

FACTUAL HISTORY

On February 12, 2013 appellant, then a 48-year-old administrative support clerk, filed an occupational disease claim (Form CA-2) alleging an emotional condition due to ongoing stress at the workplace. She stated that she experienced shortness of breath, panic attacks, anxiety, and stress at work related to her new supervisor and financial hardship.

In a February 15, 2013 letter, OWCP notified appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries.

In response, appellant submitted a position description and a March 14, 2013 narrative statement explaining that in May 2012 she was asked to do extra duties of the supervisor's position before the new supervisor, Tabatha Dubanski, arrived. She was allegedly told that a temporary detail or possible promotion was available for her if she performed the extra duties. Appellant performed the duties of her job and the duties of the supervisory position for a few months until the new supervisor came in July 2012. She was informed, however, that she would not get a promotional detail or any opportunity to apply for the job. Appellant alleged that Ms. Dubanski did not know her supervisory duties and appellant kept doing them for her. She stated that Ms. Dubanski prohibited her from obtaining authorizations for National Finance Center (NFC) and Financial Management Modernization Initiative (FMMI) which caused appellant stress. Appellant had difficulty communicating with Ms. Dubanski and went to Employee Assistance Program (EAP) counseling. The union and EAP advised appellant to take five weeks off in September 2012 which she did.

When appellant returned to work she alleged that Ms. Dubanski was still not coming into work regularly. She alleged that there was no supervision and work was piling up, which caused stress to her and her coworkers. Appellant did her best to accommodate her coworkers' requests while at the same time doing her own job. She indicated that the financial system was going through a transition during that time and the deposits were being delayed. Appellant alleged that Ms. Dubanski directed her to do a spreadsheet despite the fact that she was under a deadline for another assignment. Ms. Dubanski insisted that the spreadsheet be completed so appellant stayed at her desk for over six hours working on the spreadsheet causing a complete panic attack and she ended up in the emergency room.

Not being able to communicate with Ms. Dubanski, trying to do her own job, and being micromanaged by a supervisor who was unavailable was very stressful and caused ongoing severe anxiety to appellant at the workplace. Appellant stated that because her supervisor was gone most of the time, she had to communicate with her by text messages. When appellant tried to speak with Ms. Dubanski she acted rude and unavailable.

Ms. Dubanski kept a dry erase board outside appellant's cubicle to keep track of her whereabouts. Appellant stated that Ms. Dubanski did not want appellant to do her duties but to direct employees to her, but Ms. Dubanski was never available so appellant ultimately had to cover for her.

Appellant further noted that she was experiencing financial hardship as she was unable to afford to pay for a mortgage on her home in Trinity County and rent in Detroit, as well as her

monthly bills and groceries on her salary. She was also unable to pay for the gas to go to the doctors' appointments she needed for her medical condition. Appellant noted that she was on leave without pay for over 12 weeks and it caused her extreme stress and anxiety resulting in frequent panic attacks because she was not working. Additionally, in June 2012, she received a threatening note on her vehicle and was afraid for her safety. Appellant reported it to the district ranger and her coworkers but no action was taken. The note was written by another coworker and the coworker thought it was a funny joke. Appellant was terrified that someone was going to hurt her. She was ridiculed at work and this caused her more stress at that time.

In a November 9, 2012 e-mail message to Ms. Dubanski, Grady McMahan, a district ranger, noted that he had just met with appellant and she was happy to serve as the unit collection officer. Mr. McMahan forwarded a message he had written to appellant outlining the duties of the job, which included the collection and deposit of funds and handling Christmas tree permits and mineral permits.

Appellant submitted hospitals records from her visit to the emergency room on December 6 and 12, 2012 for adjustment disorder with anxiety and substance abuse.

The record contains e-mail correspondence to appellant from Ms. Dubanski for the period July 31 through December 6, 2012, including a message dated November 29, 2012 regarding a spreadsheet that appellant was required to update by close of business on November 30, 2012. In a December 3, 2012 e-mail message, Ms. Dubanski stated that she went over the spreadsheet with appellant to make sure she understood how to complete the project and directed her to make it a priority and complete it by close of business on December 4, 2012, noting that it should not take more than six hours to complete. On December 6, 2012 she e-mailed appellant stating that she still had not received a copy of the spreadsheet and requested the time frame in which it would be complete.

