

Appellant alleged, *inter alia*, that her supervisor put her in an extremely volatile, stressful and hostile working environment, which aggravated and accelerated her post-traumatic stress disorder (PTSD) symptoms. In support of her allegations, she discussed various incidents at work involving interactions with her colleagues and improper behavior by her colleagues. Appellant also alleged improper training, that she did most of the work in the office and that her supervisors improperly changed the location of her desk.

FACTUAL HISTORY

On November 6, 2013 appellant, then a 37-year-old human resources assistant, filed an occupational disease claim alleging that her PTSD was aggravated by her federal employment. She indicated that her Health Insurance Portability and Accountability Act rights were violated on the job in September 2013 when her medical conditions were disclosed to her fellow coworkers by the adjutant and that this created a hostile and unsafe work environment. Appellant also contended that her coworkers have worked together and developed a clique. She noted that she first realized her illness was caused by her employment on September 1, 2013.

By letter dated November 12, 2013, OWCP informed appellant that her documentation was insufficient to support her claim, instructed her to submit medical evidence and requested that she respond to a questionnaire with regard to fact of injury.

In response, appellant submitted medical evidence. The record also contains information with regard to appellant's requests for a reasonable accommodation. Appellant signed a form on July 2, 2013, indicating that she accepted reassignment as accommodation for her disabilities in response to her request for a reasonable accommodation. The statement indicated that the reassignment satisfied the relief requested in her November 9, 2012 formal Equal Employment Opportunity (EEO) complaint. Appellant also submitted an appendix to a new complaint requesting reasonable accommodation due to PTSD that was completed on October 10, 2013.

By decision dated December 17, 2013, OWCP denied appellant's claim for the reason that she had not established that an employment incident occurred as alleged.

On December 23, 2013 appellant requested reconsideration. Information submitted since the last OWCP decision included additional medical evidence. Furthermore, appellant submitted information with regard to her EEO complaint claim, including a questionnaire completed by Joyce Underwood, who worked with appellant, with regard to appellant's discrimination complaint. Ms. Underwood indicated that on October 9, 2013 appellant was denied a reasonable accommodation; that Ms. Underwood believed that the work environment was bad and that there was a clique and if you were not part of the clique that they were not going to make it easy for you; that appellant had a conflict with a coworker that Ms. Underwood also had issues with; and that on October 1, 2013 the adjutant moved appellant's desk side by side with another colleague with the same disability. She noted that in mid-September 2013 appellant asked that the adjutant resolve a conflict between her and another worker and that she responded, "These white boys, the green berets are not for us and that we need to stick together." Ms. Underwood also noted that on July 2, 2013 appellant found out that the adjutant provided her medical information to her coworkers and that on October 15, 2013 Major Marvin made a comment to other civilian employees that appellant was not going to do to this battalion what she did to her prior one.

The record also contains a questionnaire completed by appellant with regard to the EEO complaint wherein she indicated that on October 9, 2013 Major Marvin denied her request for a reasonable accommodation to transfer her to a less-stressful, less-hostile working environment. Appellant alleged that from July 2 through October 16, 2013 she was continuously exposed to a hostile working environment and harassment, which included the incident on October 5, 2013 discussed previously. She detailed problems she had with Terrence Story and Ms. Troublefield, including allegations that Ms. Troublefield received special treatment, that Mr. Story had a meeting wherein he asked others what they had heard about appellant and that Mr. Story made a false statement about appellant being a “sh*t starter.” Appellant indicated that nobody would talk to her and would whisper behind her back. She indicated that she called the military police with regard to Ms. Johnson with whom she had an altercation. Appellant discussed differences with management with regard to where she could sit.

In a February 5, 2014 letter, Edward M. Lemanski of the employing establishment alleged that the employing establishment did not deny appellant’s request for a reasonable accommodation, but could not complete the interactive process because she was out of work on medical leave from October 10 until December 2, 2013 and that, upon her return to work on December 2, 2013, she was accommodated in a different office. He indicated that the employing establishment had made multiple attempts to accommodate appellant in various locations and duties since February 2013, but that each time she found cause to rate each new position as unsatisfactory. Mr. Lemanski also indicated that appellant had informed her coworkers and various managers of her medical conditions personally.

