

**United States Department of Labor  
Employees' Compensation Appeals Board**

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S.A., Appellant	)	
	)	
and	)	<b>Docket No. 15-1355</b>
	)	<b>Issued: November 18, 2015</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Raleigh, NC, Employer	)	
	)	

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*Appearances:*  
Francine Spencer, for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 1, 2015 appellant, through her representative, filed a timely appeal from a December 9, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish an emotional condition in the performance of duty.

**FACTUAL HISTORY**

On February 11, 2014 appellant, then a 45-year-old distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on February 10, 2014 she developed high blood pressure,

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

a racing heart, and a headache due to an altercation with her supervisor.<sup>2</sup> She stopped work February 10, 2014. The employing establishment controverted appellant's claim.

In a March 14, 2014 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim. On the same date, it also requested information from the employing establishment.

Appellant submitted records of her medical treatment at the Rex Healthcare Emergency Department on February 10, 2014, and several other medical reports including those of an attending primary care physician and a cardiologist. She also submitted a therapy report of a licensed social worker.

In a statement of February 24, 2014, a coworker, who was an employee at the Method and Avent Ferry work locations, stated that on February 10, 2014 appellant made comments about her use of leave. The coworker advised appellant not to discuss such personal information. Appellant stated that her supervisor was causing confusion and then appellant called her supervisor on the telephone and yelled at her.

In an undated statement received on April 7, 2014, appellant's supervisor indicated that appellant had a history of complaints and comments about her job duties/conditions and about supervisor actions. She stated that appellant had telephoned her on February 10, 2014 and accused her of causing confusion. The supervisor stated that she told appellant to calm down. Appellant continued yelling and the supervisor hung up the telephone. A few hours later appellant called for an ambulance and was taken to a hospital. The supervisor denied that she committed any form of harassment, discrimination, or other form of wrongdoing with respect to appellant.

In an e-mail of April 5, 2014 to a coworker at the Raleigh Post Office, appellant asserted that on that date her supervisor assaulted her by grabbing a scanner out of her hand and that she called her a "heifer." Appellant stated that she called the local police and would contact the employing establishment's Office of Inspector General. She also alleged that this incident contributed to her claimed work injury.

In a letter dated April 7, 2014, a Postal Service Health and Resource Management Specialist indicated that she had been advised that appellant had a conflict with a coworker on February 10, 2014, but she provided no additional details of the conflict.

By decision dated April 23, 2014, OWCP denied appellant's emotional condition claim because she had not established any compensable work factors

In a statement dated March 5, 2014, appellant alleged additional incidents where she alleged that her supervisor had violated workplace policy. She alleged that on March 1, 2014 her supervisor harassed her all day and that on other occasions her supervisor pulled her aside for comments about her work ethic, while not making any such remarks to her coworkers. Appellant alleged that on May 14, 2013 her supervisor incorrectly told her to clear the case of counted mail prior to throwing flats, and told her that her music was a safety hazard. She alleged

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<sup>2</sup> Appellant later asserted that incidents and conditions on other dates contributed to her claimed injury.

that on May 25, 2013 and other occasions her supervisor improperly denied requests for sick leave and change of schedule. Appellant claimed that on August 5, 2013 her supervisor yelled at her to assist a customer and reprimanded her verbally regarding her attire. She alleged that on August 6, 2013 her supervisor improperly changed her start time from 8:00 a.m. to 10:00 a.m. and that, on another occasion, she wrongly accused her of answering her personal telephone in front of a customer. Appellant claimed that on December 28, 2013 her supervisor made her sign an erroneous leave slip for 2.5 hours of unscheduled leave for December 23, 2013. She also generally alleged that her supervisor unfairly scrutinized and monitored her work.

