

and its relationship to her work. Appellant stopped work on May 4, 2011. Regarding the relationship of the claimed condition to her work, she stated:

“I feel I am working in a hostile work environment in which there is a lack of support from the upper management which has caused me to feel overwhelmed and unsupported. Due to the high demands of my job, unrealistic deadlines imposed upon me, unmanageable volume of work and undue pressure from the administration. Due to the situation described above, I experienced the following symptoms: uncontrolled crying spells, high levels of anxiety, hyperventilation.”

In an accompanying undated statement, appellant indicated that she sustained stress on May 4, 2011 because she was double booked to conduct interviews with two benefits claimants, both at 1:30 p.m. on that date.² She stated that one of the claimants, who had to wait to be interviewed after the other claimant, told her that she wanted to be seen right away. A man who accompanied her yelled, “Why are you doing this to us?” Appellant asserted that a supervisor, Julia Ward, told her that she had to resolve the situation herself and then walked away. She indicated that she felt overwhelmed by the situation and began crying. Appellant asserted that, as a result of the May 4, 2011 incident, she developed various symptoms, including severe migraine headaches, nightmares, sleep problems, anxiety, depression, confusion, and accelerated heart rate.

Appellant further stated that, for the past few months, she felt anxious, stressed out, and fatigued due to unrealistic work deadlines and the environment of her workplace. She claimed that the reception area where benefits claimants were called for their interview appointments was very crowded and noisy. Appellant asserted that her interviews were constantly being interrupted by other claimants, telephone calls, and instant messages from management. She indicated that the air conditioning system did not operate well causing areas of the office to be extremely cold and others to be very hot. Appellant felt unsafe because the security doors did not operate efficiently and the main entrance door to the office constantly broke. She alleged that asbestos was found in the lunchroom causing a shutdown for a few weeks. Office equipment was constantly breaking down and there was only one facsimile machine that everyone shared.

In an undated statement received on May 31, 2011, appellant’s supervisor confirmed that appellant was scheduled to conduct two interviews with benefits claimants at the same time on May 4, 2011. She told appellant to call one of the benefits claimants and reschedule their interview for a different time slot, but appellant advised that she was unable to reach either claimant. When two benefits claimants showed up for their interviews at the same time, appellant’s supervisor told her that “she had to handle it since it was her interview.” Appellant became upset and asked for a leave slip in order to go home. Appellant’s supervisor gave her a leave slip and later found her crying in the bathroom. She noted that appellant had the same amount of work as other journeyman claims representatives. Appellant’s supervisor stated that appellant’s office never had an asbestos problem and that there never was a security breach with the employee door.

² Appellant indicated that she did not make the mistake that led to two benefits claimants being booked for the same time slot as the notices she sent out showed separate appointments for 10:30 a.m. and 1:30 p.m.

In a June 7, 2011 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim.

In a June 21, 2011 report, Dr. Mark Agresti, an attending Board-certified psychiatrist, stated that he treated appellant on May 23 and June 20, 2011. He noted that she had a three-month history of increasing depression. Appellant reported feeling increasingly sad, stressed, and overwhelmed and having crying spells, feelings of hopelessness, and inability to enjoy activities. Dr. Agresti stated that she also reported inability to concentrate, sleeping problems, and decreased appetite. Appellant stated that she could not function at her job due to disorganized thoughts and that she had become increasingly forgetful and had problems making decisions. Dr. Agresti diagnosed a single episode of major depression and hypertension and noted that her depression was due to “job stressors which have overwhelmed her coping skills.” In a July 26, 2011 report, he provided a similar assessment of appellant’s psychiatric condition and again noted that her depression was a result of unidentified job stressors. In a June 11, 2011 note, Dr. Agresti indicated that she could not return to work at that time. On August 24, 2011 he stated that appellant could return to work on August 29, 2011. Appellant returned to work for the employing establishment around that time.

In a November 4, 2011 decision, OWCP denied appellant’s emotional condition claim because she did not establish any compensable work factors. It found that her claimed work factors either were not established or related to a desire to work in a particular environment.

In statements received on November 6, 2012 and January 15, 2013, appellant provided additional discussion of the May 4, 2011 incident when she had two interviews that were double booked and described the effect that the incident had on her emotional state. In a January 9, 2013 statement, a coworker stated that in April or May 2011 appellant spoke to her about a difficult interview she had to conduct. Appellant’s counsel argued in a November 1, 2012 brief that the May 4, 2011 incident constituted a work factor because it occurred in conjunction with the performance of her regular work duties.

In several clinical notes dated between May and August 2011, Dr. Agresti noted that appellant reported being stressed about having a heavy workload and engaging in multitasking at work. Appellant later attended counseling sessions with a licensed social worker.