Appellant received a "Fully Successful" rating from Ms. Dubanski on her performance review for the period October 1, 2012 through September 30, 2013. In the November 7, 2012 performance review follow-up memorandum, Ms. Dubanski reported that she had discussed with appellant expectations for conduct in the workplace. Appellant was to be courteous to all employees and coworkers within the office and not make verbal comments directed at any employee which were accusatory or negative. Regarding appellant's daily duties and responsibilities, Ms. Dubanski summarized that she had expressed her agreement that the dry erase board in appellant's cubicle was a good organizational tool which would be updated weekly with current job duties that were to be completed and in prioritized order.

Dr. Amy Sutkus, a Board-certified family practitioner, in reports dated December 7, 2012 and March 15, 2013, diagnosed anxiety disorder and opined that it had been exacerbated by appellant's work situation. On January 21, 2013 she noted that appellant was being treated for anxiety with medication and counseling, as well as a leave of absence from work as her condition was severe enough to affect her ability to function. On April 15, 2013 Dr. Sutkus stated that appellant's current work situation exacerbated her anxiety to the point where she may have been at risk of harming herself and advised that she only return to work if she was transferred to a different worksite and working with different people. She indicated that

appellant would need six to eight weeks for her new medications to take effect before attempting to return to any location for work.

Mr. McMahan in his February 25, 2013 statement acknowledged that there was an added workload during the two-week transition period between appellant's supervisors in July 2012, and that there was also some added workload during the time Ms. Dubanski was learning the duties of her position. However, he noted that appellant's disappointment over not being selected for the supervisory position, along with having to work with Ms. Dubanski, was very stressful. He noted that appellant's position, assistant to the support services supervisor, coordinating operations for a 48 person office was not a high stress position.

On April 2, 2013 Dr. S. Michael Sasser, a forensic psychiatrist, diagnosed adjustment disorder with anxiety and general anxiety disorder. He related that appellant presented with "a tendency to be somewhat of a worry wart and [took] on burdens that perhaps [were] beyond her responsibility or authority." Dr. Sasser stated that she was "vulnerable to some anxiety and apprehension that worsened with the stress in the workplace and burdens that have been imposed upon her and some of the statements about her potential movement up the ladder that gave her false hope and then bottomed out."

In an April 9, 2013 e-mail message to Mr. McMahan, one of appellant's coworkers stated that appellant called to ask the coworker advice on some administrative procedures and "was very upset and crying saying that she was under so much stress at work and home that she didn't know how much more she could take and also stated that sometimes she didn't even want to live."

George Regas, a health, safety, and wellness leader, indicated in an April 10, 2013 statement that appellant shared her difficulty in dealing with the remoteness of her workplace and the subsequent stress that caused her to become so emotionally distraught that she gave thoughts of committing suicide. He believed she was a person who needed close mental health support.

In a letter dated April 15, 2013, Elizabeth Trevino de Tosca, a human resources specialist, advised that appellant was to report to work on April 1, 2013 but she failed to inform her supervisor of a medical appointment on April 2, 2013 with Dr. Sasser, which was located approximately five hours away in Medford, Oregon.

Ms. Dubanski provided an April 15, 2013 statement in which she stated that appellant relayed to her on many occasions that she felt overwhelmed with various projects she needed to complete and that she did not know where to start. Appellant shared that "some days she would just stare at the computer and felt like she was having an anxiety attack." Ms. Dubanski indicated that she always used a dry erase board with all her positions to keep track of "to do" items and deadlines and appellant had indicated to her that it would be a good idea for her. It was not until the end of October when appellant started making negative verbal comments under her breath at her desk that she learned that the technique was causing appellant stress. She stated that the duties appellant performed were normal expectations of an administrative clerk. Ms. Dubanski stated that appellant had not been performing the duties of the support services supervisor when Ms. Dubanski began working and did not understand what was so stressful

about her own duties as assistant. Regarding appellant not being allowed to obtain NFC and FMMI authorizations, she explained to appellant that it was the responsibility of the support services supervisor to have the NFC access. Ms. Dubanski had approved appellant's "Super User" authorization for Paycheck 8, which is what she needed to work on employees' timesheets. She had also sent appellant the link for her to get remote access to start the process for virtual private network (VPN) several times, but she never followed through with the process. On November 29, 2012 Ms. Dubanski sent appellant an e-mail and discussed with appellant in-person how to complete the spreadsheet. The spreadsheet had been created and any required formulas had already been entered. The spreadsheet was a priority and, aside from appellant's unit collections officer duties, appellant was expected to complete this task. Appellant did not call to ask any questions nor did she complete the task timely. Ms. Dubanski also related that appellant's regular duties were not being completed in a timely manner and that she received e-mails from staff stating that appellant was not replying to their e-mails or telephone calls and not providing the needed documents they required.

