United States Department of Labor
Employees' Compensation Appeals Board

B.H., Appellant	)	
and	)	**Docket No. 15-106**
	)	**Issued: March 19, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Oak Harbor, WA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 20, 2014 appellant filed a timely appeal from an October 8, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant has established an emotional condition in the performance of duty.

FACTUAL HISTORY

On October 31, 2013 appellant, then a 54-year-old city letter carrier, filed a traumatic injury claim alleging an emotional condition as a result of her employment. She alleged that on

[1] 5 U.S.C. § 8101 *et seq.*

October 21, 2013 she sustained mental illness and extreme depression knowing that she had to go to work and report to her supervisor, a facility senior manager. Appellant stopped work that day.[2]

In a November 13, 2013 letter, OWCP requested additional factual and medical evidence in support of her claim. It noted that the evidence was insufficient to establish the employment factor alleged to have caused injury and there was no medical evidence containing a diagnosis by a physician detailing how her employment activities caused, contributed to, or aggravated any diagnosed condition. Appellant was provided 30 days to submit the requested information.

In an undated statement received on December 13, 2013, appellant referenced a workplace incident report concerning a May 12, 2012 incident. She stated that while she was not pleased with the contents of the workplace incident report, at that time she believed that her supervisor, the manager who prepared the report, would not be at the employing establishment much longer. However, in January 2013, this particular individual was assigned to appellant's office as a supervisor, which meant she would have daily contact with him. Appellant stated that the fact that her supervisor had stated that she was in need of mental assistance should be enough proof to establish her disability.

The workplace incident report, authored by the supervisor, summarized that on May 12, 2012 appellant acted inappropriately towards another supervisor in placing her finger towards his face and stating that she was going to call the inspection service regarding him because he was crazy. The report noted that appellant had a long history of causing confrontation with her peers and was seen by many as imposing and in serious need of mental assistance. The report further noted that appellant's behavior could definitely have the potential for further escalation and that the employees had been concerned that appellant might do something damaging to their vehicles, as she had done in the past.

In a supplemental statement explaining her claim, appellant alleged the work environment and some individuals made it difficult for her to do her job. She described incidents involving her supervisor and incidents involving other coworkers.

Appellant described a number of undated interactions with her supervisor, as well as letters of warning received on September 20, 2013 and an October 1, 2013 interaction. Regarding interactions with her supervisor, she stated that she parked in front of the employing establishment because, when she parked in the employing establishment parking lot, individuals parked so close to her vehicle that she could barely get in. Appellant's supervisor informed her that she needed to park in the parking lot, but the postmaster disagreed with him. Appellant stated that her hamper was switched out to a dirty hamper, but when she informed her supervisor he stated "Why would anyone do that?" In describing a third incident, appellant alleged that, after she pushed a coworker's cart, her supervisor immediately called them into the office. When he found out that the coworker had pushed her cart first and not only that day but the day before, he informed them that there would be no pushing of the carts, no matter who started it.

[2] OWCP processed appellant's claim as an occupational disease injury as her disability occurred over more than one work shift.

Appellant alleged that her supervisor made sure he interacted with her on a daily basis even though her doctor recommended little to no interaction. She alleged that she was the only employee to whom her supervisor gave instructions. Appellant stated that, when she was instructed to do collections, she informed her supervisor that her back hurt, but he would not make special accommodations for her. She stated that she had not filed any grievance, but her shop steward Brian Wiggins, told her that he felt that her supervisor was out to get her. Appellant filed an Equal Employment Opportunity (EEO) complaint last year and alleged that her supervisor was hoping to get her fired. She stated that she should be able to come in and do her job and leave as she has an assigned route and has worked there for 20 years.

Appellant also described disciplinary actions taken against her which she viewed as harassment. On September 10, 2013 she received three letters of warnings: two for not doing anything above and beyond her own assigned route and one was for saying the "F" word. Appellant explained in 20 years, she had never cussed, but on the day in question another clerk, had interrupted her twice when she was talking to a customer on the telephone.

Appellant stated that her supervisor always criticized her, that if she hummed to music when wearing headphones, he told her not to hum. On October 1, 2013 she was singing outside while walking to her case and he informed her that she should not sing.

