

March 14, 2009. Appellant indicated on the form that her initial work injury occurred on June 24, 1986.

In a June 15, 2009 letter to OWCP, appellant stated that, due to the employing establishment's failure to provide her with proper accommodations required by her work-related disability, she had sustained an aggravation of her work-related emotional condition. She asserted that her work duties required her to sit for extended periods of time which aggravated her preexisting right knee condition and caused pain in her neck, back, and knees. Appellant alleged that the employing establishment denied her supervisory support and job-related training and left her alone in her office to answer the telephone. She alleges this resulted in extreme anxiety, nervousness, loss of sleep, and an intense feeling of distress when she was reminded of her previous traumatic injury. Appellant further stated that she was not provided with computer training, a permanent computer, a desk tailored to her special needs, and her own work space. She contended that all of her special needs and accommodations stemming from her previous work injury were outlined in her medical records by an independent medical specialist.

In a report dated July 17, 2009, Denise M. Morales, a behavioral therapist, stated that she examined appellant on December 20, 2007, at which time she related symptoms of depressed mood, fatigue, social withdrawal, lack of appetite, anxiety, hypervigilance, and an inability to relax. Appellant also experienced recurrent episodes of fear and a choking sensation when experiencing periods of anxiety. Ms. Morales stated that appellant was trying to deal with the trauma she endured years ago at her workplace when she was physically attacked.²

By decision dated October 22, 2009, OWCP denied compensation for a claim based on an emotional condition. In an order dated February 25, 2011,³ the Board vacated OWCP's October 22, 2009 decision. It noted that appellant had presented evidence indicating that she sustained both an emotional injury and a traumatic physical injury, possibly related to an assault she sustained while at work. In addition, OWCP had indicated that appellant had "other accepted conditions" which could have provided the basis for the accommodations the employing establishment fashioned for her light-duty job. However, the record did not contain a job description outlining work duties which were tailored to adhere to these physical restrictions. As appellant had alleged that the employing establishment forced her to exceed her physician's work restrictions, the Board found that OWCP was required to determine whether her allegation that she was being required to work beyond one's physical limitations could constitute a compensable employment factor, if such activity was substantiated by the record. The Board therefore remanded the October 22, 2009 decision and directed the district office to obtain a contemporaneous medical report containing a description of appellant's work restrictions stemming from her previous injury and a contemporaneous job description of her subsequent work duties on light duty, and where she was working at the time of her alleged April 15, 2009 work stoppage. The Board instructed OWCP, after obtaining these records, to determine whether appellant established that management's refusal to allow her to adhere to medical restrictions stemming from her previous work injury may have resulted in a compensable emotional condition.

² Appellant was a victim of an assault at the Montrose campus in 1986.

³ Docket No. 10-1097 (issued February 25, 2011).

By decision dated June 30, 2011, OWCP found that appellant failed to establish that she sustained an emotional condition in the performance of duty, finding that she failed to provide sufficient evidence to establish a compensable factor of employment. Accordingly, it found that she failed to establish fact of injury. Appellant requested an oral hearing, which was held on October 12, 2011. At the hearing she made several allegations which reiterated the assertions she made in her June 15, 2009 letter. Appellant asserted that management did not respond to her needs upon her return to the workplace, which resulted in her developing stress and aggravated her emotional condition.