In a January 24, 2013 decision, OWCP again denied appellant’s emotional condition claim on the grounds that she did not establish any compensable work factors. With respect to her claims regarding the events of May 4, 2011, it indicated that the evidence of record did not support her version of the events.

In an October 29, 2013 statement, a coworker indicated that appellant advised her on May 4, 2011 that she had two interview appointments scheduled for the same time period and that her supervisor would not help her with the situation. The coworker indicated that appellant was crying and showing other signs of anxiety.

In a November 22, 2013 report, Dr. Agresti provided the same history of symptoms and diagnoses that he provided in his June 21 and July 26, 2011 reports. He noted that appellant had made considerable progress through supportive psychotherapy once or twice per month and

through medical management. Dr. Agresti stated, “My opinion is that [appellant’s] depression is a direct result of job stressors. This includes the events that occurred on May 4, 2011 while in the performance of her duties as a claims representative with the [employing establishment] office in West Palm Beach. [Appellant] has outlined this in her employee statement.”

In a March 27, 2014 decision, OWCP affirmed its January 24, 2013 decision as modified to reflect that it was accepted that appellant established a work factor with respect to the events of March 4, 2011 when she had to handle two interview appointments that were made for the same time.³ It found, however, that the medical evidence, including the reports of Dr. Agresti, did not establish that she sustained an emotional condition due to this accepted work factor.

LEGAL PRECEDENT

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment. 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. 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.⁴ On the other hand, the disability is not covered where it results from such factors as an employee’s fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁵

As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.⁶ In claims for a mental disability attributed to work-related stress, the claimant must specifically delineate those factors or incidents to which the emotional condition is attributed and submit supporting factual evidence verifying that the implicated work situations or incidents occurred as alleged. Vague or general allegations of perceived harassment, abuse, or difficulty arising in the employment are insufficient to give rise to compensability under FECA. Based on the evidence submitted by the claimant and the employing establishment, OWCP is then required to make factual findings which are reviewable by the Board. 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.⁷

³ OWCP also found that appellant did not establish any other compensable employment factor.

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁶ See *Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant’s allegations of unfair treatment to determine if the evidence corroborated such allegations).

⁷ *Paul Trotman-Hall*, 45 ECAB 229 (1993) (Michael E. Groom, Alternate Member, concurring).

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.⁸ 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.⁹ 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.¹⁰ To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.¹¹

The Board has recognized that exposure to such work conditions as extreme noise, extreme temperature, or unsafe conditions can constitute a factor of employment.¹² However, the Board has held that an employee's dissatisfaction with a work environment perceived to be poorly managed or generally undesirable constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under FECA.¹³

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.¹⁴ This burden includes the submission of a detailed description of the employment factors or conditions which she 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.¹⁵

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

⁸ *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

⁹ *William H. Fortner*, 49 ECAB 324 (1998).

¹⁰ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹¹ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991). However, 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. *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹² *See G.M.*, Docket No. 08-312 (issued July 17, 2008); *Peggy Ann Lightfoot*, 48 ECAB 490, 494 (1997).

¹³ *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993); *David M. Furey*, 44 ECAB 302, 305-06 (1992).

¹⁴ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹⁵ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.¹⁶ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. 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

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete and accurate 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 the claimant.¹⁸

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of incidents and conditions at work. Some of her allegations pertain to her regular or specially assigned duties under *Lillian Cutler*.¹⁹ Appellant also alleged that she sustained stress due to problems with her work environment and actions of her supervisors. OWCP accepted one employment factor with respect to her having two interview appointments scheduled for the same time on May 4, 2011, but it denied her claims of other employment factors. It then found that the medical evidence did not establish that appellant sustained an emotional condition due to the one accepted employment factor.

As noted, appellant alleged that she sustained stress on May 4, 2011 because she had to handle two interview appointments with benefits claimants that were scheduled for the same time. The Board finds that OWCP properly accepted the circumstances of the May 4, 2011 incident as a work factor. The events of May 4, 2011 are established by the evidence of record, including statements from a supervisor and a coworker. This evidence shows that appellant had to conduct two interview appointments that were scheduled for the same time on May 4, 2011 and that she was required to resolve the situation on her own. The Board notes that conducting interview appointments with benefits claimants was part of appellant's regular duties.

Appellant also generally alleged that she sustained stress because she was subjected to unreasonable deadlines and an unmanageable volume of work. A claimant's experiencing emotional stress in carrying out employment duties may constitute a compensable employment factor. Appellant must specifically delineate those factors or incidents to which the emotional condition is attributed and submit supporting factual evidence verifying that the implicated work

¹⁶ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁷ *Id.*

¹⁸ *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

¹⁹ See *supra* note 4.

situations or incidents occurred as alleged. Vague or general allegations of difficulty arising in the employment are insufficient to give rise to compensability under FECA.²⁰ The Board finds that appellant has not established a factual basis for her claims regarding her deadlines and workload. Appellant's allegations lack specificity, context, and explanation, and are unsupported by any evidence. Appellant has not established a factual basis for her claim of stress related to deadlines and workload.