In an April 22, 2013 report, Barbara Alexander, a licensed professional counselor, provided a provisional diagnosis of generalized anxiety disorder and explained that appellant would be receiving both therapy and psychiatric treatment. She stated that she could not predict when appellant would be able to return to work at that time.

By decision dated June 25, 2013, OWCP denied appellant's claim finding that the evidence had failed to establish any compensable factors of employment and thus denied her emotional condition claim. It accepted that the following events occurred, but were not found to be compensable factors of her federal employment: (1) in the interim between the transfer out of her old supervisor and the arrival of her new supervisor, appellant temporarily assumed some extra duties; (2) she believed she had been promised a promotion if she temporarily performed some supervisory job functions; (3) when Ms. Dubanski began work, she asked appellant to stop performing any jobs that she had been performing in the absence of any supervisor and appellant felt manipulated by not being allowed to finish those activities which she had begun; (4) appellant believed that Ms. Dubanski assigned her additional work that was not within the scope of her job responsibilities, including completing a spreadsheet in the midst of performing her tasks as a unit collection officer; (5) her supervisor was away from the office much of the time; (6) appellant's counselors were far away from her residence and it was difficult to get there because gas was so expensive; (7) she became stressed when she became backed up in making bank deposits in December 2012 when the system for making deposits changed; and (8) appellant began experiencing financial hardship due in part to paying a mortgage on a house in California and rent for a residence near her workplace. OWCP further found that the following alleged incident had not been established: a threatening note was left on her vehicle in June 2012.²

On November 1, 2013 appellant, through counsel, requested reconsideration and submitted an October 24, 2013 narrative statement reiterating her allegations and an October 11, 2013 report from Dr. Sutkus who indicated that her anxiety was "definitely worsened by her

² On July 1, 2013 appellant, through counsel, requested an oral hearing before an OWCP hearing representative. On October 22, 2013 appellant, through counsel, withdrew her request for an oral hearing. By decision dated November 1, 2013, the hearing representative accepted appellant's request for withdrawal of the hearing.

work duties,” which included collecting monies from lockboxes and campgrounds and depositing this money, purchasing office supplies, coordinating living quarters for staff and making sure rent was paid in her role as an administrative support clerk.

In a December 10, 2013 statement, Mr. McMahan indicated that there was only a two-week vacancy period between supervisors and when Ms. Dubanski arrived “she moved as quickly as possible to take appropriate duties back from [appellant] and other members of the department that had taken on added duties during the transition.” He stated that appellant was stressed that Ms. Dubanski would not allow her to obtain authorizations, but these authorizations were needed by the supervisor, not appellant. Mr. McMahan indicated that to require her to get the authorizations would be “expanding her position description beyond the position she was hired into.” He further indicated that in December 2012 there was a nationwide change to a new financial system, which posed a problem for every collection officer, not just appellant.

In a statement dated December 13, 2013, Ms. Dubanski reiterated that her previous statements.

By decision dated January 9, 2014, OWCP denied modification of the June 25, 2013 decision.

LEGAL PRECEDENT

In providing for a compensation program for federal employees, Congress did not contemplate an insurance program against any and every injury, illness, or mishap that might befall an employee contemporaneous or coincidental with his or her employment. Liability does not attach merely upon the existence of an employee-employer relationship. Instead, Congress provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.³ The phrase while in the performance of duty has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers’ compensation law of arising out of and in the course of employment.

In *Lillian Cutler*,⁴ the Board noted that workers’ compensation law is not applicable to each and every injury or illness that is somehow related to an employee’s employment. There are situations when an injury or illness has some connection with the employment, but nonetheless does not come within the coverage of workers’ compensation as they are found not to have arisen out of the employment. When an employee experiences emotional stress in carrying out her employment duties, or has fear and anxiety regarding his or her ability to carry out his or her duties, and the medical evidence establishes that the disability resulted from her 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 resulted from her emotional reaction to her day-to-day duties. The same result is reached when

³ See 5 U.S.C. § 8102(a).

