

FACTUAL HISTORY

On March 15, 2013 appellant, then a 59-year-old program support assistant, filed an occupational disease claim (Form CA-2) alleging that she developed an acute reaction to stress and mood disorder. She alleged that she was overworked as a direct result of raising concerns of an improper affair between a coworker and her third level supervisor. Appellant alleged that she was living with fear, stress, and anxiety.

OWCP requested additional factual and medical evidence from appellant in a letter dated April 8, 2013. Appellant submitted reports dated January 9 and March 15, 2013 from Dr. Stephen McNamara, a Board-certified psychiatrist, diagnosing adjustment disorder with mixed anxiety and depression due to her employment.

Appellant completed a narrative statement and alleged that in May 2008, it became apparent to her that Mr. W, Chief of Staff, was in an adulterous relationship with Ms. B, appellant's coworker. She and another coworker, Ms. S, informed Mr. W that he was the subject of gossip. According to appellant, Mr. W became hostile and intimidating with accusatory comments and an angry and condescending attitude. He was then promoted to become appellant's senior rater. Appellant managed to avoid Mr. W, until Ms. B was given a position in appellant's division directly in Mr. W's chain of command and was assigned to the same four-person cubicle as appellant. Appellant complained about the situation to her supervisors and an Equal Employment Opportunity (EEO) officer because of the appearance of nepotism, favor, and impropriety. She alleged that Mr. W pressured her supervisor to hire Ms. B. Appellant stated that Ms. B interfered with the management of the division by questioning their supervisor's authority and instructions. She also alleged that Ms. B kept notes on appellant's whereabouts and work, and that Ms. B questioned her about her movements. Appellant alleged that Ms. B stalked her and spied on her constantly in violation of workplace regulations. Mr. W gained information through Ms. B who alleged that appellant did not do any work. Appellant stated that she had a verbal confrontation with Ms. B which caused her to be fearful. She also alleged that her workload increased and that she had no back-up personnel for her work responsibilities. Appellant alleged that these additional assignments, on top of her regular workload and deadlines, caused her stress. She stated that Ms. B ridiculed her and laughed at her tears, and that Ms. B called appellant's behavior ridiculous.

Appellant stated that her supervisors tried to protect her from Mr. W, who found fault with and complained about appellant. She was directed to avoid the area of Mr. W's office and the Commander's office on the fifth floor because her supervisors felt she was a target of Mr. W. Appellant stated that she stressed over all of her work because she feared Mr. W's criticism.

The employing establishment moved Ms. B in December 2011. Appellant's supervisor, Mr. B, filed a grievance against management due to Mr. W's interference. Appellant alleged that there was a hostile work environment, but the employing establishment found the complaints unfounded. She alleged that Mr. W threw things in the presence of other employees and that this caused her anxiety.

The employing establishment completed a statement on March 27, 2013 and stated that appellant had been required to report to the fifth floor on a monthly basis for one day to

supervise drug testing. It stated that appellant would encounter Mr. W for less than five minutes a week, and only if passing in the hallway, as she worked on the third floor and he worked on the fifth floor.

On April 23, 2013 appellant admitted that she had a source of stress in her personal life, the death of her stepfather due to cancer on September 25, 2012.

By decision dated October 23, 2013, OWCP denied appellant's claim for an emotional condition as she had failed to submit any corroborating evidence supporting her alleged factors of employment. It noted that due to the factual deficiencies it was unnecessary to address the medical evidence.

Appellant, through her counsel at the time, requested reconsideration on September 23, 2014. Counsel listed appellant's alleged employment factors and argued that her claim was based on a hostile work environment based on Mr. W's comments and attitude as well as Ms. B's notes regarding appellant's location and activities. She repeatedly referenced an EEO claim which was not included in the prior record. Counsel attached statements from the EEO claim to her reconsideration request.

Appellant submitted a witness statement from a coworker, Ms. G, dated May 4, 2014, noting that appellant was crying in the ladies room and that appellant had attributed her state to Mr. W and Ms. B. On May 23, 2014 another coworker, Ms. IB stated that appellant frequently cried in 2012 and that she alleged a hostile work environment due to Mr. W and Ms. B. In an e-mail dated January 17, 2012, a third coworker, Mr. P stated that on October 28, 2011 appellant was upset and crying and that she had attributed her condition to a hostile work environment.

In a May 21, 2014 statement, a coworker, Ms. M noted that she worked in the cubicle with appellant and Ms. B. She noticed animosity between the two and stated that Ms. B seemed to monitor appellant's activities in the office and would comment on appellant's conversations and activities. Ms. M stated that appellant became upset, fearful, and cried on several occasions. On one of these occasions Ms. B laughed and made a snide comment. She stated that appellant was never going to be promoted.

Another coworker, Ms. JM stated that she was in the next cubicle and overheard conversations between appellant and Ms. B. Ms. B stated that she witnessed appellant's every move being recorded and business actions being monitored for reporting to Mr. W. Ms. JM stated that Ms. B became Mr. W's spy and monitored how long appellant was in the ladies room.

In a statement dated January 18, 2012, appellant's supervisor Mr. B stated that appellant became more reserved in July 2010 when Ms. B began working in the division. He stated that in October 2011 appellant had a breakdown due to stress, her strained relationship with Ms. B, and her perception that she shared with Mr. B, that Ms. B was harassing her with encouragement from Mr. W. Appellant also submitted statements from her husband and mother.

