United States Department of Labor
Employees' Compensation Appeals Board

A.F., Appellant	)	
and	)	**Docket No. 14-1017**
	)	**Issued: October 3, 2014**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Topeka, KS, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 31, 2014 appellant, through counsel, filed a timely appeal from an October 4, 2013 merit decision of the Office of Workers' Compensation Programs' (OWCP) denying her claim for an employment-related emotional condition. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

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

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the issuance of the October 4, 2013 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

On appeal, counsel contends that OWCP's decision was contrary to fact and law.

FACTUAL HISTORY

On July 30, 2013 appellant, then a 41-year-old medical reimbursement technician, filed an occupational disease claim (Form CA-2) alleging an emotional condition due to ongoing stress at the workplace. She experienced anxiety, emotional stress and difficulty breathing as a result of redundancies at work, frequent changes to her job description, increasing workload and insufficient time to complete assignments.

In an August 16, 2013 letter, OWCP notified appellant of the deficiencies of her claim. It afforded her 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted her résumé and a notification of personnel action (SF-50) indicating that she received a promotion effective October 21, 2012. She also submitted a March 21, 2011 position description and time and attendance forms for the period January 1, 2012 through July 26, 2013.

In a narrative statement, appellant noted that on July 2, 2013 her department had given her new templates to enter in all accounts, which was more time consuming as it required new information to add and took time away from moving on to other accounts. Appellant alleged redundancy in her job description when her supervisor, Kelsey Mortimer, sent an e-mail instructing her to hold off utilizing the new template and then her department manager, Tom Jensen, sent an e-mail stating that they had no choice in the matter and needed to implement the new template. She alleged that management was unclear of her job description and set unrealistic expectations on the material they wanted in place and the confusion caused her stress and anxiety as she performed her job duties.

On July 18, 2013 the system was down and appellant was given redundant and frustrating instructions at work, which created unnecessary stress. On July 19, 2013 her workload assignment was to clear her buffers and her site had the highest volume of 452 accounts. Appellant stated that she came back from vacation to find that her site had not been worked on by her team, which was overwhelming. She argued that her struggle to work harder to catch up created stress and caused difficulty breathing that day because of the pressure of being behind. Appellant had to ask for assistance because it was not realistic to process the high volume of accounts.

On July 22, 2013 the daily report of the volume of accounts for appellant's site and her work increased again. Appellant alleged that the increase in workload added to her stress and anxiety.

On July 25, 2013 appellant again felt pressured and stressed to get her accounts pushed forward in response to an e-mail from her supervisor stating that she needed to push her buffers and start moving with a sense of urgency. That same day, she was on the telephone with a customer service representative when her supervisor sent an e-mail stating that she had an online meeting with appellant in 14 minutes. Appellant was working on her account entering data and her supervisor's e-mail distracted her. She responded, asking if the meeting could be scheduled

earlier because she was unable to attend. Appellant alleged that the pressure from needing to finish her work and attend the meeting created stress and she had a panic attack. She also alleged that the process of filing her workers' compensation claim created stress and anxiety because of the numerous back and forth e-mails required.

The record contains reports dated September 4-16, 2013 from Dr. Lowell Snitchler, Ph.D. a clinical psychologist. Appellant submitted e-mails dated June 5 through July 26, 2013.

An e-mail message to appellant dated July 2, 2013, instructed her to hold off on utilizing the new template until further notice, noting that more feedback would be received before moving forward.

In an e-mail message dated July 3, 2013 to appellant, Mr. Jensen stated that executive management had instructed them to use the new templates. He advised that this was not optional.

In an e-mail message to appellant dated July 25, 2013, Kuuipo N. Salavea, Insurance Verification Supervisor, stated that she needed to push her buffers and start moving with a sense of urgency.

In a July 26, 2013 letter, the employing establishment noted that management set daily goals and assignments to their staff; however, none of their employees had ever been reprimanded for not meeting the daily goals or assignments. It stated that it had not made any changes or augmentations to the employees' job descriptions and that appellant had no performance issues as she had been meeting her productivity and quality standards.

On August 29, 2013 Dr. Ho Dzung, a Board-certified anesthesiologist, diagnosed cervical spondylosis and a disc bulge.

