

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

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**M.R., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Kansas City, MO, Employer**

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**Docket No. 14-380  
Issued: August 25, 2014**

*Appearances:*

*Melford V. McCormick, Esq., for the appellant*

*No appearance, for the Director*

Oral Argument July 8, 2014

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On October 7, 2013 appellant, through counsel, filed a timely appeal from a September 17, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of her federal duties.

**FACTUAL HISTORY**

On August 22, 2012 appellant, then a 47-year-old mail processor clerk, filed an occupational disease claim (Form CA-2) alleging that she developed an emotional condition as a result of her federal employment duties. She stated that her right shoulder and bulging disc

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

injuries were not accepted as work related, which caused her stress and subjected her to harassment and retaliation at the employing establishment.<sup>2</sup> Appellant first became aware of her condition and of its relationship to her employment on September 24, 2011.<sup>3</sup>

By letter dated October 24, 2012, OWCP informed appellant that the evidence of record was insufficient to support her claim. It requested that she provide additional factual and medical evidence within 30 days.

In a November 11, 2012 narrative statement, appellant noted that, on June 7, 2004, she was hit by a piece of machinery during work. The claim was accepted for subluxation of the cervical spine for which she was assigned a registered nurse. Appellant sought treatment with her chiropractor who treated her for both her cervical condition and her shoulder injury. She obtained treatment with her chiropractor for six years for a right shoulder injury and the treatments were paid for by OWCP. Appellant contended that OWCP improperly denied her claim for a work-related right shoulder injury and the assigned nurse never informed her that the chiropractor was not considered a qualified physician for this injury. As a result, the employing establishment failed to abide by her medical restrictions which pertained to her shoulder and bulging disc injury. Appellant further stated that she was placed off the clock with no pay from December 5, 2008 to January 3, 2009, causing her to lose her home. She was provided a bid job within her physician's restrictions in January 2009, after her union filed a grievance for being placed off work. Appellant alleged that she was discriminated against because she was African American and not a military veteran. She underwent shoulder surgery on January 6, 2011 and was released to work with restrictions in February 2011 but the employing establishment would not let her return until April 2011, forcing her to use all of her annual and sick leave. Appellant alleged that Minh Tran, the employing establishment manager distribution operations, harassed

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<sup>2</sup> On June 7, 2004 appellant filed a traumatic injury claim (Form CA-1) alleging that she sustained injuries to her neck, back, right leg and left arm that day when she was struck by a box being transported by a power equipment operator. By decision dated October 8, 2004, OWCP accepted the claim for subluxation of the cervical spine. Appellant returned to work full time on May 5, 2006. On December 5, 2008 she filed a claim for notice of recurrence (Form CA-2a). By decisions dated May 4 and December 1, 2009, OWCP denied appellant's recurrence claim.

By letter dated September 13, 2010, appellant requested her claim be accepted for a right shoulder condition. By decisions dated October 22, 2010 and March 7 and September 6, 2011, OWCP denied her request to expand her claim to include a right shoulder condition, claim number xxxxxx795. On September 23, 2011 appellant filed for review of OWCP's September 6, 2011 decision in claim number xxxxxx795. The appeal was docketed as Docket No. 11-2084. By decision dated July 23, 2012, the Board affirmed the September 6, 2011 OWCP decision.

In an August 19, 2012 decision, OWCP finalized termination of appellant's medical and wage-loss benefits related to her accepted cervical condition. Appellant filed for review of the August 19, 2012 decision in Docket No. 12-1146. By decision dated September 18, 2012, the Board reversed OWCP's August 19, 2012 termination of compensation and medical benefits. OWCP reinstated appellant's compensation benefits.

