United States Department of Labor
Employees' Compensation Appeals Board

D.W., Appellant	)	
and	)	**Docket No. 13-1692**
	)	**Issued: September 23, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Bedford, IA, Employer	)	

Appearances:
Glen L. Smith, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 1, 2013 counsel for appellant filed a timely appeal from the May 2, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employee' 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.

ISSUE

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

FACTUAL HISTORY

On May 4, 2011 appellant, then a 50-year-old city letter carrier, filed an occupational disease claim alleging that her post-traumatic stress disorder (PTSD) was caused on August 16, 2010 when her male postmaster, Tom Shields, confronted her inside the female rest

[1] 5 U.S.C. § 8101 *et seq.*

room and yelled at her. She also noted that she learned that Mr. Shields inquired of another carrier about hiring a hit man to kill her. Appellant argued that her preexisting depression was also aggravated by her 60-hour workweeks with no time off. She indicated that she became aware of the illness on December 27, 2010. Appellant stopped work on August 16, 2010.[2]

In a May 3, 2011 letter, counsel noted filing appellant's claim and submitted further evidence. In a May 3, 2011 statement, appellant indicated that she first sought treatment for stress and anxiety due to her work environment in November 2007 and that her condition stabilized with treatment. However, due to "outrageous acts" of Mr. Shields, beginning August 16, 2010, her work environment "became so hostile that my condition became aggravated to the point I was diagnosed with post-traumatic stress disorder and major depression on December 27, 2010." Appellant's symptoms included anxiety, panic attacks, nightmares and self-destructive behavior. She explained that on August 16, 2010, she was delivering her route when Mr. Shields confronted her with "insistent questions" about the time it took to complete her route. Appellant went to the lady's restroom and Mr. Shields "forcefully opened the bathroom door, stepped inside and began yelling" at her. Mr. Shields had "a clenched fist, a flushed face and an aggressive posture." Appellant raised her hands and was afraid of being struck. After answering his questions, Mr. Shields continued to stand in the bathroom as she washed her hands and followed her until she clocked out for the day. Appellant indicated that her anxiety "skyrocketed," her hands were shaking and she was "traumatized." She noted having nightmares, deep depression and suicidal thoughts.

The following day, Mr. Shields continued to harass appellant by hovering over her as she did her work, invading her personal space and using intimidating body language to prevent her from filing a grievance. This aggravated appellant's stress and anxiety, as her hands were shaking and she began to question her own decisions and became afraid to make even the smallest mistake for fear of being degraded. She noted that her coworker, Cindy Simon, corroborated this behavior. Appellant noted that Ms. Simon indicated that Mr. Shields would lose his temper, scream in rage with his face mere inches from appellant's face and follow her around her work area in a tirade. She also noted that Mr. Shields indicated that he could just "strangle her." Appellant advised that coworker, Ken Smalley informed her, that Mr. Shields approached him and asked if he knew anyone that would kill her. She argued that these threats severely affected her health. Appellant also stated that she had to work 60-hour weeks with no time off and had to cover multiple assignments. She noted that Mr. Shields was terminated but her symptoms persisted. Appellant saw him drive by in his car and she had a major panic attack. She alleged that when a new manager approached her to correct her work, the approach was similar enough to that of Mr. Shields that it caused an extreme PTSD reaction.

In an October 27, 2010 report, Dr. Bethel Kopp, a Board-certified internist, noted that appellant had stress at work. Appellant was very tearful and referred to an August 16, 2010 incident where she was five minutes late for work and her boss barged into the lady's room. She

[2] The record reflects that appellant filed a claim for an occupational disease on November 29, 2007, which was denied under claim File No. xxxxxx858. Appellant also filed an emotional condition claim related to the August 16, 2010 bathroom confrontation with Mr. Shields, under claim File No. xxxxxx814, which was denied due to insufficient medical evidence on causal relationship. These claims have been combined with the record before the Board.

related that she worked 60 hours a week with no time away from work without getting "written up." Dr. Kopp discussed appellant's concerns with regard to appellant's ongoing depression and anxiety. In a December 3, 2010 report, she indicated that appellant was suffering from stress and anxiety and that appellant indicated that it was "associated with a work situation." Appellant recommended psychiatric care. On January 17, 2011 Dr. Craig N. Seamands, a Board-certified psychiatrist and neurologist, advised that appellant was evaluated for major depression and PTSD on December 27, 2010. Appellant was off work due to these two diagnoses and he recommended a possible return to work date of February 7, 2011. OWCP also received treatment notes from a physician's assistant.

