

FACTUAL HISTORY

On December 3, 2010 appellant, then a 59-year-old sales service and distribution associate, filed an occupational disease claim alleging a nervous breakdown due to the duties of her federal employment. She stated that she broke down due to the stress of never knowing where she was going to work, the time she was going to work or how she was going to get to work. Appellant alleged that, after 23 years, there was nothing solid anymore in her career. The employing establishment noted that she was employed as a part-time flexible clerk. Appellant stopped work on November 19, 2010 and had not yet returned to work. In support of her claim, she submitted a disability certificate from Dr. Raymond C. Hui, Board-certified in family practice, who noted that she was totally incapacitated from November 19 to December 13, 2010. Dr. Hui advised that appellant was able to return to her regular work duties on December 14, 2010.

By letter dated December 22, 2010, OWCP advised appellant that the information submitted was insufficient to establish her claim. It requested additional information, including factual and medical evidence.

Appellant responded that since June 2010 she has been assigned to work at different offices of the employing establishment every day. After two hours in one office, she was told to report to a different office and some days she worked in two or three offices without prior notice. Appellant stated that the worst thing was when the employing establishment directed her to go close an office as she had never been trained how to close and was told to do the best she can. She stated that her postmaster did not know how to process her requests for travel pay. Appellant found being sent to different offices was overwhelming and resulted in a nervous breakdown.

In a February 3, 2011 letter, Jean Breyer, a manager, noted that all job duties within the postal service had been changing due to decreases in mail volumes and automation. As the workforce diminished, employees were tasked to meet the needs of the service. Ms. Breyer noted that appellant was a part-time flexible employee and, as such, was assigned where needed. She noted that training for close out procedures could be provided to appellant and that she would look into her travel pay.

In a January 26, 2011 hand written note, Dr. Manouchehr Lavian, a psychiatrist, stated that appellant had been under his care since December 17, 2010. Appellant reported that she had a nervous breakdown at work, manifested by feeling depressed, crying and that the employing establishment was trying to get rid of her. Dr. Lavian diagnosed an adjustment disorder with anxiety and depressed mood.

By decision dated June 2, 2011, OWCP denied appellant's claim. It found that she failed to establish a compensable factor of employment.

On June 14, 2011 appellant requested reconsideration. She reiterated that she was a part-time flexible employee who had been assigned to the same office for 23 years, but had recently been directed to report to different offices. Appellant reiterated that she was told to close offices but had not received training. She alleged poor management and harassment, which

resulted in a nervous breakdown. Appellant noted that social security had deemed her disabled and that she would receive a disability retirement.

By decision dated September 16, 2011, OWCP denied modification of the June 2, 2011 decision.

On December 6, 2011 appellant again requested reconsideration. She contended that OWCP misunderstood her previous letters. It was not just the travel involved but when sent to different offices appellant did not know where she would be working or the employees and customers. She feared for her life as she did not know who was capable of “going postal.” At her own office, appellant knew everyone and had no fear of anyone. She also stated that being responsible for a drawer of money at each location was nerve wracking.

By decision dated March 16, 2012, the hearing representative found that appellant had established a factor of employment in that she had to perform closing procedures at various stations and had not received any training. OWCP denied her claim as she had not submitted sufficient medical evidence to establish that this factor caused her emotional condition.

On March 13, 2013 appellant, through counsel, requested reconsideration. Counsel contended that appellant suffered from fear and anxiety regarding her ability to perform the day-to-day duties of her job. She contended that, when the employing establishment started moving appellant around, her day-to-day duties caused her to become sick. Appellant noted that the additional requirement that she be responsible for closing without any training aggravated her condition and caused total disability. Counsel also contended that the claim be reopened for development of the medical evidence.

In a July 25, 2012 note, Dr. Lavian stated that appellant had been under his care since December 17, 2010 and diagnosed with an adjustment disorder with mixed depression and anxiety. Appellant was easily overwhelmed and anxious and cannot remain focused. It was Dr. Lavian professional opinion that she could not return to work. In a December 21, 2012 note, he reiterated his opinion that the aggravation appellant faced in the workplace had a causal relationship with her inability to work and perform her job.

By decision dated May 29, 2013, OWCP denied modification of its March 16, 2012 decision.

By letter dated October 31, 2013, appellant’s counsel requested reconsideration. She submitted a March 27, 2013 note from Dr. Lavian, who stated that it was his professional opinion that the job requirement that appellant perform closing procedures without adequate training aggravated her underlying condition and contributed to her current disability.

By decision dated March 7, 2014, OWCP denied modification of the May 29, 2013 decision.

LEGAL PRECEDENT

To establish a claim that he or she sustained an emotional condition in the performance of duty, an employee must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or

incidents alleged to have caused or contributed to his or her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.

An occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift.² Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.³ There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation.⁴ Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁵

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.⁶

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.⁷ 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.⁸ 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.⁹

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the facts alleged or implicated by the employee did, in fact, occur.¹⁰ Mere perceptions of harassment or discrimination are not compensable under FECA.¹¹ A claimant must substantiate allegations of harassment or discrimination with probative and

² 20 C.F.R. § 10.5(q).

³ *L.D.*, 58 ECAB 344 (2007).

⁴ *A.K.*, 58 ECAB 119 (2006).

⁵ See *supra* note 1. *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ See also *H.C.*, Docket No 12-457 (issued October 19, 2012); see *William H. Fortner*, 49 ECAB 324 (1998).

⁷ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

⁸ See *William H. Fortner*, *supra* note 6.

⁹ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁰ *K.W.*, 59 ECAB 271 (2007).

