

the ER talking to the psychiatrist, I came to the conclusion that working in the Whitinsville Post Office is way too stressful.”² She first became aware of her claimed condition and its relationship to work on August 23, 2014. Appellant stopped work on August 27, 2014. On the same form, Jonathan Graves, the Postmaster at appellant’s workplace, indicated that the employing establishment was challenging appellant’s claim.

In a September 4, 2014 statement, appellant reported that within weeks of transferring to the Whitinsville Post Office in June 2013, coworkers started making comments to her, including being asked whether she was “running” her route. One coworker made a comment to her about finishing her work so early. Appellant indicated that she used a lot of vacation time because her route was not a full eight-hour route. She indicated that, when she returned to work after a November 2013 injury, coworkers made comments to her such as “glad you could make it” and “thanks for coming in.”³ Coworkers also made comments about instances when she had to leave work due to dependent care issues. Appellant stated that a coworker asked her if she was “going to cards that night” and she responded that she did not know. The coworker then asked another coworker if he was going to cards that night and he responded that he did not know and that appellant should answer the question. Appellant interpreted this exchange as being related to her absences from work. On another occasion, a coworker “got under her skin” but she could not remember the comments he made. Appellant stated that, on an occasion when she was at work delivering mail, her mind started racing with all of the issues at work and in her personal life and she began to cry. She consulted an official from the employee assistance program and then sought treatment at an emergency room. Appellant submitted a medical note indicating that she should be excused from work between August 28 and September 6, 2014.

In a September 8, 2014 letter, Mr. Graves countered that there was no evidence that appellant was subjected to harassment at work. He indicated that when she was observed in a distressed state at work on August 27, 2014 she told a coworker that the problems in her personal life at home were overwhelming.⁴ Mr. Graves noted that, after questioning several coworkers, it was determined the comments “glad you could make it” and “thanks for coming in” occurred in the normal banter among employees. These coworkers indicated that the comments were made in a joking manner because the former Postmaster regularly walked around and thanked employees for coming in, a practice which they found amusing. The coworkers did acknowledge asking appellant about her attendance at poker night, but they denied that anything was said to appellant with malice. They did not recall making comments to appellant about her mail delivery route.⁵

² Appellant indicated that she was a single mother to a child with medical issues and stated that “time off and comments just became too much.”

³ Appellant stated that coworkers made these comments on more than one occasion.

⁴ The record contains an August 27, 2014 statement in which a coworker related that appellant came to him on that date and expressed that she was upset about problems at home. In an August 21, 2014 statement, the same coworker noted that appellant discussed personal problems with him shortly prior to the date of the statement.

⁵ One coworker recalled that, on August 23, 2004, appellant told him to mind his own business. The coworker did not recall what he had stated to appellant on that date.

On September 17, 2014 the employing establishment controverted her claim because there was no evidence of harassment at work.

In an October 8, 2014 letter, OWCP provided appellant and the employing establishment an opportunity to submit additional factual and medical evidence in support of their arguments.⁶

Mr. Graves stated in a letter dated October 15, 2014 that there were no aspects of appellant's job that were stressful beyond the scope of normal duties. Management never observed any conflict between appellant and her coworkers, and appellant had not reported any problems prior to filing her Form CA-2.

Appellant submitted medical evidence, including an undated report in which an attending psychiatrist diagnosed major depression disorder due to "stress at work."⁷

In a November 25, 2014 decision, OWCP denied appellant's emotional condition claim because she had failed to establish 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.⁸ 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.⁹

To the extent that disputes and incidents alleged as constituting harassment by coworkers 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

⁶ OWCP provided a questionnaire for appellant to complete, but it does not appear that she completed it.

⁷ Appellant also submitted an October 13, 2014 report of "initial psychiatric evaluation" completed by a registered nurse.

⁸ *Lillian Cutler*, 28 ECAB 125 (1976).

⁹ *Gregorio E. Conde*, 52 ECAB 410 (2001).

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).

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 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 well-explained opinion on whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors.¹⁶

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of incidents and conditions at work. OWCP denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.

The Board notes that appellant's allegations do not pertain to her regular or specially assigned duties under *Lillian Cutler*.¹⁷ Rather, she has alleged that she was exposed to harassment by her coworkers.

Appellant claimed that coworkers subjected her to harassment by making various comments to her at work. The employing establishment denied harassment and appellant has not

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).

¹⁵ *Id.*

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

¹⁷ *See supra* note 8.

submitted sufficient evidence to establish that she was harassed by coworkers.¹⁸ Appellant alleged that coworkers made comments about the running of her postal route, finishing her mail delivery route early, and about attending a poker night with coworkers.¹⁹ However, she did not provide corroborating evidence, such as witness statements, to establish that harassing statements actually were made as alleged.²⁰ Appellant's supervisor did acknowledge that, after questioning coworkers, he learned that comments such as "glad you could make it" and "thanks for coming in" were made to appellant. The supervisor contended that the coworkers' comments were made without malice. These coworkers reported to the supervisor that the comments were made in a joking manner because the former postmaster regularly walked around and thanked employees for coming in, a practice which they found amusing. 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.²¹ Appellant has not established the specifics of these conversations nor has she shown that any of these were made with ill intent.²² Thus, appellant has not established a compensable employment factor under FECA with respect to the claimed harassment by coworkers.

For the foregoing reasons, appellant has not established any compensable employment factors under FECA and, therefore, has not met her burden of proof to establish an emotional condition in the performance of duty.²³

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 an emotional condition in the performance of duty.

¹⁸ 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).

¹⁹ Appellant also generally indicated that a coworker "got under her skin" on one occasion, but she could not remember the comments he made.

²⁰ See *William P. George*, 43 ECAB 1159, 1167 (1992). Appellant felt that the comments about attending poker night represented a criticism about her work attendance. A supervisor noted that coworkers acknowledged asking appellant about attending poker night, but they indicated that there was no malicious intent in asking her about this matter.

²¹ *Harriet J. Landry*, 47 ECAB 543, 547 (1996).

²² 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).

²³ 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).

ORDER

IT IS HEREBY ORDERED THAT the November 25, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 22, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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