⁴ 28 ECAB 125 (1976).

the emotional disability resulted from the employee's emotional reaction to a special assignment or 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 personal 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, unhappiness with doing inside work, desire for a different job, brooding over the failure to be given work she desires, or the employee's frustration in not being permitted to work in a particular environment or to hold a particular position.⁶ Board case precedent demonstrates that the only requirements of employment which will bring a claim within the scope of coverage under FECA are those that relate to the duties the employee is hired to perform.⁷

To the extent that disputes and incidents alleged as constituting harassment by coworkers are established as occurring and arising from a claimant's performance of his or her regular duties, these could constitute employment factors.⁸ 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.⁹

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.¹⁰ 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.¹¹ 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.¹²

A claimant has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.¹³ This burden includes the submission of a

⁵ *Id.* at 130.

⁶ *See supra* note 4.

⁷ *See Anthony A. Zarcone*, 44 ECAB 751 (1993).

⁸ *See David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁹ *See Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁰ *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹¹ *See William H. Fortner*, 49 ECAB 324 (1998).

¹² *See Ruth S. Johnson*, 46 ECAB 237 (1994).

¹³ *See Pamela R. Rice*, 38 ECAB 838, 841 (1987).

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.¹⁴

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 work 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 compensable factors of employment and may not be considered.¹⁵ If a claimant does implicate a factor of employment, OWCP should then consider whether the evidence of record substantiates that factor. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim; the claim must be supported by probative evidence.¹⁶ Where the matter asserted is a compensable factor of employment and the evidence of record established the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.¹⁷

The Board has held that a variety of work factors are compensable under FECA. Among them, overwork is a compensable factor of employment if appellant submits sufficient evidence to substantiate this allegation.¹⁸ Also, in certain circumstances, working overtime is sufficiently related to regular or specially assigned duties to constitute a compensable employment factor.¹⁹ Additionally, conditions related to stress resulting from situations in which an employee is trying to meet his or her position requirements are compensable.²⁰

ANALYSIS

Appellant alleged that she developed an emotional condition due to ongoing stress at the workplace related to Ms. Dubanski, her new supervisor, a new financial system, and financial hardship. OWCP found these to be noncompensable employment factors. Therefore, the Board must review whether the alleged incidents are covered employment factors under FECA.²¹

OWCP accepted that the following events occurred, but were not factors of appellant's federal employment: (1) in the interim between the transfer out of her old supervisor and the arrival of her new supervisor, appellant temporarily assumed some extra duties; (2) she believed

¹⁴ See *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹⁵ See *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁶ See *Charles E. McAndrews*, 55 ECAB 711 (2004).

¹⁷ See *Jeral R. Gray*, 57 ECAB 611 (2006).

¹⁸ See *Bobbie D. Daly*, 53 ECAB 691 (2002).

¹⁹ See *Ezra D. Long*, 46 ECAB 791 (1995).

²⁰ See *Trudy A. Scott*, 52 ECAB 309 (2001).

²¹ See *P.E.*, Docket No. 14-102 (issued April 1, 2014).

she had been promised a promotion if she temporarily performed some supervisory job functions; (3) when Ms. Dubanski began work, she asked appellant to stop performing any jobs that she had been performing in the absence of any supervisor and appellant felt manipulated by not being allowed to finish those activities which she had begun; (4) appellant believed that her supervisor assigned her additional work that was not within the scope of her job responsibilities, including completing a spreadsheet in the midst of performing her tasks as a unit collection officer; (5) her supervisor was away from the office much of the time; (6) appellant's counselors were far away from her residence and it was difficult to get there because gas was so expensive; (7) she became stressed when she became backed up in making bank deposits in December 2012 when the system for making deposits changed; and (8) appellant began experiencing financial hardship due in part to paying a mortgage on a house in California and rent for a residence near her workplace.

Appellant attributed her emotional condition to the temporary assumption of some extra duties for a two-week vacancy period between supervisors, with the belief that she would be promoted if she temporarily performed some supervisory job functions, and then not being allowed to finish those activities which she had begun.

In *Trudy A. Scott*,²² the claimant alleged that she suffered from an emotional break down when she was required to take on extra duties, such as staff scheduling, when a supervisor left her job. The record, consisting of a performance evaluation and the affidavit of a witness, established that the employee had a heavy and demanding workload, in part due to understaffing and hiring delays within the employing establishment. The Board found that the claimant's increased workload, with the requirement that she take over scheduling duties of a departed employee, was a condition of her specially assigned duties and was to be considered a compensable factor of employment.