¹¹ *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

reliable evidence.¹² Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹³ Perceptions and feelings alone are not compensable. To establish entitlement for benefits, a claimant must establish a basis in fact for the claim by supporting his or her allegations with probative and reliable evidence.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 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.¹⁵ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.¹⁶ 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.¹⁷

ANALYSIS

OWCP determined that appellant established a compensable factor of employment in that she was assigned to close offices without receiving training. It determined that the other alleged factors were not compensable factors of employment. The Board will initially address the other alleged factors of employment.

Assigning work is an administrative function of the supervisor.¹⁸ The manner in which a supervisor exercises his/her discretion generally falls outside FECA's coverage. This principle recognizes that supervisors must be allowed to perform their duties and at times employees will disagree with their supervisor's actions.¹⁹ Appellant attributed her anxiety and stress to her assignment to different offices, often in the same day. The Board has held a disability is not covered where it results from such factors as frustration from not being permitted to work in a particular environment or hold a particular position.²⁰ As noted by Ms. Breyer, a part-time flexible employee can be assigned where needed. She noted that its workload at the employing establishment had changed due to decreases in mail volumes and automation. Appellant stated

¹² *J.F.*, 59 ECAB 331 (2008).

¹³ *G.S.*, Docket No. 09-764 (issued December 18, 2009); *Ronald K. Jablanski*, 56 ECAB 616 (2005).

¹⁴ *L.M.*, Docket No. 13-267 (issued November 15, 2013).

¹⁵ *D.L.*, 58 ECAB 217 (2006).

¹⁶ *K.W.*, *supra* note 10; *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

¹⁷ *Robert Breeden*, 57 ECAB 622 (2006).

¹⁸ *Donney T. Drennon-Gala*, 56 ECAB 469, 475 (2005); *Beverly R. Jones*, 55 ECAB 411, 116 (2004).

¹⁹ *L.M.*, *supra* note 14.

²⁰ *See Thomas D. McEuen*, *supra* note 7; *Lillian Cutler*, *supra* note 5.

her preference to work at the office where she knew the employees and customers, as opposed to the various offices where she was assigned. She noted that she was fearful at the other stations. Appellant's reaction to her assignments can be described as self-generated and not arising in the performance of duty but due to her personal frustration in not being permitted to work at a particular work environment.²¹ Accordingly, there was no management abuse in assigning her to work in different offices as needed by the employing establishment.

The Board also notes that appellant's difficulty in getting reimbursed for travel expenses involves an administrative function. There is no evidence of record that appellant submitted forms for travel reimbursement and Ms. Breyer indicated that she will look into the issue of travel pay. The Board finds that appellant has not submitted evidence to establish error or abuse in the part of the employing establishment with respect to its handling of this administrative matter.²²

Appellant also made general allegations with regard to harassment and poor management. An employee's dissatisfaction with perceived poor management is not compensable under FECA.²³ Furthermore, mere perceptions of harassment are not compensable under FECA.²⁴ To establish entitlement to benefits with regard to harassment, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.²⁵ Appellant did not explain her allegations of harassment, nor provide any evidence of harassment.

Appellant noted that her request for a disability retirement had been granted. The Board notes that determinations of other federal agencies or governmental bodies are not relevant to the issue of disability under FECA. The Board has long held that entitlement to benefits under statutes that have varying standards for establishing disability and eligibility for benefits are not dispositive in FECA proceedings.²⁶

The Board finds that appellant established a compensable factor under *Cutler* in that she had to close various offices without training. The Board finds that the evidence submitted from Dr. Hui is insufficient to establish causal relation. Dr. Lavian diagnosed adjustment disorder and mixed depression and anxiety. In a December 21, 2012 one-sentence note, he stated that it was his professional opinion that the aggravation appellant faced in the workplace established a causal relationship with her inability to work and perform her job. In a March 27, 2013 two sentence note, Dr. Lavian stated that it was his professional opinion that requiring her to perform closing procedures aggravated her underlying condition and contributed to her current disability. To be of probative medical value, however, a physician's opinion regarding the cause of an emotional condition must relate the condition to the specific incidents or conditions of employment accepted as factors of employment, must be based on a complete and accurate

²¹ See *L.R.*, Docket No. 14-302 (issued June 6, 2014).

²² See *R.C.*, Docket No. 13-1636 (issued June 16, 2014).

²³ *Robert Breeden*, *supra* note 17.

²⁴ *K.W.*, *supra* note 10.

²⁵ *D.P.*, Docket No. 12-1859 (issued March 27, 2013).

²⁶ *R.S.*, Docket No. 10-2221 (issued August 19, 2011).

factual history and must contain adequate medical rationale in support of the conclusions.²⁷ Dr. Hui failed to submit a medical report with a full or accurate history of appellant's psychiatric condition, family background, prior medical treatment or results of any diagnostic testing. His brief statements on causal relationship express his conclusion without adequate rationale based on a full or complete medical history. Although Dr. Lavian did address the compensable factor in his March 27, 2013 report, his report is not sufficiently well rationalized to establish causal relation. He did not discuss the nature of appellant's underlying disability. Dr. Lavian did not address the specific tasks involved in closing of offices or explain how such tasks caused or aggravated her emotional condition. In his March 27, 2013 note, he does not discuss appellant's current medical diagnosis. Accordingly, Dr. Lavian's brief notes of record are not sufficiently well rationalized to establish that her emotional condition is causally related to her federal employment.

CONCLUSION

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 7, 2014 is affirmed.

Issued: October 22, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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

²⁷ *Mary J. Ruddy*, 49 ECAB 545 (1998); *see also L.B.*, Docket No. 13-1640 (issued March 21, 2014).