In May 20, 2011 letters, OWCP requested additional factual and medical evidence from appellant and the employing establishment. It also requested that she provide specific details with regard to witness statements or other documentation supporting her allegations. With regard to Mr. Shields confronting appellant in the women's restroom on August 16, 2010, OWCP explained that this would not be addressed as it had previously been addressed under claim file xxxxxx814.[3]

OWCP received a September 10, 2010 letter of warning, in which Mr. Shields was charged with improper conduct related to the August 16, 2010 incident.

In a September 28, 2010 interview summary, employing establishment investigators noted speaking with Mr. Smalley, who noted that Mr. Shields asked him if he knew anyone who could kill appellant. Mr. Smalley related that he jokingly responded it would cost "20 thousand plus or a lot of money." He also indicated that there were two other occasions when Mr. Shields indicated that he wanted to strangle or kill appellant. However, Mr. Smalley believed it was just an expression, not serious and just a joke or he would have reported it. A December 20, 2010 polygraph report advised that his responses to questions regarding appellant did not indicate deception. The examiner related that Mr. Smalley observed a bad relationship between Mr. Shields and appellant. He noted that appellant was not completing her route in a timely manner and it affected pay incentives for Mr. Shields. Mr. Smalley noted that he completed her route in far less time than she took. He also explained that Mr. Shields would call her names, shout at her and "expressed a desire to kill her at one point." He referenced an incident involving a cake designed to look like a kitty litter box to upset appellant, Mr. Smalley denied bringing a cake to upset anyone, denied offering to kill appellant and denied throwing a form at her.

OWCP received August 20 and September 2, 2010 statements from Ms. Simon, who indicated that Mr. Shields attempted to isolate appellant and instructed others not to speak to her. Ms. Simon noted that, while Mr. Shields playfully bantered with the men, Mr. Shields would "scream tirades" at and about appellant. She specifically noted one morning where he was three inches from appellant's face and yelled at her to "clock out now." Ms. Simon indicated that Mr. Shields was 100 pounds heavier and a foot taller than appellant and continued to scream at her, over and over to "[l]eave the workroom floor now." She also noted that Mr. Shields vented about her when she was not at the employing establishment and suggested that she wanted to

[3] Appellant was advised that if she wished to pursue this allegation, she should follow the appeal rights provided to her in that decision.

"f**k it up." Ms. Simon also indicated that she heard him say that he could "just strangle her." She explained that in that incident, she believed Mr. Shields was just venting.

In a March 1, 2011 notice of proposed removal, Jean Susnjar, an operations manager, advised Mr. Shields of a proposed removal due to unacceptable conduct to include harassment and a hostile work environment toward appellant, such that she was fearful of his behavior. The allegations pertaining to appellant included: an incident in which Mr. Smalley made a cake to look like "poop droppings" during a time when appellant was "soiling herself" and comments made by Mr. Shields with Mr. Smalley about having appellant "killed." It was also noted that Mr. Shields made a comment that there was a long line of people who wanted to "take care of her." The employing establishment noted that he indicated that he was not denying that he made the statements but asserted that "they were not made in a serious vein."

In an April 28, 2011 report, Dr. Gregory Keller, a Board-certified psychiatrist, noted that appellant was under his care from March 3l until April 11, 2011 and then rehospitalized on April 21, 2011. He indicated that she remained under his care. Dr. Keller diagnosed PTSD with a secondary diagnosis of major depressive disorder, recurrent. He opined that appellant had a traumatic event in August 2010 when she had an on-the-job altercation with a former boss who followed her into the lady's room at work. Dr. Keller stated that she felt cornered and unable to get away from Mr. Shields as he yelled at her and she feared she was going to be physically attacked. He opined that this "brought about an intense fear response in [appellant] that is still to this day leading to intense feelings of fear, hopelessness and horror like she felt that day." Dr. Keller advised that her symptoms were related to this incident. OWCP received additional physical therapy reports; a copy of Dr. Kopp's October 27, 2010 report and Dr. Seamand's January 17, 2011 report.