Appellant also alleged several incidents with coworkers which she viewed as harassment. She described a March 2, 2013 incident during which she asked a coworker to stop casing so she could have another coworker pull down City 7, which had just been assigned to her. This coworker told appellant it was none of her business, not to talk to him, and if there was a problem to talk to her supervisor.

Appellant reported that the tray in her truck had broken but, it took over a week to get it repaired. She stated on another occasion she had ridden up on her right front tire while loading her truck and a coworker had informed another individual that appellant drove too fast.

Appellant stated that one of her siblings died on June 12, 2013 and she took leave. When she returned, she heard that a coworker was telling others that she was upset because she was not going to get leave in July, which was not true as she had already had her bid on that leave.

Appellant indicated that on September 27, 2013 someone had left empty tubs in her truck and a coworker indicated that he had used her truck. She stated that on almost a daily basis, someone put empty tubs behind her truck and moved her time card. Appellant informed the postmaster, on one occasion, to call #911 because she suffered from a mental illness. She stated that another coworker told her that she was being disruptive. Appellant alleged that her emotional reaction to her coworkers' harassment should be within the performance of duty as the evidence established that her supervisor failed to intervene when she was harassed by coworkers or the coworkers instigated such harassment.

Copies of three September 10, 2013 letter of warning notices were provided. The first letter of warning concerned the June 27, 2013 altercation with the coworker when appellant used profanity and told her to "Shut the F---k up." The second letter of warning charged that on July 30, 2013 appellant was assigned collections in addition to her regular route; however, she

deviated without authorization for 15 miles and took an additional 1.43 hours to complete her route. The third letter of warning stated that on August 6, 2013 appellant was assigned collections in addition to her regular route, but she failed to complete the assigned collections.

Appellant submitted a November 4, 2013 duty status report along with a November 4, 2013 report from Dr. Judye A. Scheidt, an osteopath and family physician. The report noted appellant's conflicts with her supervisor and diagnosed situational anxiety-stress; generalized anxiety disorder, and depression. In notes dated April 29, August 5 and December 6, 2013, Lauren Bock, a certified physician assistant, noted that appellant was either disabled from work or provided restrictions on appellant's full-time work. She recommended minimal interaction with her supervisor.

In an August 12, 2013 report, Dr. Scheidt advised that appellant could only work eight hours a day until her EEO claim was completed. She recommended that appellant have minimal contact with her supervisor until the EEO claim was resolved.

In a December 5, 2013 report, Dr. Gloria M. Harrison, a licensed clinical psychologist, noted that she saw appellant for three sessions, November 19, 27 and December 3, 2013, and she presented in a highly emotional dysregulated state, exhibiting symptoms of anxiety and depression which appellant directly attributed to a hostile work environment. Appellant had tearfully described her experience over the past few months where she felt bullied, singled out, and misunderstood by the events relating to her job. A diagnosis of adjustment disorder with mixed anxiety and depressed mood, with a history of major depression and work-related stress, financial stress, and physical health stress was provided.

In a December 12, 2013 statement, appellant's supervisor stated that appellant had not been treated any differently from any other employees, either by him or any other members of management. Rather, he noted that she had demonstrated an unwillingness to take regular instructions from her immediate supervisor and all previous supervisors. Appellant's supervisor noted that for a number of months, appellant has been excluded from performing mandatory overtime as she provided medical documentation limiting her work to eight hours. He stated that she had a guarantee of eight hours of work per day and when she finished her assignment early, she routinely had been given the option of either taking leave for the remainder of the day or to provide additional assistance within her restrictions. Appellant's supervisor noted that appellant would complete her route and often ask for additional workload in the form of collections or additional portions of another route to fill the remainder of her day. He indicated that there was a point in time when she decided she would only carry her route and nothing additional and management accommodated this request, on a day-to-day basis, depending on the needs of the service for that given day. When this request was granted to allow appellant not to carry additional workload, she would be done early which placed her in a position to use her leave. Appellant then simply took longer to complete her route.