In an Equal Employment Opportunity (EEO) affidavit dated May 9, 2014, a coworker stated that appellant's supervisor had mistreated or harassed other workers, but that she did not witness her mistreating appellant. In an EEO affidavit dated May 8, 2014, an anonymous individual noted that appellant's supervisor yelled at appellant to stop leaning on the window clerk counter. Another anonymous employee stated in an EEO affidavit dated May 9, 2014 that sometime in 2013 appellant's supervisor put her hand on appellant's arm to stop her from working.

In a statement of May 5, 2014, a coworker stated that on February 10, 2014 another coworker told her that appellant's supervisor had caused a hostile situation that landed appellant in the emergency room. In a statement dated May 21, 2014, another coworker claimed that in June 2013 appellant was yelled at by her supervisor. In an undated statement, a coworker indicated that on an occasion in 2013 she was speaking with appellant by telephone and heard someone yelling in the background that she was absent without leave. Appellant also submitted a report in which Dr. Jonathan Ahr, an attending clinical psychologist, provided a diagnosis of adjustment disorder.

In an October 31, 2014 statement, appellant's supervisor denied treating appellant in a manner different from other employees. She indicated that the actions she took with respect to work assignments as well as comments she made about work attire and the use of personal devices were within her proper job duties as a supervisor. The supervisor asserted that she properly handled leave matters, including an occasion when she changed the leave status to "scheduled." She explained that appellant's schedule was changed in order to provide a close-out clerk at Avent Ferry. The supervisor stated that on February 10, 2014 appellant telephoned her, screaming unintelligibly, and that she advised appellant to calm down. She denied grabbing a scanner from appellant on April 5, 2014 or otherwise mistreating her on that date. The supervisor reached out her hand and told appellant to put the scanner into her hand.

A Raleigh Police Department incident report shows that appellant reported on April 5, 2014 that she was the victim of an assault. In May 2014 appellant applied for a temporary restraining order against her supervisor based on the alleged April 5, 2014 assault. A temporary order was granted on May 1, 2014. However, on May 23, 2014 a Wake County, North Carolina, court found that appellant's supervisor was not provided with notice of a hearing regarding such order.

In a December 9, 2014 decision, an OWCP hearing representative affirmed OWCP's April 23, 2014 decision noting that appellant had not established any compensable employment factors. He found that appellant did not submit evidence establishing harassment, discrimination, assault, or wrongdoing 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>3</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>4</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>5</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>6</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>7</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>8</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>9</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 adversely affected by employment factors.<sup>10</sup> This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely

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<sup>3</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>5</sup> *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>6</sup> *William H. Fortner*, 49 ECAB 324 (1998).

<sup>7</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

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

<sup>9</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>10</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.<sup>11</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>12</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, OWCP must base its decision on an analysis of the medical evidence.<sup>13</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 because she had failed to 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 appellant's allegations do not pertain to her regular or specially assigned duties under *Cutler*.<sup>14</sup> Rather, appellant has alleged error and abuse in administrative matters and harassment and discrimination on the part of her supervisors.

Appellant alleged that her employer committed wrongdoing with respect to various administrative and personnel matters, including matters relating to leave usage, change of work shift, and monitoring of work assignments. 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 matter, coverage will be afforded.<sup>15</sup>

The record does not establish appellant's claim that she was improperly denied leave. Appellant alleged that her supervisor wrongly denied her leave requests on various occasions and improperly placed her on leave without pay for several hours in December 2013. However, she did not submit evidence supporting these allegations. The record does not establish that appellant's work schedule was improperly changed from an 8:00 a.m. start time to a 10:00 a.m. start time. Employers may change a work schedule as needed and, absent error or abuse in

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<sup>11</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>12</sup> *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>13</sup> *Id.*

<sup>14</sup> *See Cutler*, *supra* note 3.

<sup>15</sup> *See supra* notes 5 through 7.

taking such an administrative action, no work factor would be found on this basis.<sup>16</sup> The supervisor explained that appellant's schedule was changed in order to provide a close-out clerk at Avent Ferry. The record does not contain a grievance or EEO finding that the work schedule was changed for some improper reason.