By decision dated June 28, 2011, OWCP denied the claim. It found that appellant established a compensable employment factor, that Mr. Shields stood three inches from her and screaming at her to "clock out now." However, the medical evidence was insufficient to support a connection between the claimed emotional condition and the compensable employment factor. OWCP found that other incidents either did not occur or did not occur as alleged. It found that while Ms. Simon supported that Mr. Shields screamed obscenities, her statements did not establish that they occurred in appellant's presence or that he was screaming about appellant. OWCP found that, while Mr. Shields threatened to strangle appellant, she was not present at the time and his statement was not made in a serious nature. Likewise, regarding Mr. Shields' statement that he threatened to hire a hit man to kill her, it found that, while the statement was made, it did not occur as alleged by appellant, as Mr. Smalley indicated that it was made as a joke. OWCP noted that the employing establishment characterized it as banter and unprofessional conversation. It also found no evidence to establish that appellant was forced to work 60-hour weeks with no time off; that she covered multiple assignments or that a manager corrected her work.

On July 28, 2011 counsel requested a hearing that was held on December 13, 2011. During the telephonic hearing, appellant was advised that the August 16, 2010 incident was addressed under claim file number xxxxxx814. She testified that she was overworked because she was required to cover her own route as well as that of a coworker who left in 2010 and, in early 2011, she was required to additionally perform clerical duties when another coworker left.

On December 13, 2011 counsel submitted pay stubs and scheduling documents. The pay stubs for the several pay periods in 2010 revealed that appellant worked 106.18 hours in pay period 23, 112.11 hours in pay period 26. In 2011, during pay period three, she worked 102.48 hours.

In a letter dated December 28, 2011, counsel submitted additional evidence. In a January 30, 2011 statement, Ms. Boswell, (formerly Ms. Simon) indicated that she carried part of appellant's route on August 17, 2010 to enable her to change her labels in her case. She explained that when she came in from her route, she witnessed Mr. Shields supervising appellant as she worked. Ms. Boswell noted that in her opinion, "he was invading [appellant's] personal space as he hovered over her in a threatening manner." She indicated that appellant glanced over to her and took a deep breath, as she "was clearly uncomfortable and stressed." Ms. Boswell also noted witnessing Mr. Shields solicit negative comments about appellant from other coworkers. She stated that he was absolutely aware of threats Lary Wyckoff made about appellant."[4] Ms. Boswell explained that she had never witnessed any other carriers speak inappropriately about anyone. OWCP also received physician's assistant notes and copies of previously submitted evidence.

By decision dated February 15, 2012, OWCP's hearing representative reversed the June 28, 2011 decision. However, in a March 19, 2012 decision, OWCP set aside the February 15, 2012 decision and affirmed the June 28, 2011 decision. It found that the August 16, 2010 incident was not within the purview of the present claim and that, on May 20, 2011, appellant was advised that the August 16, 2010 incident was addressed in claim file number xxxxxx814.

By letter dated April 5, 2012, counsel requested reconsideration. He argued that the evidence was undisputed that appellant's preexisting mental condition was aggravated based upon the number of hours that she worked after the August 16, 2010 incident. Counsel noted that she submitted payroll records and schedules to support that she was working six days a week and working overtime in late 2010. He argued that Dr. Keller's April 28, 2011 report supported that her depressive symptoms could be directly linked to the changes in her rest and sleep patterns associated with extended work hours with minimal to no time off. Counsel provided copies of appellant's pay stubs.

By decision dated April 27, 2012, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant review of its prior decision.

On October 18, 2012 counsel requested reconsideration and submitted evidence. He argued that working overtime was a compensable employment factor. Counsel asserted that new medical evidence showed causal relationship.

In a May 3, 2012 report, Dr. Stephen Gruba, Board-certified in family medicine, noted that he had known appellant for about 20 years. He explained that in general, "she's always been

[4] The record for claim file number xxxxxx814 contains a September 28, 2010 interview summary of Mr. Wyckoff, who related jokingly telling Mr. Shields that a blanket could be put over appellant and then beating her up to take care of the trouble maker. This file also contains a September 2, 2010 statement from Mr. Smalley, and a June 3, 2011 letter of decision terminating Mr. Shields effective June 7, 2011.

an upbeat outgoing woman." Dr. Gruba reviewed appellant's chart and explained that she changed in the latter half of 2009 when she began to experience a smoldering depression and anxiety problem. He advised that since January 2010 she consistently mentioned stress at work from an overbearing boss as contributing to this depression. Dr. Gruba indicated that "this came to a head on August 16, 2010 when her boss confronted her in a physically threatening way." He noted that afterwards appellant "[could not] sleep well due to nightmares, but still had to put in long hours at work because of short staffing at the [employing establishment]." Dr. Gruba opined that it was his medical opinion that "the stress from the overbearing boss, the lack of sleep and the ongoing nightmares worsened her depression greatly."