Appellant's supervisor advised that appellant had a history of inability to work well with others. He noted that she provided constant distraction for the other employees in the form of loud humming, singing, foot tapping, and loud outbursts and became combative and unable to follow instructions when management addressed these issues with her. Appellant then provided medical documentation stating that she was unable to fulfill certain expectations of her job due to

medical conditions. Appellant's supervisor noted that this had been ongoing since 1995. Duplicate copies of the May 12, 2012 incident and the three September 10, 2013 letter of warning notices were provided.

Appellant subsequently filed claims for ongoing wage-loss compensation commencing January 29, 2014. A work excuse dated March 31, 2013 was also submitted.

By decision dated April 30, 2014, OWCP denied appellant's claim finding no compensable employment factors.

Appellant continued to file claims for wage-loss compensation. Of record were May 27, 2014 work restrictions from Ms. Bock; a May 22, 2014 medical record from Dr. Harrison, a certification of Health Care Provider for Employee's Serious Health Condition completed by Ms. Bock and a June 2, 2014 letter by Ms. Bock addressing recommended work restrictions.

On September 4, 2014 OWCP received appellant's request for reconsideration. Appellant asserted that her depression was triggered by work-related issues. She referenced various Board decisions and legal precedents and stated that they applied to her. Appellant alleged that the employing establishment acted abusively in issuing three letters of warning. She stated that she was threatened by a coworker while answering the telephone. Appellant stated that her supervisor advised her that she was in need of mental assistance and was a danger to herself and others. She summarized her previous allegations, regarding her interactions with coworkers. Appellant concluded that she would not submit witness statements and that her EEO case had been settled.

By decision dated October 8, 2014, OWCP denied modification of the April 30, 2014 decision.

LEGAL PRECEDENT

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.[3]

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*,[4] the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.[5] There are situations where an injury or

[3] *Leslie C. Moore*, 52 ECAB 132 (2000).

[4] 28 ECAB 125 (1976).

[5] 5 U.S.C. §§ 8101-8193.

illness has some connection with the employment but nevertheless does not come within coverage under FECA.[6] 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 an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.[7] 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.[8]

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.[9] 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.[10] 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.[11]

For harassment or discrimination to give rise to a compensable disability, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations that the harassment occurred with probative and reliable evidence.[12] With regard to emotional claims arising under FECA, the term harassment as applied by the Board is not the equivalent of harassment as defined or implemented by other agencies, such as the EEOC, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers' compensation under FECA, the term harassment is synonymous, as generally defined, with a persistent disturbance, torment or

[6] *See Robert W. Johns*, 51 ECAB 137 (1999).

[7] *Supra* note 4.

[8] *Kim Nguyen*, 53 ECAB 127 (2001).

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

[10] *See William H. Fortner*, 49 ECAB 324 (1998).

[11] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[12] *James E. Norris*, 52 ECAB 93 (2000).

persecution, *i.e.*, mistreatment by coemployees or workers. Mere perceptions and feelings of harassment will not support an award of compensation.[13]

In emotional condition claims, 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. 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.[14]

ANALYSIS

In the instant case, OWCP properly developed this claim as an occupational disease claim as appellant alleged her emotional condition was the result of several incidents rather than occurring during one workday or work shift.[15] It denied her claim as she failed to establish an injury as defined under FECA. The Board must, therefore, review whether appellant established any compensable employment factors.

Appellant has not attributed her emotional condition to the performance of her regular work duties or to any special work requirement arising from her employment under *Cutler*.[16] Rather, she alleged that her supervisor stated that she was in need of mental assistance and was a danger to herself and others and that this comment, along with actions of her supervisor and her coworkers, created a hostile work environment. This general allegation pertains to an administrative matter. The standard under *McEuen* is whether the evidence of record establishes error or abuse by appellant's supervisor.[17]

At the onset, it is noted that any disabling conditions resulting from appellant's desire to work in a different environment, away from her supervisor and coworkers, does not constitute a personal injury sustained while in the performance of duty within the meaning of FECA.[18]

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[13] *Beverly R. Jones*, 55 ECAB 411 (2004).

[14] *Dennis J. Balogh*, 52 ECAB 232 (2001).

[15] A traumatic injury means a condition caused by an incident or incidents occurring within a single workday or work shift; occupational disease or illness is a condition produced by the work environment over a period longer than a single workday. *See* 20 C.F.R. § 10.5(q) and (ee), respectively.

