

FACTUAL HISTORY

On December 3, 2013 appellant, then a 43-year-old administrative specialist, filed an occupational disease claim (Form CA-2) alleging that she sustained work-related emotional conditions in the form of depression, anxiety disorder, panic attacks, and panic disorder. She indicated that on August 22, 2013 she first became aware of her claimed condition and that it was caused or aggravated by her employment. Appellant stopped work on August 22, 2013.

In a December 5, 2013 statement, appellant indicated that on August 22, 2013 she advised her supervisor of a decline in her health and ability to concentrate due to stress and pressure caused by an upcoming move to a new workplace approximately eight or nine miles away from her then-current workplace. She indicated that she thought that she was having a heart attack and that she went to the emergency room where she was diagnosed with anxiety disorder. Appellant stayed off work due to continuing symptoms and felt that she was treated harshly when she sent an e-mail on August 27, 2013 to her supervisor about possibly returning to work on a telework basis. She indicated that she felt that her supervisor was “continuing to intimidate me” and “added insult to my injuries” when he responded, “Facilities has moved your boxes and chair to [Building 198] and installed the keyboard tray as previously requested.” Appellant stated that she was psychologically mistreated and abused “all because of the demands of a move.” She stated, “I am trying to restore my credibility. I have been defamed. I have been called a squatter. I have been bullied. I have been harassed. I have been abused psychologically and I have been lied to and lied on and my chain of command failed me.”

Appellant submitted a number of documents, including copies of e-mails, concerning the move of her and coworkers to Building 198. The documents were dated between May and August 2013 and dealt with such matters as assignment of workspaces at Building 198 and the timing of the move. In several of the documents, appellant indicated that she wished to postpone her move to Building 198 until issues were resolved regarding her ability to effectively and efficiently perform her job duties at the new location.³ In an August 12, 2013 e-mail, her supervisor advised that appellant “is currently squatting in Building 3112, cube 20.”⁴ Appellant also submitted medical evidence in support of her claim. Some of the reports indicated that she suffered from depression, anxiety, and panic attacks.

In a February 12, 2014 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim.

In an undated statement and a March 4, 2014 statement received on March 5, 2014, appellant indicated that between January and August 2013 she experienced a lot of stress because her work team was transitioning from contractors to government workers. She claimed that her work unit was not adequately supported by management in the performance of her work during this transition period. Appellant asserted that on June 24, 2013 she advised another supervisor,

³ Appellant asserted that Building 198 did not have adequate space for the multiple conferences she attended per week and that she would not be able to print and transfer files in an efficient manner at Building 198.

⁴ In an August 22, 2013 e-mail to appellant, her supervisor stated, “You need to be moved by [close of business] today then.”

that she was not ready to move to Building 198. She claimed that this supervisor gave her assurances that she would not have to move until she was ready to make such a move. Appellant indicated that she suffered a great deal of stress because she was told by her supervisor *via* e-mail on August 22, 2013 that she would have to vacate her workspace the close of business on August 23, 2013. She also submitted additional medical evidence in support of her claim.

In a March 19, 2014 decision, OWCP denied appellant's emotional condition because she had not established any compensable work factors. In particular, it found that she did not establish any work factors with respect to her claim that the employing establishment committed error and abuse in connection with her move to Building 198 in August 2013. Moreover, appellant did not establish that she was subjected to harassment.

Appellant requested reconsideration of her claim on April 25, 2014 and submitted additional evidence including several statements in which she continued to argue that the employing establishment mishandled her move to Building 198 in August 2013. By decision dated May 7, 2014, OWCP denied her request for further review of the merits of her claim.

Appellant requested reconsideration on May 21, 2014 received on June 24, 2014. She continued to submit personal statements and documents regarding the move to Building 198 in August 2013. On July 17, 2014 OWCP received an undated statement from appellant's supervisor which addressed her claimed work factors. The supervisor noted that appellant rejected two requests to move in June and July 2013 and that these were cancelled in an effort to accommodate her. On August 2, 2013 it was discovered that her cubicle was assigned to two individuals and a proper request to vacate was issued on August 12, 2013 after a new employee showed up to occupy the same space. The supervisor indicated that appellant made little progress to move and a final request was issued on August 22, 2013. The move did not require special computer server or access requirements, and the "Carpathia" server was available from the contractor's site. The supervisor stated that the term "squatting" was administrative, and was used to denote a person working in a cubicle not officially assigned to him or her or occupying a space marked vacant. The term was not used only for appellant and was not meant to be an insult.