By decision dated October 4, 2013, OWCP denied appellant's claim finding that the evidence did not establish an emotional condition arising from a compensable factor of employment. It accepted that the following events occurred, but were not factors of appellant's federal employment: (1) appellant was provided a new template and then told not to use the new template; (2) ONTRAC system was down, so appellant was told to work QUICS and Buffer and she began to do that, but then was told that ONTRAC was up and began to log back in when she was told that it was back down and then once again told that it was back up; (3) appellant was told to clear her buffer of 452 accounts; (4) appellant received daily report of volume accounts, additional accounts were added and she asked for assistance; (5) appellant received an e-mail instructing the team to push the buffers and move with a "sense of urgency"; (6) appellant was working and received an e-mail from her supervisor marked "high importance" indicating that there would be an online meeting in 14 minutes and she requested more information regarding the meeting because she was on a telephone call; and (7) appellant received and sent e-mails regarding her OWCP claim.

LEGAL PRECEDENT

In providing for a compensation program for federal employees, Congress did not contemplate an insurance program against any and every injury, illness or mishap that might

befall an employee contemporaneous or coincidental with his or her employment. Liability does not attach merely upon the existence of an employee-employer relation. Instead, Congress provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[3] The phrase while in the performance of duty has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers' compensation law of arising out of and in the course of employment.

In *Lillian Cutler*,[4] the Board noted that workers' compensation law is not applicable 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 nonetheless does not come within the coverage of workers' compensation as they are found not to have arisen out of the employment. When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding his or her ability to carry out her duties and the medical evidence establishes that the disability resulted from his or her 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 resulted from his or her emotional reaction to her day-to-day duties. The same result is reached when the emotional disability resulted from the employee's emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of the work.[5]

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, unhappiness with doing inside work, desire for a different job, brooding over the failure to be given work he or she desires or the employee's frustration in not being permitted to work in a particular environment or to hold a particular position.[6] Board case precedent demonstrates that the only requirements of employment which will bring a claim within the scope of coverage under FECA are those that relate to the duties the employee is hired to perform.[7]

To the extent that disputes and incidents alleged as constituting harassment by coworkers are established as occurring and arising from a claimant's performance of his or her regular duties, these could constitute employment factors.[8] However, for harassment to give rise to a

[3] *Id*. at § 8102(a).

[4] 28 ECAB 125 (1976).

[5] *Id.* at 130.

[6] *See Lillian Cutler*, *supra* note 4.

[7] *See Anthony A. Zarcone*, 44 ECAB 751 (1993).

[8] *See David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

compensable disability under FECA there must be evidence that harassment did, in fact, occur. Mere perceptions of harassment are not compensable under FECA.[9]

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.[10] 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.[11] 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.[12]

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.[13] This burden includes the submission of a detailed description of the employment factors or conditions, which believes caused or adversely affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.[14]

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 work 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 compensable factors of employment and may not be considered.[15] If a claimant does implicate a factor of employment, OWCP should then consider whether the evidence of record substantiates that factor. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim; the claim must be supported by probative evidence.[16] Where the matter asserted is a compensable factor of employment and the evidence of record established the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.[17]

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[9] *See Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[10] *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff d on recon.*, 42 ECAB 556 (1991).

[11] *See William H. Fortner*, 49 ECAB 324 (1998).

[12] *See Ruth S. Johnson*, 46 ECAB 237 (1994).

[13] *See Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[14] *See Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[15] *See Dennis J. Balogh*, 52 ECAB 232 (2001).

[16] *See Charles E. McAndrews*, 55 ECAB 711 (2004).

[17] *See Jeral R. Gray*, 57 ECAB 611 (2006).