Appellant generally alleged that she was subjected to excessive scrutiny and monitoring at work, but she did not show that management committed error or abuse regarding such matters. 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.<sup>17</sup> Actions by the supervisor, including questioning appellant as to her uniform, asking about her whereabouts, or advising her not to answer her personal telephone or activate her personal music device at the customer window, fall within the scope of a supervisor's job to monitor an employees' work performance. For these reasons, the Board finds that appellant has not established any compensable work factors with respect to any administrative matters.

Appellant claimed that her supervisor subjected her to harassment and discrimination. Her supervisor denied that she subjected appellant to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisor.<sup>18</sup> Appellant did not provide sufficient corroborating evidence as to date, time and specificity to establish that the alleged actions actually occurred.<sup>19</sup> She also alleged that she was assaulted by her supervisor. The Board has recognized the compensability of physical assaults or verbal abuse in certain circumstances, but appellant did not establish her claim in this regard.<sup>20</sup>

The record does not establish that appellant was subjected to harassment, discrimination, or verbal abuse on February 10, 2014. Appellant has not established that her supervisor committed any wrongdoing on that date. In fact, the witness statements of record indicate that on February 10, 2014 appellant stated to a coworker that her supervisor was causing confusion and then appellant called her supervisor on the phone and yelled at her.

The record also does not establish appellant's claim that she was assaulted by her supervisor on April 5, 2014. The supervisor denied that she assaulted appellant on April 5, 2014 and the evidence of record lacks probative evidence showing that such an assault occurred. Appellant filed a criminal complaint with the Raleigh Police Department, but the record does not contain a disposition of such a charge. A temporary restraining order was issued based on appellant's complaint to the police, but there is no record of a hearing to determine the validity of the temporary restraining order, or a court decision finding that the supervisor attacked appellant

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<sup>16</sup> See *supra* note 6.

<sup>17</sup> See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

<sup>18</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>19</sup> See *William P. George*, 43 ECAB 1159, 1167 (1992).

<sup>20</sup> See *Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991).

or otherwise intended to harm her. The record does not establish that an assault occurred on April 5, 2014.

Appellant's general allegations of harassment and discrimination are not supported by the evidence of record. As noted above, unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred and appellant must establish a factual basis for her allegations by submitting probative factual evidence.<sup>21</sup> Appellant's allegations of harassment or discrimination are not supported by either by witness statements or by EEO decisions finding harassment or discrimination. Appellant's supervisor denied the allegations made as to improper conduct. There is no substantive evidence of record that appellant's supervisor verbally abused appellant or ever called her derogatory names.

Appellant submitted various witness statements but they do not contain sufficient specificity to establish any compensable work factor. One coworker made vague comments about the supervisor yelling at appellant. The Board has generally held that being spoken to in a raised or harsh voice does not of itself constitute verbal abuse or harassment.<sup>22</sup> Another coworker's account of the events of February 10, 2014 did not establish any additional substantial facts about the incident. Some of the statements indicate that appellant in fact engaged in yelling and there are no statements of record that contradict these statements. One coworker acknowledged that a conflict arose between appellant and another coworker, but the statement lacks sufficient details about the incident. The two anonymous statements submitted to the record are not probative evidence of harassment or other improper treatment. Some of the statements contain information that was obtained on a second-hand basis and they would not be probative evidence of the existence of harassment or discrimination. Thus, appellant has not established a compensable employment factor under FECA with respect to the claimed harassment and discrimination.

On appeal appellant argued that OWCP improperly found that her supervisor engaged in wrongdoing on February 10, 2014, but she did not identify specific probative factual evidence supporting her argument.

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 that she sustained an emotional condition in the performance of duty.<sup>23</sup>

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.

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<sup>21</sup> See *supra* note 9.

<sup>22</sup> *G.M.*, Docket No. 14-841 (issued July 10, 2015).

<sup>23</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 (1992).

**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 December 9, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 18, 2015  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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