[16] *Supra* note 4.

[17] *See Thomas D. McEuen, supra* note 9.

[18] *See supra* note 9.

Regarding the investigation conducted by appellant's supervisor about the May 12, 2012 incident, wherein appellant placed her finger towards another supervisor's face and stated that she was going to call the inspection service because he was crazy, it is well established that investigations into possible employee wrongdoing pertain to actions taken in an administrative capacity of the employer and do not relate to the regular or specially assigned duties of the employee.[19] The Board finds that the record is devoid of any evidence establishing that the administrative action of appellant's supervisor in investigating and preparing an incident report on May 12, 2012 regarding appellant's actions was in error. Therefore this report is not considered a factor of employment compensable under FECA.

Appellant described several incidents in which she believed her supervisor treated her disrespectfully. These pertain to her supervisor's comments and/or actions regarding her parking in front of the gate, the switching of her hamper, cart pushing with a coworker, and her humming/singing. The record confirms that appellant's supervisor informed appellant to park in the parking lot and that both appellant and the coworker were counseled about the cart pushing. Generally, complaints about the manner in which a supervisor performs his or her duties or the manner in which a supervisor exercises his or her discretion fall, as a rule, outside the scope of coverage provided by FECA. This principle recognizes that a supervisor or manager in general must be allowed to perform his or her duties and employees will, at times, dislike the actions taken. Mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent evidence of error or abuse.[20] As the record contains no evidence that her supervisor or any employing establishment supervisor or manager committed error or abuse in discharging management duties, this allegation is not compensable.[21] As appellant failed to provide any corroborating evidence, such as witness statements, to support her allegations pertaining to the switching of her hamper and her humming/singing, she failed to support a factual basis for that aspect of her claim.

Appellant alleged that she was the only one to whom her supervisor gave instructions and argued that he did not make special accommodations for her when she was instructed to do collections. She indicated that she had not filed a grievance, but her shop steward told her that he felt he was out to get her and that the letters of warning were not valid. In his December 12, 2013 statement, appellant's supervisor explained that appellant has a guarantee of eight hours of work per day and when she finishes her assignment early, she was either given the option of taking leave for the remainder of the day or to carry additional assistance within her restriction's to fill the remainder of her day. This, however, is dependent on the employing establishment's needs and is done on a day-by-day basis. On September 10, 2013 appellant received two letters of warning for unsatisfactory work performance. Although the handling of disciplinary actions is generally related to employment, they are administrative functions of the employing establishment and not duties of the employee.[22] The fact that letters of warning were issued to

[19] *See P.J.*, Docket No. 11-200 (issued September 6, 2011).

[20] *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

[21] *See David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

[22] *Peter D. Butt, Jr.*, 56 ECAB 117 (2004).

appellant regarding unsatisfactory work performance, does not indicate that she was singled out or that her supervisor was out to get her. The letters of warning, by themselves, does not establish error or abuse on the part of the supervisor in this administrative matter. Additionally, in the absence of any witness statement, any comments attributed to other employees cannot be substantiated.

Regarding appellant's general contention that she was subjected to harassment, particularly by her supervisor and her coworkers, mere perceptions of harassment or discrimination are not compensable under FECA,[23] and unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.[24] As noted above, appellant was issued a letter of warning for saying the "F" word but there is no evidence that the coworker had threatened appellant as alleged. She alleged that almost on a daily basis someone put empty tubs behind her truck and moved her time card, and that her coworker's harassed her by telling her to talk to her supervisor if there was a problem. However, appellant has not substantiated any of her allegations with probative and reliable evidence. She submitted nothing to show a persistent disturbance, torment or persecution, *i.e.,* mistreatment by either employing establishment management or her coworkers.[25] Appellant therefore did not establish a factual basis for her claim of harassment by probative and reliable evidence.[26]

Finally, as appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record.[27]

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.

[23] *Supra* note 12.

[24] *Id.*

[25] *Supra* note 13.

[26] *See Robert Breeden*, 57 ECAB 622 (2006).

[27] *Katherine A. Berg*, 54 ECAB 262 (2002).

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an emotional condition in the performance of duty, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the October 8, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 19, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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