<sup>3</sup> The Board notes that appellant has also filed an August 22, 2012 CA-2 form in claim number xxxxxx346 again alleging that she developed a right shoulder condition as a result of her federal employment duties. By decisions dated December 17, 2012 and September 11, 2013, OWCP denied her claim finding that the evidence of record failed to establish that her diagnosed condition was causally related to factors of her federal employment. Appellant filed for review of the September 11, 2013 decision before the Board which is currently on review in Docket No. 1411.

her and sent her home when she arrived at work. She noted that she was allowed to return to work on April 2, 2011 and he retaliated by mistreating, harassing and attacking her. Appellant alleged that the failure of OWCP to accept her right shoulder injury caused her to become homeless, which resulted in depression and work anxiety from her work-related injury. She concluded that she had no prior psychiatric conditions.

In a November 20, 2012 witness statement, Juanita Weaver, a postal employee, reported that she was aware of appellant being knocked down on the job by another mail handler while operating power equipment. Appellant was placed off the clock in December 2008 without pay. Ms. Weaver loaned her money to make ends meet.

In a December 11, 2012 e-mail, Mylan D. Winn, a manager, denied appellant's allegations of harassment. He noted that appellant was placed off the clock because no claim was submitted for an injury and as a result, management treated the case as nonjob-related injury. Mr. Winn further noted that in the situation of a nonjob-related injury, an employee could request a light-duty assignment and any restrictions were reviewed to place the employee at work within their restrictions, provided such work is available. He noted that appellant filed a grievance with the union for being placed off duty and, through the grievance process, was paid for the time she was off the clock. Mr. Winn noted that she had physical restrictions and limitations to perform her job requirements as a result of her surgery which caused performance issues.

A May 26, 2009 unsigned grievance settlement for time spent off the clock on December 1, 2008 was submitted. It did not identify the circumstances to which it related. Two payout request history for grievance were also submitted with unidentifiable dates.

By decision dated March 15, 2013, OWCP denied appellant's emotional condition claim. It found that she did not establish a compensable work factor.

On April 15, 2013 appellant, through counsel, requested an oral hearing before the Branch of Hearings and Review. At the July 11, 2013 hearing, counsel for her argued that OWCP failed to properly accept her claim for a right shoulder injury; that the employing establishment ignored her work restrictions; that appellant was harassed and mistreated; and that there was another Equal Employment Opportunity (EEO) complaint investigation underway.

A July 10, 2013 psychiatric evaluation was submitted from Dr. Gilbert R. Parks, a Board-certified psychiatrist, who reported that appellant's depression and post-traumatic stress disorder could be attributed to problems in her workplace, as well as the traumatic incident which caused her physical injury in June 2004.

On July 18, 2013 counsel argued that appellant's employing establishment ignored her work restrictions; OWCP failed to provide support for her June 7, 2004 traumatic injuries when it failed to accept her right shoulder condition as work related; and the assigned nurse failed to give proper instructions to appellant.

By decision dated September 17, 2013, OWCP's hearing representative affirmed the March 15, 2013 decision, as modified. The evidence of record established that appellant was placed off work pending receipt of proper documentation to be provided of light or limited-duty

work but that this was not a compensable factor of employment. The March 15, 2013 finding was affirmed as she failed to establish the facts of her remaining allegations.

### **LEGAL PRECEDENT**

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.<sup>4</sup> There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.<sup>5</sup>

Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>6</sup> On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of FECA.<sup>7</sup>

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.<sup>8</sup> However, the Board has held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.<sup>9</sup> In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.<sup>10</sup>

The Board has held that the manner in which a supervisor exercises his or her discretion falls outside the coverage of FECA. This principal recognizes that a supervisor or manager must be allowed to perform their duties and that employee's will, at times, disagree with actions taken.

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<sup>4</sup> See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

<sup>5</sup> See *Ruth C. Borden*, 43 ECAB 146 (1991).

<sup>6</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>7</sup> *Id.*

<sup>8</sup> See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>9</sup> See *William H. Fortner*, 49 ECAB 324 (1998).

