

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

J.M., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS HEALTH ADMINISTRATION,
East Orange, NJ, Employer**

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**Docket No. 15-0013
Issued: September 11, 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
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 3, 2014 appellant filed a timely appeal from an April 24, 2014 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 met her burden of proof to establish an emotional or stress-related condition in the performance of duty.

¹ 5 U.S.C. §§ 8101-8193.

² Appellant submitted additional evidence after OWCP's April 24, 2014 decision, but the Board cannot consider such evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

On October 30, 2013 appellant, then a 55-year-old medical support assistant, filed an occupational disease claim (Form CA-2) alleging that she sustained high blood pressure due to exposure to stress at work. Regarding the cause of her claimed condition, appellant stated, “Worked along with no help for 10 years straight with no help in a hostile working zone. Carried the clinic with no help.”³

In a November 5, 2013 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim.

In an undated statement received on March 18, 2014, appellant further discussed her claimed work factors. She stated that she worked in the audiology department for five audiology doctors and four compensation doctors and that she performed various duties, including checking patients in and out, changing patients’ appointments, answering the telephone, manning a walk-in clinic, and pulling medical charts.⁴ Appellant alleged that she sustained stress because she frequently was forced to work more than eight hours per day. She also asserted that she sustained stress because she was often forced to work alone without help from coworkers or management. Appellant claimed that her requests for transfer/reassignment to another department of the employing establishment, including requests made in 2007 and 2012, were improperly denied by management. She asserted that she filed a grievance regarding some of these matters.

Appellant submitted various documents from 2007 and 2012 reflecting her requests to be transferred to other departments of the employing establishment. She also submitted a performance plan describing her work duties and performance standards. The record contains an August 23, 2013 document referencing a “grievance.” Appellant also submitted several medical reports in which attending physicians discussed her high blood pressure in the context of her claimed stress at work.

In a statement received by OWCP on April 18, 2014, appellant’s supervisor (A.B.-M.), whose title was audiology section chief/supervisor, stated that when appellant began working for the employing establishment there were two program support assistants assigned to the East Orange Audiology Department on the fourth floor. She noted that appellant and a male coworker worked for five audiologists at this campus. Appellant’s supervisor indicated that appellant’s tour of duty began at 8:30 a.m. (although she often was late) and ended at 5:00 p.m. Her supervisor stated that the male coworker covered the fourth floor office before 8:30 a.m. and was then stationed on the third floor for the rest of the day. From there, the male coworker answered telephones, made appointments, and handled all the mailing on a daily basis. Appellant’s supervisor asserted that the male coworker also cleared the telephones in the

³ On the same form, appellant’s supervisor indicated that her work schedule was 8:30 a.m. to 5:00 p.m., Monday through Friday. Appellant stopped work on September 13, 2013. She indicated on the Form CA-2 that she first became aware of her claimed condition on November 17, 2004.

⁴ Appellant asserted that patients were always “fighting with each other” to determine who would be examined first. She described the work environment as a “mad house.” Appellant submitted an April 15, 2008 statement in which a coworker stated that patients were “rude” to her.

morning, cancelled clinics as needed, and took care of certifying the incoming hearing aids. Appellant's supervisor stated that there were no instances when appellant ever was required to work alone.

In the statement received on April 18, 2014, appellant's supervisor further stated that the male coworker was replaced by a female coworker who joined the staff in September 2008. The new coworker worked from 8:00 a.m. to 4:00 p.m., Monday through Friday. Appellant's supervisor indicated that, whenever this coworker was away, the supervisor assisted in manning the telephones with appellant and also sat at the front desk with her at times. She asserted that there was never a walk-in clinic, but that there was a repair clinic and all patients were scheduled to arrive at a certain time so there was no "drama." Appellant's supervisor stated that, if patients were late for their appointments, they were given audiological services for the balance of the time that remained for that appointment or were rescheduled if they were extremely late. She stated that appellant's duties were to intake the patients answer the telephones, and make new and follow-up appointments. If an audiologist fell ill, it was appellant's duty to reschedule the patients. Appellant's supervisor noted that there were no charts to pull as all patients' medical records were computerized and all consults were handled by another coworker who worked from the Lyons campus. This coworker scheduled new appointments for both campuses, Lyons and East Orange, and was not part of appellant's job duties. Appellant's supervisor stated that appellant did not work overtime and was never subjected to harassment or discrimination in the workplace.

