

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

C.B., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Dallas, TX, Employer)

**Docket No. 15-1441
Issued: October 16, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 24, 2015 appellant filed a timely appeal from an April 21, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant established an emotional condition in the performance of duty causally related to factors of her federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

² On appeal, appellant submitted new evidence. The Board may not consider new evidence for the first time on appeal that was not before OWCP at the time it issued the final decision in the case.

FACTUAL HISTORY

On February 6, 2015 appellant, then a 52-year-old medical support assistant, filed a traumatic injury claim (Form CA-1) alleging that on February 4, 2015 she sustained an anxiety episode with sweating and left arm and lumbar pain when a clinical coordinator allegedly gave her incorrect rescheduling information. Her supervisor controverted the claim, asserting that the coordinator gave appellant “good documentation” and that appellant’s emotional reaction was due to her misunderstanding of the new rescheduling policy that was e-mailed and not the coordinator’s instructions.

In a February 17, 2015 letter, OWCP advised appellant of the evidence needed to establish her claim including factual corroboration of the February 4, 2015 incident and a report from her attending physician explaining how and why that incident would cause the claimed emotional condition. It afforded her 30 days to submit such evidence.

Appellant provided a March 10, 2015 statement alleging a hostile work environment. She noted a history of post-traumatic stress disorder (PTSD) from her military service. This condition had been treated with medication and behavioral techniques. In a March 11, 2015 statement, appellant alleged that on February 4, 2015, the clinical coordinator instructed her to reschedule Dr. U’s February 6, 2015 patients to Dr. N, who only had new patient appointments. After appellant began inputting the changes and calling patients, a coworker advised her that Dr. U’s appointments could not be rescheduled as Dr. U’s clinic was not “closed.” The coworker believed that the clinical coordinator “used” appellant to manipulate a third physician into covering Dr. U’s patients.

Appellant contended that the coordinator tricked her into giving patients and physicians erroneous information. She then experienced stress, back pain, and shoulder pain. Appellant called in sick on February 5, 2015, and returned to work the following day. On February 6, 2015 she experienced stress when the clinical coordinator called to her. Appellant asked her supervisor to accompany her to the emergency room for “physical and mental stress.”³ She described various problems with focus, short-term memory, and PTSD.⁴

Appellant’s supervisor provided a March 11, 2015 statement contending that the clinical coordinator’s February 4, 2015 instructions fully conformed to a new scheduling policy e-mailed to employees on October 7, 2014. She was familiar with this policy as she had previously

³Appellant also submitted medical evidence. Dr. Kanwal Z. Haider, an attending Board-certified psychiatrist, diagnosed severe anxiety and renewed psychiatric medications on February 5 and 10, 2015. In February 26 and March 19, 2015 reports, Dr. Charles Willis, an attending Board-certified anesthesiologist, related that appellant attributed anxiety and musculoskeletal pain to being asked to perform extra work on February 4, 2015. He diagnosed an anxiety disorder, aggravation of a preexisting lumbar condition, left shoulder strain, and acute cervical strain. Dr. Bettina Suzann Fehr, an attending psychiatrist, provided a March 13, 2015 report relating appellant’s account of panic attacks at work on February 11, 2015 due to working in a noisy area near the operating room. She prescribed medication and held appellant off work. Appellant also provided a February 13, 2015 physical therapy prescription, physical therapy notes, shoulder x-ray reports, and cardiac test results.

⁴ In March 17, 2015 letters, the employing establishment alleged that appellant was claiming a prohibited dual benefit as she was receiving veterans’ benefits for PTSD.

rescheduled appointments under the new rules. The supervisor noted that appellant had called in sick earlier in the week but had not mentioned an occupational incident until she asked the supervisor to accompany her to the emergency room.

In a March 11, 2015 letter, an employing establishment official stated that the clinic coordinator complied with existing policy. If appellant had questions about the new scheduling policy, she “had the option to tell the clinical coordinator that she will first check with her [s]upervisor to make sure she [was] rescheduling the appointments per policy.” The employing establishment noted that appellant was a probationary employee who had been counseled for improper leave use.

By decision dated April 21, 2015, OWCP denied the claim as fact of injury was not established. It found that appellant failed to establish any compensable employment factors. OWCP further found that the evidence did not demonstrate that the clinical coordinator gave her erroneous instructions on February 4, 2015, as appellant’s supervisor confirmed that “all patients were scheduled according to policy and procedure.”

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an “employee of the United States” within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

In *Lillian Cutler*,⁷ 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. Where disability results from an employee’s reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁸ 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.⁹ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.¹⁰

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ 28 ECAB 125 (1976).

⁸ 5 U.S.C. §§ 8101-8193. *Supra* note 7.

⁹ *L.R.*, Docket No. 14-0302 (issued June 6, 2014).

¹⁰ *Ruthie M. Evans*, 41 ECAB 416 (1990).

When working conditions are alleged as factors in causing emotional 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.¹¹ If a claimant implicates a factor of employment, it 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.¹²

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of being given erroneous instructions by a clinical coordinator on February 4, 2015. OWCP denied her emotional condition claim because she failed to establish any compensable employment factors. The Board must, therefore, review whether the alleged February 4, 2015 incident is a covered employment factor under *Cutler*.

Appellant has not alleged that her regular or specially assigned duties have caused an injury or an occupational disease. Rather, she has alleged a hostile work environment. This is not an employment factor within the ambit of *Cutler*.

To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹³ Appellant alleged that on February 4, 2015, a clinical coordinator deliberately gave her incorrect instructions about how to reschedule clinic patients. This caused appellant to misinform the patients and physicians affected by the changes. However, both appellant's supervisor and an employing establishment official explained that the clinic coordinator's instructions were not incorrect. They followed a new scheduling policy. These statements outweigh appellant's assertion that the instructions were erroneous. Under these circumstances, the Board finds that appellant has shown that she received incorrect work instructions on February 4, 2015.

Insofar as appellant attributed her condition to a disagreement with the clinical coordinator's instructions, the Board has held that the manner in which a manager exercises his or her discretion falls outside the coverage of FECA.¹⁴ This principle recognizes that supervisors or managers must be allowed to perform their duties and that employees will at times disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent error or abuse.¹⁵ There is insufficient evidence that the clinical coordinator gave appellant erroneous or unreasonable instructions. Appellant's

¹¹ See *Norma L. Blank*, 43 ECAB 384 (1992).

¹² *Marlon Vera*, 54 ECAB 834 (2003).

¹³ *F.H.*, Docket No. 13-0294 (issued April 12, 2013).

¹⁴ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹⁵ *K.A.*, Docket No. 15-0684 (issued August 27, 2015); *Linda J. Edwards Delgado*, 55 ECAB 401 (2004).

supervisor and an employing establishment official both provided statements explaining that the coordinator's instructions were in full conformance with the applicable scheduling policy. Therefore, appellant has not established a compensable factor of employment in this regard.

As appellant failed to establish a compensable factor of employment, the Board need not evaluate the medical evidence submitted in support of this claim.¹⁶

Appellant may submit the 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 established an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 21, 2015 is affirmed.

Issued: October 16, 2015
Washington, DC

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

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

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

¹⁶ *Margaret S. Krzycki*, 43 ECAB 496 (1992).