By decision dated May 2, 2013, OWCP denied modification of its prior decision. It noted the accepted factor of employment as Mr. Shields standing three inches from appellant and screaming at her to "clock out now" and to "leave the workroom floor now." OWCP found that Dr. Gruba referred to the August 16, 2010 incident that was addressed in file number xxxxxx814.

LEGAL PRECEDENT

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her stress-related condition.[5] If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.[6] 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.[7]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,[8] the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.[9] When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an 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 results from his or her emotional reaction to a special assignment or other requirement imposed

[5] *Leslie C. Moore*, 52 ECAB 132 (2000).

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

[7] *Id.*

[8] 28 ECAB 125 (1976).

[9] *See Robert W. Johns*, 51 ECAB 137 (1999).

by the employing establishment or by the nature of the work.[10] Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[11] Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.[12] Personal perceptions alone are insufficient to establish an employment-related emotional condition.[13]

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.[14] Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.[15]

For harassment or discrimination to give rise to a compensable disability, 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. A claimant must establish a factual basis for his or her allegations that the harassment occurred with probative and reliable evidence.[16] With regards to emotional claims arising under FECA, the term "harassment" as applied by the Board is not the equivalent of "harassment" as defined or implemented by other agencies, such as the Equal Employment Opportunity Commission, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers' compensation under FECA, the term "harassment" is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by co-employees or workers. Mere perceptions and feelings of harassment will not support an award of compensation.[17]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[18] The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by

[10] *Lillian Cutler*, 28 ECAB 126 (1976).

[11] *J.F.*, 59 ECAB 331 (2008).

[12] *M.D.*, 59 ECAB 211 (2007).

[13] *Roger Williams*, 52 ECAB 468 (2001).

[14] *Charles D. Edwards*, 55 ECAB 258 (2004).

[15] *Kim Nguyen*, 53 ECAB 127 (2001).

[16] *James E. Norris*, 52 ECAB 93 (2000).

[17] *Beverly R. Jones*, 55 ECAB 411 (2004).

[18] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

the employee.[19] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[20]

ANALYSIS

OWCP found and the record supports that appellant has established as a compensable factor of employment that Mr. Shields, the postmaster, stood three inches from her and screamed at her to "clock out now" and to "leave the work room floor now."

Appellant also attributes in part her emotional condition to the stress of carrying out her workload, because she was overworked. The Board has held that conditions related to stress resulting from situations in which a claimant is trying to meet his or her position requirements are compensable.[21] Appellant indicated that she worked 60-hour weeks and covered for other employees who left. During the hearing, she testified that she covered her own route and that of another coworker who left in December 2010. Appellant also noted that she had to perform clerical duties in addition to her duties when another coworker left in 2011. To support her allegations, she provided the pay stubs for several pay periods in 2010, which revealed that appellant worked 106.18 hours in pay period 23 and 112.11 hours in pay period 26. Furthermore, in 2011, during pay period three, appellant worked 102.48 hours. The Board finds that the fact that appellant checked more than 80 hours in a pay period is not sufficient to establish that she was required to work overtime to complete her regular duties. The employing establishment disputed her allegations, claiming that another carrier could complete her route in far less time.[22] The Board finds that appellant has not established a compensable work factor under *Cutler*.[23]

Appellant also attributed her emotional condition to threats in which Mr. Shields discussed having appellant killed. The Board has recognized the compensability of physical threats and verbal abuse in certain circumstances.[24] This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.[25] In such cases, the Board has reviewed the evidence of record to determine whether the allegations of the claimant are substantiated by reliable and probative evidence.[26] The Board finds that appellant's allegations that Mr. Shields discussed having her killed are corroborated by the evidence.

[19] *Supra* note 5; *Gary L. Fowler*, 45 ECAB 365 (1994).

[20] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[21] *Richard H. Ruth*, 49 ECAB 503 (1998).

[22] *Cf. Bobbie D. Daly*, 53 ECAB 691 (2002).

[23] *See supra* note 10.

