

**United States Department of Labor
Employees' Compensation Appeals Board**

P.M., Appellant

and

**DEPARTMENT OF LABOR, OFFICE OF
WORKERS' COMPENSATION PROGRAMS,
San Francisco, CA, Employer**

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**Docket No. 14-188
Issued: April 21, 2014**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 1, 2013 appellant filed a timely appeal of an August 28, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish an emotional condition resulting in vomiting on May 31, 2013 in the performance of duty.

FACTUAL HISTORY

On July 16, 2013 appellant, then a 54-year-old senior claims examiner, filed a traumatic injury claim alleging that she developed stress-related nausea on May 31, 2013 due to the

¹ 5 U.S.C. § 8101 *et seq.*

employing establishment's directive to return to work. Appellant's supervisor stated that appellant received an administrative letter requesting that she return to work or provide medical evidence to cover her absences since her entitlement to medical and wage-loss benefits was terminated by OWCP on January 25, 2013.

The employing establishment controverted appellant's claim noting that an April 22, 2013 memorandum directed appellant to return to work following the January 25, 2013 termination of her medical and compensation benefits for an accepted November 23, 2010 right knee injury. The employing establishment stated that the letter from Andy Tharp, District Director, was an administrative action and that there was no error or abuse in administering this memorandum.

Appellant submitted a statement dated July 5, 2013 and noted that Mr. Tharp issued a memorandum ordering her to return to work on April 25, 2013. She stated that following receipt of this memorandum she became nauseated and eventually developed intractable vomiting. Appellant sought treatment at a hospital emergency room. She alleged that the memorandum from Mr. Tharp aggravated and irritated her to the extent that dormant stress was triggered and developed into intractable vomiting.

The employing establishment submitted the April 22, 2013 Memorandum Ordering Return to Work noting that appellant's claim for medical and wage-loss benefits as a result of her November 23, 2010 employment injury was terminated effective January 25, 2013. Mr. Tharp directed her to provide medical documentation within 30 days if her continued absence was a medical condition. He further noted that, if appellant failed to provide medical documentation, submit a leave form or report to work, she would be placed in absent without leave (AWOL) status. Mr. Tharp stated that unless she became available for duty on a regular full-time basis, management would have no other recourse but to take adverse action against her, up to and including removal from federal service.

Dr. Steven Verbinski, a Board-certified internist, completed a note dated June 3, 2013 and stated that appellant had an episode of intractable nausea and vomiting that required hospitalization from May 31 through June 3, 2013. He alleged that she had experienced "a great deal of stress related to her anxiety from her job." Dr. Verbinski noted that appellant's stress was contributing to her symptoms of vomiting.

OWCP requested additional factual and medical evidence from appellant by letter dated July 26, 2013. Appellant responded on August 1, 2013 and stated that the April 22, 2013 memorandum caused her to feel jittery and nauseated resulting in hospitalization on May 31, 2013. She alleged that the memorandum was an abusive inappropriate administrative action. Appellant stated that the employing establishment and Mr. Tharp were aware that she planned to appeal the termination and that she could not return to work due to depression, anxiety, multiple chronic pain issues and a panic attack at work on June 9, 2010. She denied any outside sources of stress other than her diagnosis of diabetes.

By decision dated August 28, 2013, OWCP denied appellant's claim finding that she had not established a compensable factor of employment as she had not submitted corroborating

evidence that the April 22, 2013 memorandum constituted error or abuse in an administrative action.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an “employee of the United States” within the meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

OWCP defines a traumatic injury as, “[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected.”⁵ To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First the employee must submit sufficient evidence to establish that he and she actually experienced the employment incident at the time, place and in the manner alleged.⁶ Second, the employee must submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.⁷

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment. In the case of *Lillian Cutler*,⁸ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.⁹ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.¹⁰ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an

² 5 U.S.C. §§ 8101-1893.

³ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ 20 C.F.R. § 10.5(ee).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *J.Z.*, 58 ECAB 529 (2007).

⁸ 28 ECAB 125 (1976).

⁹ 5 U.S.C. §§ 8101-8193.

¹⁰ See *Robert W. Johns*, 51 ECAB 136 (1999).

emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.¹¹ In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of FECA. Thus disability is not covered when it results from an employee's fear of a reduction-in-force, nor is disability covered when it results from such factors as an employee's frustration in not being permitted to work in a particular environment or to hold a particular position.¹²

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.¹³ Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹⁴ A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹⁵

ANALYSIS

Appellant filed a traumatic injury claim alleging that she developed nausea and vomiting as the result of stress caused by the receipt of an April 22, 2013 memorandum from the employing establishment directing her to return to work or provide medical evidence supporting her inability to do so. In support of her traumatic injury claim, appellant submitted a note dated June 3, 2013 from Dr. Verbinski alleging that appellant had experienced "a great deal of stress related to her anxiety from her job" which was contributing to her symptoms of vomiting.

Appellant asserted that her emotional reaction to the April 22, 2013 memorandum resulted in a physical condition. The Board finds that she has not attributed her emotional condition and alleged consequential physical reaction to her regular or specially assigned duties. Therefore, appellant has not alleged a compensable factor under *Cutler*.¹⁶

In *Thomas D. McEuen*,¹⁷ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered

¹¹ *Cutler*, *supra* note 8.

¹² *Id.*

¹³ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁴ *Kim Nguyen*, 53 ECAB 127 (2001). See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹⁵ *Roger Williams*, 52 ECAB 468 (2001).

¹⁶ *Cutler*, *supra* note 8.

¹⁷ See *Thomas D. McEuen*, *supra* note 14.

under FECA as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under FECA would attach if the facts surrounding the administrative or personnel action established error or abuse by employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁸

In a memorandum dated April 22, 2013, Mr. Tharp informed appellant of her obligation to return to work or to provide medical documentation in support of her continued absence. He further informed appellant that, if she did not report to work or provide the appropriate documentation, then she could be considered AWOL which could result in other consequences including termination of her federal service. Although the handling of leave requests and the supporting documentation is generally related to employment, this is an administrative function of the employer and not a duty of the employee. An administrative or personnel matter will be considered to be an employment factor only where the evidence discloses error or abuse on the part of the employing establishment.¹⁹ Appellant argued that the April 22, 2013 memorandum was an abusive, inappropriate administrative action. She stated that the employing establishment and Mr. Tharp were aware that she planned to appeal the termination and that she could not return to work due to depression, anxiety, multiple chronic pain issues and a panic attack at work on June 9, 2010. The Board finds that appellant's evidence is insufficient to establish error or abuse regarding the request for medical documentation supporting her continued absence from work. The evidence establishes that the employing establishment acted reasonably.²⁰ Appellant has not established administrative error or abuse in the performance of these actions and therefore they are not compensable under FECA.

Consequently, appellant has not established her claim for an emotional condition resulting in a physical consequential injury as she has not attributed her claimed condition to any compensable employment factors.²¹ She may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

¹⁸ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁹ *C.S.*, 58 ECAB 137 (2006).

²⁰ *D.L.*, 58 ECAB 217 (2006).

²¹ As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the August 28, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 21, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board