By decision dated January 26, 2015, OWCP denied appellant's claim, finding that the evidence she submitted, including witness statements, did not provide proof that she was harassed or given extra work assignments or deadlines. It noted that the statements submitted were of general application and not determinative of the specific employment factors alleged.

OWCP accepted that appellant had concerns regarding the alleged affair between Mr. W and Ms. B, but found that this was not a factor of employment. It further found that management did not like appellant, but that was also not a factor of employment.

LEGAL PRECEDENT

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*,² the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.³ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.⁴ 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 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 person 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. Nor is disability covered when it results from such factors as an employee's frustration in not being permitted to work in a particular environment or to hold a particular position.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 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.⁸ A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.⁹

² 28 ECAB 125 (1976).

³ *Supra* note 1.

⁴ *See Robert W. Johns*, 51 ECAB 136 (1999).

⁵ *Supra* note 2.

⁶ *Id.*

⁷ *Charles D. Edwards*, 55 ECAB 258 (2004).

⁸ *Kim Nguyen*, 53 ECAB 127 (2001). *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁹ *Roger Williams*, 52 ECAB 468 (2001).

For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under FECA. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹⁰

ANALYSIS

Appellant has alleged that she was overworked and subjected to stress inducing deadlines. If established, these elements relate to her job duties under *Lillian Cutler*¹¹ and would be compensable employment factors. The Board finds that appellant has submitted no evidence supporting her allegations that she was overworked or that her employment duties involved deadlines. Without evidence substantiating the allegations of overwork and deadlines, appellant has failed to meet her burden of establishing a compensable factor of employment under *Cutler*.

In *Thomas D. McEuen*,¹² the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under FECA would attach if the facts surrounding the administrative or personnel action established error or abuse by employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.

Appellant alleged error or abuse in an administrative action under *McEuen* in that she believed it violated employing establishment policies for Mr. W to engage in an affair with Ms. B, to supervise Ms. B given her relationship to him, and to require appellant's supervisor Mr. B to hire Ms. B. The Board finds that appellant has not established these events as compensable factors of employment as she has not substantiated the affair nor provided documentation of the violations of specific employing establishment policy. Without evidence of error or abuse in an administrative action, appellant has not established a compensable factor of employment with regard to these alleged events. Furthermore, even if these had been established, they would not be related to appellant in such a way as to be a compensable factor for her as she has been impacted by the events only due to her belief others were violating a policy.

Appellant also attributed her emotional condition to harassment by Mr. W and Ms. B in retaliation for her complaints that their alleged improper relationship created a hostile work

¹⁰ *Alice M. Washington*, 46 ECAB 382 (1994).

¹¹ *Supra* note 2.

¹² *Supra* note 8.

environment. She has provided witness statements supporting that she believed that Mr. W and Ms. B harassed her and that there was a hostile work environment, but her mere perceptions, even if revealed to others and recorded by them, are insufficient to establish that harassment occurred as alleged. Appellant has not submitted specific details or evidence of specific incidents of harassment with dates and times and as such has not established a hostile work environment.

Appellant alleged that Ms. B monitored her activities while at work and reported her findings to Mr. W. She alleged that this was error and abuse as it was a violation of the employing establishment's policy on harassment. Appellant's coworkers, Ms. M and Ms. JM, completed statements generally alleging that Ms. B seemed to monitor appellant's activities in the office and would comment on her conversations and activities. Ms. JM asserted that Ms. B was a spy. The Board finds that these witness allegations regarding Ms. B are insufficiently substantiated by the evidence of record as to date, time, and place to find them compensable.¹³ Neither Ms. M nor Ms. JM provided specific instances in which Ms. B spied upon appellant, recorded her activities, or commented on her conversations. Such general allegations are insufficient to establish harassment or error and abuse by the employing establishment.

Appellant alleged that she had a verbal confrontation with Ms. B, and that Ms. B laughed on occasions when appellant was upset and crying. Ms. M noted that appellant frequently cried and became upset and that on one of these occasions Ms. B laughed and made a snide comment. She further alleged that Ms. B stated that appellant was never going to be promoted. Verbal altercations and difficult relationships with coworkers and supervisors/managers, when sufficiently detailed and supported by the record, may constitute compensable factors of employment.¹⁴ However, this does not imply that every ostensibly abusive or threatening statement uttered in the workplace will give rise to coverage under FECA. For appellant to prevail on her claim, she must support her allegations with specificity and reliable evidence. The Board finds that while they are generally supported, Ms. B's statements and actions are not proved with specific dates and times and as such are not sufficiently established as true.

Contrary to counsel's arguments on appeal, the Board finds that appellant has not submitted the necessary specific corroborative evidence to establish her claims of hostile work environment and harassment. The Board further finds that appellant has not established error or abuse in an administrative action or verbal confrontation. Where a claimant has not established any compensable employment factors, the Board need not consider the medical evidence of record.¹⁵

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.

¹³ *M.D.*, Docket No. 13-867 (issued September 26, 2014) (finding that witness statements must provide precise support for alleged employment factors).

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

¹⁵ *A.K.*, 58 ECAB 119 (2006).

CONCLUSION

The Board finds that appellant has not established a compensable factor of employment and therefore has not met her burden of proof to establish her emotional condition claim.

ORDER

IT IS HEREBY ORDERED THAT the January 26, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 29, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board