In this case, however, appellant was not required to take over supervisory job functions. She volunteered to assume some extra duties for a two-week period between supervisors. Moreover, appellant received a "Fully Successful" rating from Ms. Dubanski on her performance review for the period October 1, 2012 through September 30, 2013. In his December 10, 2013 statement, Mr. McMahan indicated that when Ms. Dubanski arrived "she moved as quickly as possible to take appropriate duties back from [appellant] and other members of the department that had taken on added duties during the transition." He further indicated that, although she was stressed that Ms. Dubanski would not allow her to obtain certain authorizations, to require appellant to get these authorizations would be "expanding her position description beyond the position she was hired into." Additionally, there is no evidence to establish that appellant was promised a promotion if she temporarily performed some supervisory job functions. The Board finds that her feelings of stress and manipulation from not being able to finish certain activities and her disappointment in not receiving a promotion must be construed to be self-generated. As appellant's increased workload was not a condition of her specially assigned duties, she has failed to establish a compensable factor of employment.²³

²² *Supra* note 20.

²³ *See H.C.*, Docket No. 12-457 (issued October 19, 2012).

Appellant further attributed her emotional condition to her belief that Ms. Dubanski assigned her additional work that was not within the scope of her job responsibilities, including completing a spreadsheet in the midst of performing her tasks as a unit collection officer, and becoming backed up in making bank deposits in December 2012 when the system for making deposits changed. Assignment of work pertains to an administrative matter. The standard under *McEuen* is whether the evidence of record establishes error or abuse by the employing establishment in an administrative matter.²⁴ There is no evidence to establish that Ms. Dubanski assigned appellant additional work that was not within the scope of her job responsibilities. The Board has held that a manager or supervisor must be allowed to perform his or her duties and that the employees will disagree with actions taken. Mere disagreement or dislike of actions taken by a supervisor will not be compensable absent evidence establishing error or abuse.²⁵ An employee's reaction to an administrative or personnel matter is not covered under FECA, unless there is evidence that the employing establishment acted unreasonably.²⁶ Because appellant has not presented sufficient evidence to establish that Ms. Dubanski acted unreasonably or that the employing establishment engaged in error or abuse, she has failed to identify a compensable work factor.

Appellant further attributed her emotional condition to her allegation that Ms. Dubanski was away from the office much of the time. The Board has held that mere allegations, in the absence of factual corroboration, are insufficient to meet a claimant's burden of proof.²⁷ As appellant failed to provide evidence to establish a compensable factor of employment, the Board finds that she has not met her burden of proof.

Finally, appellant's counselors being far away from her residence and her financial hardship due to paying a mortgage on a house in California and rent for a residence near her workplace are not factors of her federal employment. There is no evidence to establish that she was unable to attend meetings with her counselors or alleviate her financial hardship. The Board finds that appellant has not submitted sufficient evidence to support that the employing establishment acted erroneously or abusively regarding her counseling or financial situation. Thus, appellant has not established a compensable work factor.

OWCP further found that the following alleged incident did not occur: (1) a threatening note was left on her vehicle in June 2012. A claimant must establish a factual basis for her allegations with probative and reliable evidence.²⁸ Appellant did not submit probative evidence, such as a witness statement, corroborating her allegations of a threatening note. The absence of such documentation diminishes the validity of her contention in this case, where there is no

²⁴ See *Thomas D. McEuen*, *supra* note 10.

²⁵ *Linda Edwards-Delgado*, 55 ECAB 401 (2004).

²⁶ See *Alfred Arts*, 45 ECAB 530 (1994).

²⁷ See *Bonnie Goodman*, 50 ECAB 139 (1998).

²⁸ *Supra* note 13.

evidence to document that she received a threat in June 2012. Thus, appellant has failed to establish a compensable factor of employment.²⁹

Furthermore, it is unnecessary to address the medical evidence of record as appellant has failed to establish a compensable factor of employment.³⁰

On appeal, counsel contends that appellant submitted sufficient evidence to establish an emotional condition arising from a compensable factor of employment. Based on the findings and reasons stated above, the Board finds his argument is not substantiated.

Counsel further contends that even if some events alleged were not related to appellant's employment, there is no apportionment under FECA, thus, if any of the events discussed occurred and were within the performance of duty, the entire condition would be covered under FECA. In this case, however, no compensable employment factors have been established.

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 has not met her burden of proof to establish an emotional condition in the performance of duty.

²⁹ See *supra* note 23.

³⁰ See *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 10, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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