Appellant alleged that she was exposed to a noisy and disruptive work environment, extreme cold and hot temperatures, inadequate office equipment, and unsafe working conditions due to asbestos and a faulty security door. The Board has recognized that exposure to such work conditions as extreme noise, extreme temperature, or unsafe conditions can constitute a factor of employment.²¹ However, the Board has also held that an employee's dissatisfaction with a work environment perceived to be poorly managed or generally undesirable constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under FECA.²² The Board finds that appellant did not establish the factual aspect of these allegations. Appellant did not submit any evidence to support her assertions regarding her work environment and therefore her claims in this regard must be considered a noncompensable desire to work in a particular work environment.

Appellant alleged that the employing establishment committed wrongdoing by failing to adequately support her and by subjecting her to undue pressure regarding work matters. These allegations are related to administrative and personnel matters. Although generally related to the employee's employment, such matters pertain to administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA. However, as noted above, 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.²³ Appellant only made general allegations that management failed to support her and subjected her to undue pressure. Moreover, she did not submit any evidence to support these allegations. Therefore, appellant has not established a work factor with respect to administrative matters.

Appellant also generally indicated that she was subjected to a "hostile work environment" but she did not identify any actions by management or coworkers that she felt constituted harassment or discrimination. Therefore, she has not established any work factor with regard to harassment or discrimination.²⁴

In the present case, appellant has established a compensable factor of employment with respect to the May 4, 2011 incident at work when she had to handle two interview appointments

²⁰ See *supra* notes 4 through 7.

²¹ See *supra* note 12.

²² See *supra* note 13.

²³ See *supra* notes 8 through 10.

²⁴ See *supra* note 11.

that were made for the same time period. However, her burden of proof is not discharged by the fact that she has established an employment factor, which may give rise to a compensable disability under FECA. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.²⁵

Appellant submitted a November 22, 2013 report in which Dr. Agresti, an attending Board-certified psychiatrist, provided a description of her symptoms and diagnoses. In this report, Dr. Agresti diagnosed a single episode of major depression and hypertension and stated, “My opinion is that her depression is a direct result of job stressors. This includes the events that occurred on May 4, 2011 while in the performance of her duties as a claims representative with the [employing establishment] office in West Palm Beach. [Appellant] has outlined this in her employee statement.”

The Board finds that this report does not establish appellant’s claim for a work-related emotional condition because it is of little probative value because it lacks medical rationale on causal relationship. While OWCP accepted a work factor in connection with the double-booked interviews on May 4, 2011 and Dr. Agresti suggested that events occurring on May 4, 2011 affected appellant’s emotional condition, he did not provide a description of the events of May 4, 2011 or specifically explain in medical terms how they caused or aggravated the diagnosed conditions of depression and hypertension. Dr. Agresti made reference to an unspecified “employee statement,” but such a vague reference to another document, presumably describing the events of May 4, 2011, would not serve as an adequate substitute for his own description of these events. His November 22, 2013 report is of limited probative value on the relevant issue of this case because it is based on an incomplete factual and medical history. The symptoms and diagnoses contained in Dr. Agresti’s November 22, 2013 report appear to have been copied directly from his June 21 and July 26, 2011 reports, produced more than two years prior, apparently without any attempt to update the information to reflect appellant’s condition in November 2013.²⁶ Dr. Agresti produced other medical reports implicating “job stressors” but these reports did not contain any further details about what specific work factors might have affected appellant’s emotional or stress-related conditions.

On appeal appellant’s counsel argued that the submission of Dr. Agresti’s November 22, 2013 report required the case to be remanded to OWCP for further development of the medical evidence. Appellant’s counsel cited several Board cases in support of this proposition, including *Rebel L. Cantrell*, 44 ECAB 660 (1993) and *John J. Carlone*, 41 ECAB 354 (1989). However, the Board notes that the facts of the present case differ from those of the cases cited by counsel in that Dr. Agresti’s November 22, 2013 report did not contain a clear description of the specific work factors which were implicated in causing or aggravating the diagnosed conditions.

²⁵ See *M.D.*, 59 ECAB 211 (2007).

²⁶ See *B.B.*, 59 ECAB 234 (2007) (finding that an opinion in a medical report must be based on a complete and accurate factual and medical background).

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 did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the March 27, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 7, 2015
Washington, DC

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

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

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