[24] *Charles D. Edwards*, 55 ECAB 258 (2004).

[25] *See Mary A. Sisneros*, 46 ECAB 155, 163-64 (1994); *David W. Shirey*, 42 ECAB 783 (1991).

[26] *M.B.*, Docket No. 08-1021 (issued September 18, 2008).

OWCP received a December 20, 2010 polygraph report from Mr. Smalley, who indicated that he observed a bad relationship between Mr. Shields and appellant. Mr. Smalley noted that Mr. Shields would call appellant names, shout at her and "expressed a desire to kill her at one point." In a September 28, 2010 interview summary, he indicated that Mr. Shields asked him if he knew anyone who could kill appellant. Another coworker, Ms. Simon confirmed that Mr. Shields indicated that he could "just strangle" appellant. Mr. Smalley indicated that it was just a joke and Ms. Simon thought that Mr. Shields was just venting. However, the employing established removed Mr. Shields on March 1, 2011 based in part on his actions. Ms. Susnjar, in proposing to remove Mr. Shields, noted his statements to Mr. Smalley about having appellant "killed." The Board finds these statements made by Mr. Shields are sufficiently corroborated and deemed to by the employing establishment to violate its policies. The Boards finds that appellant has substantiated that these threats were made by Mr. Shields and they are a compensable employment factor.

Other allegations by appellant of threats and verbal abuse are either of a general nature and vague or not sufficiently confirmed as being made about her or in her presence. While the fact that Mr. Shields uttered obscenities has been confirmed, this, by itself, is insufficient to establish a compensable employment factor in the absence of more specific information about the time, place and context of such utterances.[27] Therefore, appellant has not established a compensable factor with regard to other allegations of verbal abuse.

Additional allegations, these pertain to administrative actions or to allegations that appellant was harassed and treated abusively by Mr. Shields. Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of FECA.[28] Absent evidence establishing error or abuse, a claimant's disagreement or dislike of such a managerial action is not a compensable factor of employment.[29]

Appellant argued that a new manager corrected her work and acted similarly to Mr. Shields. Generally, complaints about the manner in which a supervisor performs his or her duties or the manner in which a supervisor exercises his or her discretion fall, as a rule, outside the scope of coverage provided by FECA. This principle recognizes that a supervisor or manager in general must be allowed to perform his or her duties and employees will, at times, dislike the actions taken. Mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent evidence of error or abuse.[30] In this, case, appellant alleged that a new manager corrected her work and acted similarly to Mr. Shields but she provided

[27] *See Dennis J. Balogh*, 52 ECAB 232 (2001) (no compensable factor established where the record indicated that the supervisor had an aggressive style of managing but where the evidence was nonspecific as to the instances in which the supervisor raised his voice); *Donna G. Lewis*, Docket No. 04-2051 (issued April 25, 2005) (vague allegations of verbal attacks insufficient to established a compensable verbal altercation).

[28] *J.C.*, 58 ECAB 594 (2007).

[29] *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

[30] *Id*.

insufficient details of the time, place and manner of the interaction that she asserts was unreasonable. She has not established a compensable work factor in this matter.

Appellant also generally alleged that she had a confrontation on the street with Mr. Shields; that he harassed her by hovering over her as she did her work, invaded her personal space and used intimidating body language in an effort to prevent her from filing a grievance. However, there is insufficient evidence to support these allegations with regards to the exact time and place in which they occurred. Appellant has not established a compensable factor in this regard.

However, as appellant has established the additional compensable factors noted above, OWCP did not analyze or develop the medical evidence utilizing the above noted compensable employment factors. The case will therefore be remanded to OWCP for this purpose.[31] After such further development as deemed necessary, it should issue a *de novo* decision on this matter.

Counsel argued that appellant established an emotional condition and referred to the incident of August 16, 2010. However, that claim is not before the Board. Counsel further argued that the February 15, 2012 decision should not have been overturned. However, as found above, the case is not currently in posture for decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

[31] *See Robert Bartlett*, 51 ECAB 664 (2000).

ORDER

IT IS HEREBY ORDERED THAT the May 2, 2013 decision of the Office of Workers' Compensation Programs is set aside and remanded for further action consistent with this decision.[32]

Issued: September 23, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[32] Richard J. Daschbach, Chief Judge, who participated in the preparation of the decision, was no longer a member of the Board after May 16, 2014.