By decision dated August 29, 2014, OWCP denied modification of its March 19, 2014 decision. It again found that appellant had not established any compensable work factors.

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.⁵ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction in

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

force or his or her frustration from 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 employing establishment 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

To the extent that disputes and incidents alleged as constituting harassment by supervisors are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.¹⁰ However, for harassment to give rise to a compensable disability under FECA, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under FECA.¹¹

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.¹² 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.¹³

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.¹⁴ If a claimant does implicate a factor of

⁶ *Gregorio E. Conde*, 52 ECAB 410 (2001).

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

⁸ *William H. Fortner*, 49 ECAB 324 (1998).

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

¹⁰ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹¹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹² *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹³ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹⁴ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

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.¹⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. 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.¹⁶

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. OWCP denied her claim finding she did not establish any compensable employment factors. The Board must initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.

The Board notes that some of appellant's allegations relate to her regular or specially assigned duties under *Cutler*.¹⁷ Appellant indicated that between January and August 2013 she experienced a lot of stress because her work team was transitioning from contractors to government workers. She claimed that her work unit was not adequately supported by management during this transition period. The Board finds, however, that appellant did not establish these claims regarding work duties. Appellant did not provide further detail regarding these claims which the Board finds to be vague. Moreover, she did not provide any supporting evidence to establish her assertions.

In addition, appellant has alleged error and abuse with respect to personnel or administrative matters. In particular, she alleged that the employing establishment committed wrongdoing by mishandling her move to another work location in August 2013. Appellant claimed that she was given assurances that her move would be delayed until she was ready to move and that she was improperly advised on August 22, 2013 that she had to move her belongings from her cubicle by the close of business on August 23, 2013. Such administrative and personnel matters, although generally related to the employee's employment, are 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, the Board has

¹⁵ *Id.*

¹⁶ *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

¹⁷ *See supra* note 5.

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.¹⁸ The Board finds that appellant has not established error or abuse in her management's handling of the move in August 2013. Appellant did not submit sufficient evidence to establish the occurrence of such claimed wrongdoing by management. For example, she did not submit the findings of a grievance showing that error or abuse occurred with respect to the move. Management explained that appellant had adequate notice of the move to Building 198, but that she did not respond in time to the need to move. Therefore, appellant has not established a compensable work factor with respect to administrative or personnel matters.

Appellant claimed that her supervisors subjected her to harassment, particularly with regarding the move to Building 198 in August 2013. She asserted that she was harassed when her supervisor referred to her in an e-mail as "squatting" at her work cubicle. Appellant generally alleged that management unfairly characterized her as not cooperating with the move in August 2013.¹⁹ The employing establishment denied that she was subjected to harassment and she has not submitted sufficient evidence to establish that she was harassed by her supervisors.²⁰ Appellant alleged that supervisors made statements and engaged in actions which she believed constituted harassment, but she provided no corroborating evidence, such as witness statements, to establish that the statements were actually made or that the actions actually occurred.²¹ Although an e-mail did refer to her as "squatting" at her work cubicle, the e-mail was not addressed to appellant and her supervisor explained that the phrase was commonly used to describe someone who was in a space to be filled by another employee and that it was not used in a derogatory manner. Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under FECA.²² Appellant has not shown how this isolated statement that she was "squatting" would rise to the level of verbal abuse or otherwise fall within the coverage of FECA.²³ Thus, she has not established a compensable employment factor under FECA with respect to the claimed harassment.

¹⁸ See *supra* notes 7 and 8.

¹⁹ Appellant also felt that her supervisor harassed her by trying to "intimidate" her into returning to work after she stopped work on August 22, 2013. On appeal, she generally indicated that she was subjected to harassment, but she did not provide any additional clarification of how the evidence of record established this claim.

²⁰ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

²¹ See *William P. George*, 43 ECAB 1159, 1167 (1992).

²² *Harriet J. Landry*, 47 ECAB 543, 547 (1996).

²³ See, e.g., *Alfred Arts*, 45 ECAB 530, 543-44 (1994) and cases cited therein (finding that the employee's reaction to coworkers' comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction). Compare *Abe E. Scott*, 45 ECAB 164, 173 (1993) and cases cited therein (finding that a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

For the foregoing reasons, appellant has not established any compensable employment factors under FECA and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.²⁴

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 August 29, 2014 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 27, 2015
Washington, DC

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

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

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

²⁴ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).