In a statement dated November 4, 2011, Maribeth Affeldt, the employing establishment's business manager, rebutted appellant's allegations. She denied her assertion that she was not given proper training, attention, and direction upon her return to the workplace. Ms. Affeldt indicated that appellant did not attend the New Employee Orientation (NEO) required of all new employees and this delayed her receiving access to the computer which was needed for her position of timekeeper, as well as basic orientation to the intranet. She stated that appellant worked in an office with two other program support assistants, whom she was to shadow and observe until she received access. When appellant received access to the intranet soon after she arrived, she was instructed to complete the mandatory on-line training at her own speed; her coworkers helped show her the basics of navigating around the computer. Ms. Affeldt asserted that appellant worked from 8:00 a.m. to 12:00 p.m., Monday to Friday, and received the required access to the timekeeping menus to begin training on a program called VISTA. While she did not remember what day appellant received access she believed that it was just before appellant had stopped coming to work. Ms. Affeldt stated that appellant received very little training because she stopped coming to work at about the same time she received access to the timekeeping menus. She advised that appellant received basic computer training on how to navigate the intranet which allowed her to complete the mandatory training. However, since appellant's computer skills were lacking, there was no pressure to force her to complete them in any time frame, and she could work at her own pace. Ms. Affeldt remembered talking to appellant about the delay in getting her access and to bear with us while we all had to wait. She stated that appellant appeared comfortable and had no issues, that she could shadow the other office staff just to get a feel of the environment and the work product. Ms. Affeldt believed that appellant had been out of the working environment for a long time and that management and staff were allowing her to take her time and get comfortable in the work setting.

Ms. Affeldt denied that appellant was forced to return to Montrose, where her 1986 physical assault had occurred, contrary to her physician's restrictions. Appellant stated that management had made a decision prior to her return to the employing establishment that she would never have to go there. The agreement to keep her from the Montrose location was why she did not attend the New Employee Orientation, which is held on the Montrose campus. Ms. Affeldt denied that appellant's work area had three desks, all of which were assigned to other employees. She related that the office for the nursing support staff at Castle Point has three workstations and that appellant was the third employee assigned to that office. She asserted that management had not filled the position which was assigned to appellant and that the desk was still unoccupied. Ms. Affeldt denied that appellant was left alone at the worksite. She stated that appellant's coworkers might have been on a smoke break or in the restroom but that she did not recall appellant ever being left alone for any length of time. With regard to appellant's assertion that she was not properly trained to do things in the office while left alone, Ms. Affeldt stated

that, if she was ever left alone, the only task she might have been assigned was being asked to answer the phone and take a message. She advised that there was no instance where appellant was asked to do anything with which she was not comfortable. Ms. Affeldt conceded that appellant did not have the computer codes when she arrived at the facility, but this was because she did not attend the NEO, where new employees receive all access and ID badges. She advised that the employing establishment had to “play catch up” to get appellant the required access as soon as it could.

Lastly, Ms. Affeldt stated that appellant only worked at the worksite for a few weeks and that, while she did not have access to her timecards, she believed appellant worked for two weeks at four hours per day. She noted several times that appellant’s schedule was from 8:00 a.m. to 12:00 p.m.

By decision dated December 19, 2011, an OWCP hearing representative affirmed the June 30, 2011 decision. He found that appellant had failed to implicate a compensable factor of employment, failed to establish fact of injury, and failed to provide medical evidence sufficient to establish an emotional condition causally related to any employment factor.

In a statement dated December 29, 2011, received by OWCP on February 10, 2012, appellant alleged that there were numerous actions taken by the employing establishment which caused her stress and constituted compensable acts of employment. These included:

(1) The fact that when she returned to work from her period of disability there were not enough work stations in her office, which forced her to frequently stand for extended periods. This made her uncertain of her work duties and her employment status;

(2) That while her supervisor Ms. Affeldt stated that she did not recall leaving appellant by herself at the worksite, this was because appellant rarely saw her. She asserted that Ms. Affeldt was seldom in her office and had her door closed when she was at work. She also denied Ms. Affeldt’s claim that she saw her on a daily basis while she was working at the employing establishment; at one point Ms. Affeldt was on military leave for an entire week but failed to tell appellant whom to consult in her absence. Appellant asserts that this constituted neglect and showed that management was not concerned with reacclimating her into the work environment after her long absence. She alleged that this made her uncomfortable because Ms. Affeldt was not present to observe the effect of the stressful situations into which she was placed. As a result appellant was left alone in an area of the hospital that was partly isolated and was required to answer the telephone, a duty with which she was not comfortable and for which she was not trained;

