

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

S.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Absecon, NJ, Employer**

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**Docket No. 14-1423
Issued: November 21, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 10, 2014 appellant filed a timely appeal from a March 17, 2014 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 this case.

ISSUE

The issue is whether appellant established any additional compensable work factors in support of her emotional condition claim.

FACTUAL HISTORY

The case was before the Board on a prior appeal. Appellant filed a claim for occupational disease (Form CA-2) on February 23, 2011. She alleged that she was subject to harassment and bullying by management and coworkers, including having a noose hung in the

¹ 5 U.S.C. § 8101 *et seq.*

office. OWCP issued an April 4, 2011 decision denying the claim on the grounds that the evidence did not establish that the incidents occurred as alleged. By decision dated July 8, 2011, it found appellant did not establish any compensable work factors. In a decision dated October 31, 2011, OWCP noted that she had filed a prior claim and stated “the majority of your claim cites work factors which were previously claimed” under the prior claim. It again found no compensable work factors were established.

In a decision dated February 13, 2012, OWCP found that appellant did not establish any compensable work factor. The decision stated that the evidence was now sufficient to establish “your supervisor improperly called your psychologists office” in early 2010, but this was not a compensable work factor. By decision dated June 8, 2012, OWCP found no compensable work factors were established.

By order dated February 27, 2013, the Board remanded the case to OWCP.² The Board noted that in the June 8, 2012 decision OWCP had referred to a prior claim and stated that most of the alleged factors had been considered under that claim. The Board remanded the case to combine the case files for proper adjudication of the issue.

On record, OWCP combined the claim files. In the prior claim, appellant filed a Form CA-2 on February 24, 2010, alleging that she was subject to harassment, being singled out, having work taken away, being subject to changing schedules and worksites. She also made an allegation in a March 3, 2010 statement of seeing a noose hanging at one of the carrier’s cases.

By decision dated July 22, 2010, OWCP accepted the following as compensable work factors: (1) Between late 2007 and January 2008 a noose was hanging in an employee’s desk area and upon notifying management it was not removed and no action was taken until late January 2008; (2) a coworker called appellant “cuckoo” and made “cuckoo” sounds in her vicinity following a conversation about the noose; (3) a note left for a supervisor regarding her route used derogatory language; and (4) appellant’s supervisors and coworkers had access to her personal medical information and the contents of her Equal Employment Opportunity (EEO) complaints; and (5) her supervisor contacted her physician to request private health information and refused to honor her doctor’s note. OWCP found the medical evidence was insufficient to establish an employment-related emotional condition due to any of the compensable factors.

Appellant submitted an October 20, 2010 report from Dr. Michael Schwartz, Ph.D a clinical psychologist. On January 20, 2011 OWCP accepted the claim for major depressive disorder, single episode and adjustment disorder, mixed anxiety and depressed mood. Appellant was paid wage-loss compensation from January 25 to April 18, 2010.³

As noted above, the Board had reviewed a June 8, 2012 OWCP decision that did not refer to the acceptance of the claim or the work factors accepted as compensable by OWCP. In this regard, appellant had submitted a March 1, 2012 statement. She alleged her privacy had been violated by a Supervisor Sloan, who called her physician. According to appellant, she was

² Docket No. 12-1434 (issued February 27, 2013).

³ Appellant filed a Form CA-7 claim for compensation for the period January 25 to April 30, 2010.

subject to disparate treatment and derogatory comments. She alleged that on February 15, 2011 she was referred to as “the trash” by supervisors and her supervisor’s violation of regulations had caused a hostile environment. Appellant also referred to a Supervisor Walicki, who she alleged retaliated against her for filing EEO complaints. She noted a letter of warning and stated that her route was “screwed up” and caused her stress.

By decision dated March 17, 2014, OWCP reviewed appellant’s March 1, 2012 allegations and found no additional compensable work factors had been established.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment.⁴ This burden includes the submission of detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁵

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the coverage of workers’ compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee’s frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee’s emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁶

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.⁷ Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.⁸

ANALYSIS

In the present case, the only decision before the Board is the March 17, 2014 decision which was limited to a determination that appellant did not have any additional compensable

⁴ *Pamela R. Rice*, 38 ECAB 838 (1987).

⁵ *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

⁶ *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

⁸ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

work factors. The case files were administratively combined and will be considered together. As the case history indicates, OWCP did accept compensable work factors and accepted major depressive disorder, single episode and adjustment disorder, mixed anxiety and depressed mood. Appellant submitted a Form CA-7 claim for compensation and was paid from January 25 to April 18, 2010. If appellant is seeking additional wage-loss compensation related to the accepted conditions, she may submit an appropriate Form CA-7 and pursue the issue but on this appeal, the only issue was whether there were additional compensable work factors.

In this regard, the Board notes that appellant's March 1, 2012 letter refers to some factors that have already been accepted by OWCP as compensable. OWCP accepted as a compensable factor, in the July 22, 2010 decision, that a supervisor contacted appellant's physician. In a later February 13, 2012 decision, it indicated that, while it was accepted that appellant's supervisor improperly contacted the physician by telephone, which did not constitute a compensable work factor. The Board notes that 20 C.F.R. § 10.506 of OWCP's implementing regulations specifically prohibits an employing establishment from contacting a physician by telephone.⁹ The record established error by the employing establishment in this regard and it is a compensable work factor, as found in the July 22, 2010 OWCP decision in file number xxxxxx247.

As to the other allegations in appellant's March 1, 2012 letter, no evidence was submitted to support a finding of an additional compensable work factor. With respect to allegations of harassment or disparate treatment, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.¹⁰ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.¹¹ While appellant refers in the March 1, 2012 letter to specifically numbered exhibits, the record did not contain any such evidence submitted with the letter. It is not clear what specific evidence she is referring to in this regard. On August 2, 2011 appellant had submitted a statement from Supervisor Walicki dated March 11, 2011, denying her allegations of a hostile work environment. The general allegations of harassment and disparate treatment are not sufficient to establish a compensable work factor and there is no supporting evidence. There are, for example, no findings with respect to an EEO proceeding or other probative evidence.¹² With respect to a November 19, 2010 letter of warning, appellant presented no evidence of error or abuse.¹³

⁹ An employing establishment may contact the physician in writing concerning work limitations, but may not contact the physician through telephone or personal visit. 20 C.F.R. § 506.

¹⁰ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

¹¹ *Helen P. Allen*, 47 ECAB 141 (1995).

¹² The record contained an undated EEO decision, received by OWCP on November 1, 2010, finding that appellant's claim was improperly dismissed for failure to state a claim but no findings were made with respect to the actual allegations of reprisal or discrimination.

¹³ Disciplinary actions such as a letter of warning are not compensable work factors unless there is evidence of error or abuse by the employing establishment regarding the disciplinary action. *See G.C.*, Docket No. 13-704 (issued April 4, 2014).

The Board finds that the record does not establish any additional compensable work factors beyond those accepted in the July 22, 2010 decision, in the prior claim. As noted, if appellant is seeking additional wage-loss compensation she may pursue such claim with OWCP.

CONCLUSION

The Board finds that appellant has not established any additional compensable work factors beyond those previously accepted in a July 22, 2010 decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 17, 2014 is modified to reflect that a telephone call from a supervisor to appellant's physician is a compensable work factor and affirmed as modified.

Issued: November 21, 2014
Washington, DC

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

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

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