In an April 24, 2014 decision, OWCP denied appellant's emotional condition claim as she had failed to establish any compensable work factors. It found that she had not factually established the existence of such employment factors, including her claims that management committed wrongdoing with respect to administrative matters or that she was subjected to harassment/discrimination. OWCP also determined that appellant had not established that management required her to work alone or to work on an overtime schedule.

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.⁵ 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.⁶

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Gregorio E. Conde*, 52 ECAB 410 (2001).

assigned work duties of the employee and are not covered under FECA.⁷ 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.⁸ 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.⁹

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.¹⁰ 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.¹¹

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.¹² 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.¹³

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.¹⁴ 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.¹⁵

⁷ *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

⁸ *William H. Fortner*, 49 ECAB 324 (1998).

⁹ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁰ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹¹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹² *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹³ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹⁴ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁵ *Id.*

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete and accurate factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁶

ANALYSIS

Appellant alleged that she sustained an emotional or stress-related condition, in the form of high blood pressure, as a result of a number of employment incidents and conditions. OWCP denied appellant's 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 made allegations pertaining to her regular or specially assigned duties under *Cutler*.¹⁷ Appellant also alleged error and abuse in administrative matters and harassment and discrimination on the part of her supervisors.

Appellant claimed that work duties caused her to sustain high blood pressure when she alleged that she sustained stress because she was required to work alone and was required to work overtime to perform her work duties. However, she has failed to factually establish that those were her working conditions. Appellant did not submit any evidence to support these allegations. Appellant's supervisor provided a detailed statement in which she explicitly denied appellant's allegations.¹⁸

Appellant alleged that management officials committed wrongdoing by mishandling requests to transfer to another department of the employing establishment, or by failing to properly support her in her work. 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. The Board finds that appellant has not established her claims regarding administrative matters. While appellant submitted some documents relating to these matters, these documents did not establish that the employing establishment committed error or abuse. Appellant suggested that she filed a formal grievance with respect to these administrative

¹⁶ *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

¹⁷ *See supra* note 6.

¹⁸ Appellant also suggested that she was subjected to adverse work conditions as patients were always "fighting with each other" to determine who would be examined first. She submitted an April 15, 2008 statement in which a coworker stated that patients were "rude" to appellant, but the statement did not contain a description of any specific events.

matters. The record contains an August 23, 2013 document referencing a “grievance” but it is unclear from the record whether appellant ever formally filed a grievance about her claimed work factors and, if so, whether she received a favorable outcome. For these reasons, appellant has not established a compensable employment factor under FECA with respect to administrative matters.

Appellant generally claimed that her supervisors subjected her to harassment and discrimination.¹⁹ She generally alleged that supervisors engaged in actions which she believed constituted harassment and discrimination, but she provided no corroborating evidence, such as witness statements, to establish that the actions actually occurred.²⁰ Further, these allegations were specifically denied by the employing establishment. Thus, appellant has not established a compensable employment factor under FECA with respect to the claimed harassment and discrimination.

For the foregoing reasons, appellant has not established any compensable employment factors under FECA and, therefore, has not met her burden of proof in establishing that she sustained an emotional or stress-related condition in the performance of duty.²¹

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 or stress-related condition in the performance of duty.

¹⁹ 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).

²⁰ See *William P. George*, 43 ECAB 1159, 1167 (1992).

²¹ 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). On appeal appellant discussed the treatment for her medical conditions, but such discussion is irrelevant to the basis of the denial of her claim, which was factual in nature.

ORDER

IT IS HEREBY ORDERED THAT the April 24, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 11, 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