(3) Appellant alleged that Ms. Affeldt was responsible for her failure to attend orientation for new employees, which left her unprepared for some of the work duties she was required to perform in order to ensure her successful return to work. In addition, she asserted that while management was under the impression that she would be working eight hours, her treating physician had limited her to

working from 8 a.m. to 12.00 p.m. Appellant further asserted that Ms. Affeldt wrongly stated that she did not know she would have to go to Montrose for computer training. This caused her extreme stress because she had previously been assigned to Montrose, in 1986, at which time she was left alone in a locked psychiatric unit occupied by about 21 clients; appellant recalled being grabbed and beaten across the head, back and shoulders by an unruly client. Appellant alleged that a referee physician had stipulated that she was not supposed to go to Montrose; this restriction was disregarded and she was ordered to go there, which showed an outright disregard for her emotional and physical health;

(4) Appellant asserted that Ms. Affeldt wrongly stated that she was absent from work on certain dates when she actually did work; this demonstrated her lack of involvement and concern to assist her in having a successful transition back into the work force.

(5) Appellant further asserted that the chief of police stated that she lacked an employee photo identification card to enter her worksite. Ms. Affeldt conceded this; however, she stated that appellant had previously been allowed to enter the facility without the identification card. This constituted an additional concern which caused her to experience stress and anxiety on a daily basis. Appellant attempted to obtain the proper identification but encountered repeated, unnecessary delays.

Appellant alleged that, due to management's unresponsiveness to her concerns and its lack of support and training, she was acutely stressed to the point that she experienced an accelerated blood pressure, nausea, dizziness, hypervigilance, sleeplessness, acute anxiety, and reactive depression.

By letter dated June 13, 2012, appellant's attorney requested reconsideration.

By decision dated June 16, 2012, OWCP denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require OWCP to review its prior decision.

By order dated May 2, 2013,⁴ the Board vacated OWCP's June 16, 2012 decision on the grounds that it failed to consider evidence it received prior to that decision; *i.e.*, appellant's December 29, 2011 statement. The Board remanded for OWCP to consider appellant's statement.

By decision dated May 31, 2013, OWCP denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require OWCP to review its prior decision. It stated that OWCP had previously denied her claim on the grounds that she failed to submit medical evidence from a qualified physician sufficient to establish the medical component of her emotional condition claim. OWCP found that the evidence appellant submitted still failed to contain any medical evidence

⁴ Docket No. 13-80 (issued May 2, 2013).

from a qualified physician; therefore, it found that she provided no new evidence material to the issues at hand.

By decision dated November 20, 2013,⁵ the Board vacated OWCP's May 31, 2013 decision. The Board found that appellant submitted additional factual evidence, *i.e.*, her December 29, 2011 statement, which contained numerous allegations that she experienced stress at her workplace on the part of management in the course of her regular duties which, if credited, could constitute a compensable act of employment. The Board therefore found that appellant had submitted new and relevant evidence pertaining to the issue in this case, *i.e.*, whether appellant established a *prima facie* case that she sustained an emotional condition in the performance of duty, which OWCP had not previously considered. The Board remanded to OWCP to consider appellant's December 29, 2011 statement and determine whether it was sufficient to establish an employment factor which could give rise to a compensable disability under FECA and to establish a *prima facie* case that she sustained an emotional condition in the performance of duty. The facts of this case are set forth in the Board's February 25, 2011, May 2 and 31, 2013 decisions and are by reference herein incorporated.

By decision dated April 15, 2014, OWCP denied modification of the June 30 and December 19, 2011 decisions.

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.⁶ There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable, and probative evidence.⁷

The first issue to be addressed is whether appellant has cited factors of employment that contributed to her alleged emotional condition or disability. 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.⁸ 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. Administrative and personal matters although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially

⁵ Docket No. 13-1563 (issued November 20, 2013).

⁶ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

⁷ See *Ruth C. Borden*, 43 ECAB 146 (1991).

⁸ *Lillian Cutler*, 28 ECAB 125 (1976).

assigned work duties of the employee and are not covered under FECA.⁹ 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 the Act.¹⁰

ANALYSIS

The Board notes initially that appellant did not attribute her emotional condition to the performance of her regular or specially assigned duties as a time keeper under *Lillian Cutler*.¹¹ Rather, she contends that her emotional condition was related to actions taken by the employing establishment following her return to work in March 2009.