By decision dated February 5, 2014, OWCP found that the evidence submitted for reconsideration was insufficient to modify the decision denying her claim.

On February 10, 2014 appellant requested reconsideration. In her reconsideration request, she noted *inter alia* that, from September until December 2013 she was in a very hostile, stressful and harassing environment. She noted that Ms. Troublefield falsely accused her of putting a substance of voodoo under her desk and reported this to SSG Berry and Major Marvin. Appellant alleged that she was not formally trained for her daily duties. She indicated that she did not share her personal information with anybody from work. Appellant stated that she would go into community and because of what the people at work stated, the members of the community would look at her and her kids and whisper rumors. She stated that she was asked by other coworkers about a rumor that she slashed and destroyed personal property in the parking lot. Appellant noted that various statements made her fearful for her life and personal safety.

By decision dated March 3, 2014, OWCP denied appellant’s claim for merit review.

LEGAL PRECEDENT -- ISSUE 1

To establish a claim that he or she sustained an emotional or stress-related condition in the performance of duty, an employee must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) medical evidence establishing that he or she has an emotional or stress-related disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the condition. If a claimant implicates a factor of employment, OWCP should

determine whether the evidence of record substantiates that factor. Allegations alone are insufficient to establish a factual basis for an emotional condition claim and must be supported with probative and reliable evidence. If a compensable factor of employment is established, OWCP must then base its decision on an analysis of the medical evidence.²

Workers' compensation law does not apply to each and every injury or illness that is somehow related to a claimant's employment. In the case of *Lillian Cutler*,³ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition under FECA. When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that a disability resulted from this emotional reaction, the disability is generally regarded as due to an injury arising out of and in the course of employment. This holds true when the disability results from an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work. On the other hand, there are disabilities that have some causal connection with the claimant's employment but nonetheless fall outside FECA's coverage because they are found not to have arisen out of employment, such as when a disability results from a fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.⁴

Administrative and personnel matters, although generally related to the claimant's employment, are administrative functions of the employing establishment rather than the regular or specially-assigned work duties of the claimant and are not covered under FECA.⁵ However, the Board has held that an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁶

For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.⁷ A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and EEO complaints by themselves do not establish that workplace harassment or unfair treatment occurred. The issue is whether the claimant has submitted sufficient evidence under FECA to establish a factual basis for the claim by supporting his or her allegations with

² *G.G.*, Docket No. 13-644 (issued July 19, 2013).

³ 28 ECAB 125 (1976).

⁴ *William E. Seare*, 47 ECAB 663 (1996).

⁵ *M.C.*, Docket No. 10-1628 (issued June 8, 2011); *Matilda R. Wyatt*, 52 ECAB 421 (2001).

⁶ *M.D.*, 59 ECAB 211 (2007); *Ruth S. Johnson*, 46 ECAB 237 (1994); see also *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁷ See also *R.C.*, Docket No. 13-1636 (issued June 16, 2014); see *Michael Ewanichak*, 48 ECAB 364 (1997).

probative and reliable evidence.⁸ The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by OWCP and the Board.⁹

The Board has held that the manner in which a supervisor exercises his or her discretion falls outside the coverage of FECA. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.¹⁰

ANALYSIS -- ISSUE 1

Appellant has not shown that she developed an emotional condition due to the performance of her regular or specially assigned duties or out of a specific requirement imposed by her employment under *Cutler*.¹¹

The majority of appellant's allegations concern her perception that she worked in a hostile work environment and was harassed by fellow employees. For example, she listed numerous conflicts with her colleague's clique, that people would talk about her behind her back and asserted that she was treated unfairly. Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹² Appellant also noted that her medical information was improperly given to her colleagues. She noted that management did not properly intervene to resolve conflicts between her and her coworkers and that she had to call the military police. Appellant alleged that improper comments were made about her behavior. For harassment to give rise to a compensable disability there must be evidence that the harassment occurred.¹³ Appellant has not established that the harassment occurred. The employing establishment indicated that it was she who told her colleagues and managers about her medical conditions. The only document appellant submitted in support of her allegations was a statement by Ms. Underwood. This statement is largely repetition of what appellant stated to Ms. Underwood rather than independent observations of Ms. Underwood about specific incidents. Although Ms. Underwood also alleged that she had similar problems with her colleagues, evidence of specific circumstances that she can provide independent support for are questionable. She alleges that certain improper comments were made by management, but it is unclear if Ms. Underwood heard these comments herself or if they were repetition of what appellant told her. For harassment to give rise to a compensable disability there must be evidence that the

