

FACTUAL HISTORY

Appellant, a 50-year-old program support assistant, filed a traumatic injury claim (Form CA-1) on April 4, 2014 alleging that she was subjected to stress and sustained an emotional condition due to her working conditions on March 28, 2014. She asserted that as a result of this stress she experienced chest pains and anxiety and was treated in an emergency room. On the form, the employing establishment controverted the claim, asserting that there were conflicting accounts regarding what actually occurred on March 28, 2014. It noted that appellant had a preexisting heart condition.

In a statement dated April 11, 2014, an employing establishment human resources specialist, controverted appellant's claim and rebutted her assertions. He noted that although she alleged that she sustained a traumatic injury of chest pain and anxiety, she had a documented condition of coronary artery disease and sustained a heart attack three years ago. The human resources specialist also reported that appellant's medical records indicated that she had also sustained 15 panic attacks over the past two years and that she had been treated extensively for these attacks by her treating physician and psychologist. He disputed her account of the events which transpired on March 28, 2014. The human resource specialist noted that while deputy registered nurse N.B. was in the area where appellant was working, she had no direct contact with him to have negatively impacted her health. He claimed that the actual cause of appellant's stress was her preexisting struggles with panic attacks and her preconceived emotional mindset that her supervisor has "something on her." The human resources specialist reported that although management had identified several employees working under the same supervisor as she who had submitted similar stress-related claims, none of these employees had submitted any objective evidence to substantiate these claims.³ He concluded that appellant's preexisting, frequently recurring battle with anxiety attacks was what had caused her increased level of stress, not any conduct on the part of deputy registered nurse N.B.

In an April 14, 2014 narrative statement, appellant alleged that management was responsible for her stress and her traumatic emotional injury because it allowed her to come into contact with N.B. on March 28, 2014 thereby violating a no-contact agreement. She asserted:

"When I was driving to work that morning I was thinking that this is going to be a really stress free day because [N.B.] and registered nurse [C.L.] have their AWS days today. I have a no contact agreement with [N.B.] and I was thinking how nice will would be to leave my office without being on egg shells worried that I might run into him. Upon arriving at work, the first thing I saw was [N.B.]. I immediately went to my office and tried to calm myself down at the fact that he was in the building. I felt I should have been notified that he would be in on his day off so that I could prepare myself for that. We have a no contact agreement in place.

"In my office I started sweating profusely, felt lightheaded and was having trouble breathing. The chest pains followed. I asked the lead to please bring me a slip to go to employee health. When I received the slip I tried to find [S.O.] to

³ The human resource specialist asserted that management would continue to investigate to prevent collusion against fellow employees who had committed no wrong doing.

have it signed, but she was not available. I then went to [C.L.] to have her fill it out. By that point I was in tears and was visibly not well. [C.L.] asked me if I wanted to sit down and talk and I told her that I needed to get to employee health as quickly as possible. I told her that the situation with [N.B.] has taken a toll on me and my health. She suggested that I do the mediation that was offered. I told that I was not interested in that. By this time I was even more upset that I was when I entered her office. I was not offered any type of help to employee health by [C.L.]. I walked myself there with the chest pains, the lightheadedness and having a hard time controlling my breathing. As soon as I arrived at employee health they immediately put me in a wheelchair and escorted me to the emergency room. In the emergency room I was hooked up to the electrocardiogram machine immediately and given oxygen. I was seen by the emergency room doctor, the cardiologist and by mental health. I was administered nitro twice for the chest pains and a cardiologist wanted me transferred to Waukesha Memorial where my cardiologist is located.”

Appellant asserted that C.L., a registered nurse, should have provided her with assistance and checked on her when she noticed her condition. She also asserted that the long walk to the employee health center exacerbated her chest pains and sweating.

By letter dated April 17, 2014, OWCP advised appellant to submit additional information in support of her claim. It asked her to describe in detail the employment-related conditions or incidents which she believed contributed to her emotional condition and to provide specific descriptions of all practices, incidents, etc., which she believed affected her condition.

In a March 28, 2014 hospital report, received by OWCP on April 21, 2014, it was noted that appellant was seen in the emergency room for panic attack, chest pain, and discomfort over a stressful work situation. Appellant related that she was working with authorities regarding a hostile work environment created by another employee. She advised that when she went to work that day she saw an employee who was supposed to be off work, she broke down and had a panic attack, started to have chest pain and tightness, and came to the emergency room. The attending nurse advised that she observed appellant crying, sobbing, and exclaiming that this was the worst panic attack she had ever experienced. Appellant expressed concern about her chest pain, as she had a heart attack three years ago. She advised that she was being treated by a psychologist and her treating physician for her panic attacks. Appellant was fearful and too upset to return to work. The report also indicated that she had a history of coronary artery disease and had a myocardial infarction in 2010.

In a management questionnaire dated April 28, 2014, received by OWCP on May 2, 2014, appellant was asked what interactions she had with N.B. on March 28, 2014 other than merely seeing him. She responded:

“Prior to that date I had filed a police incident report against [N.B.]. We have a no-contact order in place -- he is not to speak to me or be near me. On that date he was not scheduled to be working. When he is here the same times that I am here I will stay in my office to avoid any type of further harassment from him. On this given day when I left my office I saw him standing in the hallway and it sent me

into a panic attack with chest pains. I have had a previous heart attack three years ago.”