The Board finds that the administrative and personnel actions taken by management in this case contained no evidence of agency error, and are therefore not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under FECA, unless there is evidence that the employing establishment acted unreasonably.¹² In the instant case, appellant has presented no evidence that the employing establishment acted unreasonably or committed error with regard to the incidents of alleged unreasonable actions involving personnel matters on the part of the employing establishment. Regarding appellant's allegations that Ms. Affeldt was rarely in the office and therefore not accessible to appellant when she returned from medical leave, and that she failed to tell appellant whom to consult about her work duties while she was on military leave. Appellant also asserted that Ms. Affeldt rarely checked with her to see how she was doing and did not show sufficient concern for someone returning to the workplace. These allegations were not corroborated by coworkers and were rebutted by Ms. Affeldt, who asserted that appellant was given appropriate guidance by management and coworkers and was brought along slowly and at a pace management believed was comfortable for her, particularly since she did not attend the orientation program as did other new employees. The Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of FECA.¹³ The managerial conduct and actions of Ms. Affeldt toward appellant involved administrative functions which, absent agency error or abuse, were not compensable. The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under FECA.¹⁴

⁹ See *Matila R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon*, 42 ECAB 556 (1991).

¹⁰ *Id.*

¹¹ *Supra* note 7.

¹² See *Alfred Arts*, 45 ECAB 530, 543-44 (1994).

¹³ See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹⁴ *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

Appellant has provided insufficient evidence to establish that the employing establishment acted unreasonably or committed error in discharging its administrative duties with regard to her reentry into the workplace. As for her assertion that she experienced stress because she did not have a photo identification card, appellant did not dispute that she had been permitted to enter her facility despite not possessing identification. OWCP properly found that any stress on the part of appellant stemming from a lack of an identification card was self-generated. An employee's emotional reaction to an administrative or personnel matter is not covered under FECA, unless there is evidence that the employing establishment acted unreasonably.¹⁵ Appellant's allegations that there were not enough work stations in the office; that she was left alone, isolated and forced to answer telephone calls without proper training; and that Ms. Affeldt was responsible for her failure to attend orientation for new employees, leaving her unprepared for some of the work duties she was required to perform in order to ensure her successful return to work were not substantiated. She has not provided any additional information or corroborating evidence, such as witness statement, regarding the circumstances of her work assignments so as to establish the context under which they were made. Ms. Affeldt stated that appellant did not attend orientation training at Montrose because of management's awareness that this was the site where she had been assaulted in 1986. Appellant did not submit any evidence to substantiate that any of her work assignments were in error or were abusive.

Appellant alleged that management tried to have her work hours extended past her four-hour daily restriction and that Ms. Affeldt disregarded the restriction against assigning appellant for computer training at the Montrose facility, where she had been physically assaulted were not corroborated. She, in effect, alleged that she experienced stress because the employing establishment did not make reasonable accommodations for her stress-related condition. The Board has held that being required to work beyond one's physical limitations may constitute a compensable employment factor if substantiated by the record.¹⁶ However, appellant has failed to provide any evidence such as statements from witnesses to support this allegation.

Regarding appellant's allegation that she developed stress due to the insecurity of her job duties and her feelings of inadequacy and her fears that she was not able to prepare herself to do her job, the Board has previously held that a claimant's job insecurity is not a compensable factor of employment under FECA.¹⁷ Accordingly, a reaction to such factors did not constitute an injury arising within the performance of duty. OWCP properly concluded that in the absence of agency error or abuse such personnel matters were not compensable factors of employment. Appellant has failed to substantiate her allegations. In the absence of agency error or abuse, such personnel matters were not compensable factors of employment.

The Board finds that appellant has not established a compensable work factor. For this reason, the medical evidence will not be considered.¹⁸ The Board will affirm OWCP's April 15,

¹⁵ See *Alfred Arts*, *supra* note 6.

¹⁶ *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

¹⁷ See *Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

¹⁸ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

2014 decision denying modification of the December 19, 2011 decision denying compensation for an alleged emotional condition.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the April 15, 2014 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: December 24, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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