⁸ See *R.C.*, *id.*

⁹ *Id.*; see also *Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁰ See also *H.C.*, Docket No 12-457 (issued October 19, 2012); see *William H. Fortner*, 49 ECAB 324 (1998).

¹¹ See *Lillian Cutler*, *supra* note 3.

¹² *S.B.*, Docket No. 14-160 (issued June 9, 2014).

¹³ See *Donna J. DiBernardo*, 47 ECAB 700 (1996).

harassment occurred.¹⁴ A claimant's mere perception of harassment is not compensable.¹⁵ The Board finds that appellant has not established a compensable factor due to harassment.

Appellant also alleged that management improperly moved her desk and did not provide her with appropriate training. The Board finds that these allegations concern administrative or personnel matters. Generally, an employee's emotional reaction to administrative or personnel matters is not covered under FECA. However, when the evidence of record demonstrates that the employing establishment erred or acted unreasonably in a personnel matter, coverage may be afforded.¹⁶ There is no evidence that the employing establishment acted unreasonably with regard to moving appellant's desk or with regard to providing training.

Lastly, appellant alleged that the employing establishment failed to provide a reasonable accommodation to her with regard to her disability. However, disability is not covered where it results from her not being permitted to work in a particular environment or to hold a particular position.¹⁷ The Board notes that the employing establishment indicated that appellant was off work from October 10 through December 2, 2013 and that, when she returned to work, she was accommodated in a different office. The employing establishment noted that it made numerous attempts to provide her with a change of work environment but that she would find each position unsatisfactory.

Accordingly, after review of the evidence of record, the Board finds that appellant has not established a compensable work factor. As appellant has failed to establish a compensable work factor, the Board need not address the medical evidence of record.¹⁸

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.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,¹⁹ OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.²⁰ To be entitled to a merit review

¹⁴ *Id.*

¹⁵ See *Joel Parker, Sr.*, 43 ECAB 220 (1991).

¹⁶ See *Thomas D. McEuen*, *supra* note 6; *Norman A. Harris*, 42 ECB 923 (1991).

¹⁷ *A.K.*, Docket No. 14-437 (issued June 9, 2014).

¹⁸ *Marlon Vera*, 54 ECAB 834 (2003).

¹⁹ See *supra* note 1. Under section 8128 of FECA, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

²⁰ 20 C.F.R. § 10.606(b)(3).

of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.²¹ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.²²

ANALYSIS -- ISSUE 2

OWCP denied appellant's claim for compensation as she failed to establish a compensable factor of employment in her claim for an emotional condition. It denied her request for further merit review of her claim in its March 3, 2014 decision.

In requesting further reconsideration of her claim, appellant did not submit any new evidence. Instead, she reiterated arguments previously made and rejected by OWCP. Appellant did make new allegations with regard to other incidents, including an allegation that an accusation was made that she placed a voodoo substance under Ms. Troublefield's desk and her belief there was gossip about her amongst her colleagues and the general public. However, these allegations are totally unsupported by any evidence. A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence, but appellant did not submit any pertinent new and relevant evidence in this case.²³ Furthermore, appellant did not identify a specific point of law or show that it was erroneously applied or interpreted or advance new legal argument.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant did not establish that she sustained an emotional condition in the performance of duty, as alleged. The Board further finds that OWCP properly denied her request to reopen her case for further review of the merits under 5 U.S.C. § 8128(a).

²¹ *Id.* at § 10.607(a).

²² *Id.* at § 10.608(b).

²³ *See T.M.*, Docket No. 13-1194 (issued August 27, 2013).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 3 and February 5, 2014 and December 17, 2013 are affirmed.

Issued: October 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