<sup>10</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.<sup>11</sup> Although the handling of leave requests and attendance matters are generally related to employment, they are administrative matters and not a duty of the employee.<sup>12</sup>

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.<sup>13</sup> Mere perceptions of harassment or discrimination are not compensable under FECA.<sup>14</sup> A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.<sup>15</sup> Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.<sup>16</sup> A claimant must establish a factual basis for his or her allegations of harassment or discrimination with probative and reliable evidence.<sup>17</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>18</sup> If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.<sup>19</sup> When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.<sup>20</sup>

### ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. OWCP denied her emotional condition claim on the

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<sup>11</sup> *S.M.*, Docket No. 09-2290 (issued July 12, 2010); *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

<sup>12</sup> *C.T.*, Docket No. 08-2160 (issued May 7, 2009); *Jeral R. Gray*, 57 ECAB 611 (2006).

<sup>13</sup> *K.W.*, 59 ECAB 271 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

<sup>14</sup> *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>15</sup> *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, *supra* note 13.

<sup>16</sup> *G.S.*, Docket No. 09-764 (issued December 18, 2009); *Ronald K. Jablanski*, 56 ECAB 616 (2005); *Penelope C. Owens*, 54 ECAB 684 (2003).

<sup>17</sup> *Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>18</sup> *D.L.*, 58 ECAB 217 (2006); *Jeral R. Gray*, *supra* note 12.

<sup>19</sup> *K.W.*, 59 ECAB 271 (2007); *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

<sup>20</sup> *Robert Breeden*, *supra* note 13.

grounds that she did not establish any compensable work factors. The Board must initially review whether the alleged incidents and conditions of employment are covered employment factors under the terms of FECA. The Board finds that appellant did not establish any compensable work factors. Appellant did not meet her burden of proof to establish that she sustained an employment-related emotional condition.

Appellant did not attribute her emotional condition to her regular or specially assigned duties under *Cutler*.<sup>21</sup>

Appellant made several allegations related to administrative and personnel actions. In *Thomas D. McEuen*,<sup>22</sup> the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered 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 factual circumstances surrounding the administrative or personnel action established error or abuse by the 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.<sup>23</sup>

Appellant alleged stress due to OWCP's failure to accept her right shoulder injury as causally related to the accepted June 7, 2004 traumatic injury. She argued that OWCP failed to give her proper instructions regarding her accepted claim. The field nurse assigned to appellant's case never informed her that her treating chiropractor was not considered a physician with respect to treatment of her right shoulder injury. She noted that the work restrictions pertaining to her right shoulder were ignored, requiring her to use all of her annual/sick leave and that she had outstanding medical bills due to OWCP's failure to accept her additional conditions. To the extent that appellant was alleging that her emotional condition stemmed from problems related to the processing or handling of her accepted claim, the Board has held that development of any condition related to such matters does not arise in the performance of duty. The processing of compensation claims bears no relation to her day-to-day or specially assigned duties.<sup>24</sup>

Appellant alleged that the employing establishment did not abide by her work restrictions. Being required to work beyond one's physical limitations may constitute a compensable employment factor; but such allegation must be substantiated by probative and reliable evidence.<sup>25</sup> The record does not contain sufficient evidence to establish that appellant

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<sup>21</sup> See *supra* note 6.

<sup>22</sup> *Supra* at note 8.

<sup>23</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>24</sup> See *W.K.*, Docket No. 06-1278 (issued December 26, 2006); *George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

<sup>25</sup> *Diane C. Bernard*, 45 ECAB 223 (1993); *Lizzie McCray*, 36 ECAB 419, 421 (1985).

had specific limitations that were not accommodated by the employing establishment. Appellant did not provide any details regarding her position, her restrictions from her accepted injuries, the specific time period involved, how she completed her duties in relation to the difficulties she was having or any evidence that the employing establishment did not abide by her work restrictions.<sup>26</sup> Accordingly, she has not substantiated her allegation of work outside her limitations.<sup>27</sup>