Appellant further explained: “I was walking to the copy room to make copies of the weekly schedules when [N.B.] was standing there in the hallway. He looked right at me and it brought back the incidents of harassment that are reported in the police incident report.”⁴

By decision dated May 20, 2014, OWCP denied appellant’s claim as she failed to establish any compensable factor of employment and thus fact of injury was not established.

On June 20, 2014 appellant requested reconsideration.

In a June 10, 2014 report, received by OWCP on September 10, 2014, Dr. Raymond J. Kloss, Board-certified in psychiatry and neurology, advised that he had been seeing appellant for more than four years for anxiety and depression. He related that during his most recent examination of May 20, 2014 she was having significant stress and had been on medical leave from work since May 2, 2014. Appellant asserted to him that there was a man at her worksite who was harassing a woman and that four people had filed reports against him. She related that management and her supervisors were friendly with this man and were not disciplining him, management was attributing the problem to the sensitivity of the people filing the reports, and management was retaliating against the people who were filing the complaints rather than correcting the problem. Dr. Kloss advised that, due to harassment on that part of her coworker N.B., appellant had experienced increased panic attacks. He noted that there were no other significant stressors in her life and that her work situation appeared to be an exacerbation of her problems with anxiety. Dr. Kloss noted that appellant had been doing well there for many years until this recent incident of harassment occurred. He concluded that her panic attacks seemed to be directly related to these work-related stressors.

In a September 8, 2014 statement, appellant responded to the human resource specialist’s rebuttals. She acknowledged that she had experienced numerous panic attacks in recent years and in fact advised that she had sustained even more of these episodes than management reported. Appellant asserted that her account of recent events was supported by an e-mail from acting program manager S.O. dated February 11, 2014 in which she stated that “[N.B.] has been

⁴ Appellant also asserted that C.L. was required, as a registered nurse, to follow protocol when dealing with employees who are experiencing chest pains. She advised that she was having trouble breathing and was crying uncontrollably, holding her chest. Appellant reported, however, that the registered nurse C.L. offered her no help, when he should have at least called 911. She related that she had to walk at least three or four blocks to employee health, where she was placed in a wheelchair and rushed to an emergency room. Appellant asserted that she could have sustained many medically-related conditions as a result of being ignored and having to walk by herself all the way to employee health.

counseled on his behavior and regrets his actions.”⁵ She also noted a police report that was filed with the employing establishment police. In addition, appellant noted that Dr. Kloss opined in his June 20, 2014 report that before the incidents with N.B. occurred she had been doing very well and was not having panic attacks. She asserted that the human resource specialist was demonstrating bias and was harassing and discriminating against her by making baseless claims against her.

By decision dated September 19, 2014, OWCP denied modification of the May 20, 2014 decision.

In a letter dated September 29, 2014, received by OWCP on October 2, 2014 appellant again requested reconsideration. She essentially reiterated her previous allegations and asserted that she had provided documentation showing that she had been disciplined unjustly by the employing establishment. In support of her request appellant submitted the following documents: (1) a workplace violence incident report dated February 20, 2014; (2) an April 3, 2014 employing establishment incident report which described the alleged March 28, 2014 incident with N.B., previous incidents with him, and the corrective actions taken by appellant and management;⁶ (3) a May 2, 2014 acceptance by management to process and investigate an Equal Employment Opportunity (EEO) complaint filed by appellant regarding the incidents above;⁷ (4) a September 26, 2014 letter from appellant’s union representative asserting that appellant had filed a hostile work environment complaint against N.B., at which time management advised it would implement a no-contact order against him, but the order was not being enforced; and (5) a March 25, 2014 e-mail from appellant to the union representative

⁵ Program manager S.O. asserts in her February 11, 2014 e-mail to appellant that “I have followed up with [N.B.] regarding your written concern. [N.B.] has been counseled on his behavior and regrets his actions. I want to assure you your comfort and safety in the workplace is important to me and taken very seriously. I do not anticipate any future incidents, however, should a situation occur where you feel confronted and disrespected, please alert me immediately.” Appellant also submitted two other e-mails which she exchanged with program manager S.O. dated February 10, 2014. These e-mails indicate that manager S.O. tried to arrange a meeting between appellant and N.B. because he intended to apologize to her. Appellant, however, expressed anxiety at meeting with N.B. She also submitted a February 11, 2014 e-mail from her division manager in which he asked to be informed about the incident with N.B. and expressed his intent to improve the situation and address any inappropriate behavior on the part of N.B.