The Board has held that a variety of work factors are compensable under FECA. Among them, overwork is a compensable factor of employment if appellant submits sufficient evidence to substantiate this allegation.[18] Also, in certain circumstances, working overtime is sufficiently related to regular or specially assigned duties to constitute a compensable employment factor.[19] Additionally, conditions related to stress resulting from situations in which an employee is trying to meet his or her position requirements are compensable.[20]

ANALYSIS

Appellant alleged that she developed an emotional condition due to stress at the workplace related to redundancies and her workload. OWCP found these to be noncompensable employment factors. Therefore, the Board must review whether the alleged incidents are covered employment factors under FECA.[21]

OWCP accepted that the following events occurred, but were not factors of appellant's federal employment: (1) appellant was provided a new template and then told not to use the new template; (2) ONTRAC system was down, so appellant was told to work QUICS and Buffer and appellant began to do that, but then was told that ONTRAC was up and began to log back in when she was told that it was back down and then once again told that it was back up; (3) appellant was told to clear her buffer of 452 accounts; (4) appellant received a daily report of volume accounts, additional accounts were added and she asked for assistance; (5) appellant received an e-mail instructing the team to push the buffers and move with a "sense of urgency"; and (6) appellant was working and received an e-mail from her supervisor marked "high importance" indicating that there would be an online meeting in 14 minutes and she requested more information regarding the meeting because she was on a telephone call.

Appellant attributed her emotional condition to redundancies at work. This pertains to an administrative matter. The standard under *McEuen* is whether the evidence of record establishes error or abuse by the employing establishment.[22] In a July 26, 2013 letter, the employing establishment indicated that management set daily goals and assignments to their staff, however, none of the employees had ever been reprimanded for not meeting the daily goals or assignments, nor were there any repercussions. It had not made any changes or augmentations to the employees' job description and that appellant had no performance issues as she had been meeting her productivity and quality standards. The Board finds that appellant's stress and anxiety at work must be construed to be self-generated. There is no evidence establishing that the employing establishment assigned her additional work that was not within the scope of her job responsibilities. The Board has held that a manager or supervisor must be allowed to perform their duties and that employees will disagree with actions taken. Mere disagreement or

[18] *See Bobbie D. Daly*, 53 ECAB 691 (2002).

[19] *See Ezra D. Long*, 46 ECAB 791 (1995).

[20] *See Trudy A. Scott*, 52 ECAB 309 (2001).

[21] *See P.E.*, Docket No. 14-102 (issued April 1, 2014).

[22] *See McEuen*, *supra* note 10.

dislike of actions taken by a supervisor will not be compensable absent evidence establishing error or abuse.[23] An employee's reaction to an administrative or personnel matter is not covered under FECA, unless there is evidence that the employing establishment acted unreasonably.[24] As noted above, disability is not covered when an employee is frustrated in not being permitted to work in a particular environment.[25] Because appellant has not presented sufficient evidence to establish that her supervisors acted unreasonably or that the employing establishment engaged in error or abuse, she has failed to identify a compensable work factor.

Appellant further attributed her emotional condition to her workload. The Board has held that overwork, when substantiated by sufficient factual information to corroborate her account of events, may be a compensable factor of employment.[26] The Board finds that appellant did not submit sufficient evidence to establish a compensable employment factor under *Cutler*. The record does not substantiate her contentions that she was overworked. Rather, the record shows that appellant was meeting her productivity and quality standards. Thus, the Board finds that the evidence is insufficient to establish overwork allegations.[27]

Finally, appellant attributed her emotional condition to the processing of her OWCP claim. The Board has long held that the processing of workers' compensation claims bears no relation to appellant's day-to-day or specially assigned duties.[28] The Board finds that her claim was timely filed. Therefore, appellant failed to establish a compensable factor of employment.

The Board notes that it is unnecessary to address the medical evidence of record as appellant has failed to establish a compensable factor of employment.[29]

On appeal, counsel alleges that OWCP's decision was contrary to fact and law. Based on the findings and reasons stated above, the Board finds counsel's argument is not substantiated.

Appellant 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 appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

[23] *See Linda Edwards-Delgado*, 55 ECAB 401 (2004).

[24] *See Alfred Arts*, 45 ECAB 530 (1994).

[25] *See Lillian Cutler*, *supra* note 4.

[26] *See Bobbie D. Daly*, 53 ECAB 691 (2002).

[27] *See E.H.*, Docket No. 13-559 (issued August 21, 2013).

[28] *See George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 806, 811 (1986).

[29] *See Garry M. Carlo*, 47 ECAB 299, 305 (1996).

ORDER

IT IS HEREBY ORDERED THAT the October 4, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 3, 2014
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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