With respect to appellant's allegation that she would report for work but would be sent home by Mr. Tran, there is no evidence to establish this factual allegation. Although the handling of disciplinary actions, evaluations, leave requests, assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>28</sup> Absent a showing of error or abuse on the part of the employing establishment, these administrative matters are not compensable.<sup>29</sup> While appellant argued that Mr. Tran unjustly sent her home upon arriving to work, she has not submitted any evidence to support her claim. Because she has not presented sufficient total evidence that Mr. Tran acted unreasonably or committed error or abuse, she has failed to establish a compensable work factor.<sup>30</sup>

Appellant also alleged that she was improperly placed off work with no pay from December 5, 2008 to January 3, 2009 and from January 6 to April 2, 2011. The record before the Board contains a witness statement from Ms. Weaver, a fellow coworker. She reported that appellant was placed off the clock in December 2008 without pay. A December 11, 2012 statement from Mr. Winn, a manager, noted that appellant filed a grievance for being placed off duty and, through the grievance process, was paid for the time she was off the clock. A May 26, 2009 unsigned grievance settlement for time spent off the clock on December 1, 2008 was submitted to the record but did not identify the circumstances to which it related. Two payout request histories for grievances were also submitted with unidentifiable dates. While the evidence submitted establishes that appellant was placed off work and provided back pay through the grievance process, she did not submit sufficient evidence to establish error or abuse in placing her off work.<sup>31</sup> The record does not contain any final grievance or EEO decision finding fault on the part of the employing establishment for placing her in an off duty status at any time. The evidence does not establish that any supervisor or manager acted unreasonably or

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<sup>26</sup> *W.K.*, see *supra* note 24.

<sup>27</sup> *Gary E. Kruger*, Docket No. 05-1110 (issued September 30, 2005).

<sup>28</sup> *Cyndia R. Harrill*, 55 ECAB 399 (2004).

<sup>29</sup> *Id.*

<sup>30</sup> *H.C.*, Docket No. 12-457 (issued October 19, 2012).

<sup>31</sup> *M.F.*, Docket No. 13-1356 (issued February 10, 2014).

committed error or abuse. Appellant has failed to establish a compensable factor with respect to these allegations.<sup>32</sup>

Appellant contended that she was harassed, subjected to retaliation and discriminated against by Mr. Tran. Actions of a claimant's supervisor which the claimant characterizes as harassment may constitute a compensable factor of employment. However, for harassment to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.<sup>33</sup> An employee's charges that he or she was harassed or discriminated against, is not determinative of whether or not harassment or discrimination occurred.<sup>34</sup> To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>35</sup> Appellant contended that Mr. Tran harassed her and retaliated against her for filing grievances. She also alleged that she was discriminated against for being African American and a nonmilitary veteran. Appellant's general assertions of dissatisfaction with her supervisor at work does not establish her allegations as factual.<sup>36</sup> Mere perceptions of harassment or discrimination are not compensable; an she must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.<sup>37</sup> The Board finds that appellant has failed to establish that she was subjected to harassment and discrimination by the employing establishment.

The Board finds that appellant has failed to provide evidence to establish a compensable factor of employment and her claim was properly denied. As appellant has not established any compensable work factors, the Board need not consider the medical evidence of record submitted from Dr. Parks.<sup>38</sup>

### CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish an emotional condition causally related to factors of her employment as a mail processor clerk.

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<sup>32</sup> Administrative and personnel matters also include the handling of disciplinary actions, evaluations and leave requests, the assignment of work duties, request for a different job and promotions or transfers where absent a showing of error or abuse, are not considered an employment factor. See *Harold B. Einarson*, Docket No. 00-348 (issued September 6, 2001).

<sup>33</sup> *J.C.*, 58 ECAB 594 (2007); *Robert G. Burns*, *supra* note 14; *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

<sup>34</sup> See *Ronald K. Jablanski*, *supra* note 16; *William P. George*, 43 ECAB 1159 (1992).

<sup>35</sup> See *G.S.*, Docket No. 09-764 (issued December 18, 2009); *C.S.*, 58 ECAB 137 (2006); *Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>36</sup> *Supra* note 4.

<sup>37</sup> *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>38</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated September 17, 2013 is affirmed.

Issued: August 25, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board