



management harassed her by giving her more work than coworkers in the same position. She stopped work on June 11, 2014.

Appellant submitted medical evidence including May 28 and June 18, 2014 reports in which Dr. Kevin Ferentz, an attending Board-certified family medicine physician, stated that she could only work four hours per day due to ongoing stress issues that affected her health. She also submitted a June 13, 2014 letter from the employing establishment indicating that she had been placed on absence without leave status due to denial of a leave request.

In a letter dated September 9, 2014, OWCP requested that appellant submit additional factual and medical evidence. It also requested information from the employing establishment.

In an undated statement received on October 15, 2014, appellant provided additional discussion of the incidents and conditions at work which she believed caused her claimed stress-related conditions. She asserted that in early 2013 an operations supervisor texted her on her personal telephone in a threatening manner, and addressed her in a derogatory manner in front of coworkers and the public. Appellant alleged that in May 2013 another superior searched her desk and personal belongings without prior notice and that her immediate supervisor treated her in an aggressive and hostile manner when discussing her leave request. She alleged that in April 2013 the operations supervisor harassed her regarding the use of leave and that in December 2013 she unfairly chastised her and yelled at her from a distance. Appellant also claimed that in early 2014 her immediate supervisor yelled at her and improperly singled her out with questions about her entries in the sign-in sheet. She asserted that her immediate supervisor improperly denied leave requests, mismanaged her work assignments, overly scrutinized and monitored her work, and had a “horrible communication style.”

In an undated statement received on September 29, 2014, appellant’s immediate supervisor denied that appellant was subjected to harassment or discrimination as alleged. He indicated that management acted properly when it carried out actions relating to the handling of leave requests, the management of work assignments, and the monitoring of work product. The immediate supervisor denied that appellant was given more work than coworkers in the same position or that her supervisors verbally harassed her.

Appellant submitted numerous documents from grievances and Equal Employment Opportunity (EEO) claims she filed with respect to some of her claimed employment factors. None of the EEO documents indicate that a final decision was issued in her favor with respect to any of these matters. The record does contain a February 2013 grievance settlement through which an element of appellant’s performance evaluation was raised to a higher level. However, the agreement specifically indicates that it does not create a precedent and that it cannot be used in any other forum.

Appellant submitted a number of e-mails and letters she sent to union representatives and management officials in which she discussed her claims of management wrongdoing. In a September 25, 2014 statement, a coworker related that appellant was “badly” treated by her immediate supervisor and the operations supervisor. The coworker stated that appellant received work that two service representatives did not want to complete. Appellant also submitted additional medical evidence in support of her claim.

By decision dated February 27, 2015, OWCP denied appellant's emotional condition because she did not establish any compensable employment factors. It found that she did not submit sufficient evidence to establish that supervisors committed harassment or discrimination or that management committed error or abuse with respect to administrative matters.

### **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.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup>

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

---

<sup>2</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>4</sup> *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>5</sup> *William H. Fortner*, 49 ECAB 324 (1998).

<sup>6</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>7</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>8</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

adversely affected by employment factors.<sup>9</sup> This burden includes the submission of a detailed description of the employment factors or conditions which appellant 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.<sup>10</sup>

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.<sup>11</sup> 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, it must base its decision on an analysis of the medical evidence.<sup>12</sup>

### ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. OWCP denied her emotional condition claim, finding that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA. The Board notes that none of appellant's claimed employment factors are alleged to be related to her regular or specially assigned duties under *Cutler*.<sup>13</sup> Appellant has alleged error and abuse in administrative matters and harassment and discrimination on the part of her supervisors.

Appellant alleged that managers, especially her immediate supervisor, committed wrongdoing by improperly denying leave requests, mismanaging her work assignments, and overly scrutinizing and monitoring her work.<sup>14</sup> Such 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. 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

---

<sup>9</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>10</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>11</sup> *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>12</sup> *Id.*

<sup>13</sup> *See supra* note 2.

<sup>14</sup> Appellant also asserted that her immediate supervisor had a "horrible communication style." However, the Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under FECA. *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

matter, coverage will be afforded.<sup>15</sup> The employing establishment denied that it committed error or abuse with respect to such matters and appellant has not submitted sufficient evidence to establish specific incidents, as to time and place of error or abuse with respect to these allegations. Appellant submitted grievances and EEO documents with respect to some of these claimed employment factors, but no final decision was issued showing error or abuse by management.

Appellant claimed that her immediate supervisor and the operations supervisor subjected her to harassment and discrimination on numerous occasions in 2013 and 2014. For example, she claimed that they yelled at her and subjected her to taunting, sent her improper texts on her personal telephone, and treated her disparately with respect to work assignments and other matters. The employing establishment denied that appellant was subjected to harassment or discrimination and she has not submitted sufficient evidence to establish the factual basis as to time, place, and specialist, so as to establish that she was harassed or discriminated against by her supervisors.<sup>16</sup> Appellant alleged that supervisors made statements and engaged in actions which she believed constituted harassment and discrimination, but these broad allegations provided no probative corroborating evidence to establish that the statements actually were made or that the actions actually occurred.<sup>17</sup>

Appellant submitted a September 25, 2014 coworker statement that appellant had been “badly” treated by her immediate supervisor and the operations supervisor. However, this statement does not contain a detailed account or date stamp the particular actions or statements of the immediate supervisor or the operations supervisor. The coworker suggested that appellant had been harassed because she received work that two service representatives did not want to complete, but she did not provide any further specificity about this matter. The Board notes that appellant filed grievances and EEO complaints regarding some of her claims of management harassment and discrimination, but the record does not contain a final decision of any such grievance or EEO complaint finding error or abuse by management<sup>18</sup>

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.<sup>19</sup>

---

<sup>15</sup> See *supra* notes 4 through 6.

<sup>16</sup> 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).

<sup>17</sup> See *William P. George*, 43 ECAB 1159, 1167 (1992).

<sup>18</sup> On appeal, appellant noted that the case record contained a copy of an OWCP decision concerning another claimant for FECA benefits and she questioned whether OWCP claims examiners intertwined the facts of the two cases. The Board notes that there is no indication in the record that the facts of the two cases were intertwined. OWCP only considered evidence relevant to appellant’s case in reaching its conclusions.

<sup>19</sup> 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).

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.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 27, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 4, 2015  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board