⁶ In this incident report appellant described previous incidents from February 2014 in which registered nurse N.B. allegedly approached her and stated in a loud voice, “I need to know what you are working on and I need to know everything that happens in this building” at which time she walked away and returned to her office. Two weeks later N.B. allegedly stood in a doorway when she was in a coworkers’ office, stared at her, then yelled at her in a loud voice, “What are you doing in here? What are you working on? You are not allowed to work admissions! How many times do you need to be told?” Appellant alleged that she went to the deputy program manager and asked her to stop this, but that she just stood there and did nothing. While the deputy program manager later apologized and stated that N.B. should not have behaved in this manner, she did not offer any suggestions or indicate the problem would be addressed. Management investigated, but determined that since no physical violence had occurred nothing could be done about the problem. Appellant asserted that during a meeting between her, the deputy program manager and the acting program manager found that she was treated in a dismissive, insulting manner. However, she was able to obtain a no-contact restriction against N.B. The March 28, 2014 incident was also described in the report. However, as with other accounts of this incident, appellant did not assert that N.B. did anything other than show up for work unexpectedly.

⁷ In this May 2, 2014 notice of acceptance, appellant alleged for the first time that on March 28, 2014 N.B. yelled at her and stated “I need to know what you are working on and everything that goes on in this building.”

which noted her complaint that N.B. had been walking and pacing around her and nearly bumped into her the day before. Appellant reported that this type of behavior on the part of N.B. continued to cause her much anxiety and constituted a hostile work environment.

By decision dated February 5, 2015, OWCP denied modification of the May 20, 2014 decision.

LEGAL PRECEDENT

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*,⁸ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.⁹ There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under FECA.¹⁰ 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 his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.¹¹ In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a person injury sustained in the performance of duty within the meaning of FECA. Thus, disability is not covered when it results from an employee's fear of a reduction-in-force nor is disability covered when it results from such factors such as an employee's frustration in not being permitted to work in a particular environment or to hold a particular position.¹²

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.¹³ Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹⁴ A claimant must support his or her allegations with probative

⁸ 28 ECAB 125 (1976).

⁹ *Supra* note 1.

¹⁰ *See Robert W. Johns*, 51 ECAB 136 (1999).

¹¹ *Supra* note 8.

¹² *Id.*

¹³ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁴ *Kim Nguyen*, 53 ECAB 127 (2001). *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹⁵

The Board has recognized that verbal altercations, when sufficiently detailed by the claimant and supported by evidence, may constitute compensable employment factors.¹⁶ Not every statement uttered in the workplace will give rise to coverage under FECA.¹⁷

Harassment is defined as a persistent disturbance, torment, or persecution, *i.e.*, mistreatment by coemployees or workers.¹⁸ 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. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. 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.¹⁹

ANALYSIS

Appellant alleged that she sustained an emotional condition because her coworker N.B., who had an agreement not to have contact with her, unexpectedly showed up at work on March 28, 2014 when he was expected to be out of the office. She asserted that management should have notified her that N.B. would be at work that day so that she could prepare herself for encountering his presence. Appellant further alleged that although she was sweating profusely, felt lightheaded, was having trouble breathing, was crying, and experiencing chest pains, registered nurse C.L. neglected to offer her assistance and guide her to the emergency room, where she received medical care and testing. OWCP denied her emotional condition claim finding that she had not established any compensable employment factors. The Board must review whether the alleged incident and conditions of employment are covered employment factors under the terms of FECA.

Appellant has not attributed her emotional condition to her job duties as an employee under the precedent set forth in *Cutler*. Rather, she contends that she experienced stress as the result of encountering her coworker, N.B., and that management did not provide her with notice of his presence or appropriate assistance when she became upset and had a panic attack. Appellant also contends that management did not take appropriate disciplinary action toward N.B. prior to the March 28, 2014 event after he engaged in inappropriate office behavior in two incidents which occurred in February 2014. These allegations are therefore essentially that management erred or acted abusively in discharging its administrative or personnel functions.

¹⁵ *Roger Williams*, 52 ECAB 468 (2001).

¹⁶ *T.G.*, 58 ECAB 189 (2006).

¹⁷ *V.W.*, 58 ECAB 428 (2007).

¹⁸ *D.G.*, Docket No. 14-1796 (issued January 16, 2015); *Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁹ *Alice M. Washington*, 46 ECAB 382 (1994).

The Board finds appellant's assertions that intimidation and harassment by her coworker, N.B., was ignored or condoned by management or that the employing establishment tolerated a hostile work environment are not supported by the evidence of record. The February 11, 2014 e-mail from program manager S.O., which appellant submitted, indicated that the program manager "followed up with [N.B.] regarding [her] written concerns" and counseled him on his behavior. The e-mail also indicates that he expressed regret to program manager S.O. over his actions. The program manager expressed her intent to ensure appellant's comfort and safety in the workplace and advised her to alert her immediately in the event a similar disturbance occurred in the future. E-mails dated February 10, 2014 express a similar intent from management to deal straightforwardly with appellant's concerns and admonish N.B. about his behavior. Furthermore, as appellant has emphasized, management implemented a no-contact restriction toward N.B. and agreed to investigate and process her EEO complaint regarding the March 28, 2014 incident. She has not supported her assertions of preferential treatment toward N.B. on the part of certain management personnel.

The Board finds that the evidence of record does not establish that the administrative and personnel actions taken by management in this case were in error and are therefore not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under FECA, unless there is evidence that the employing establishment acted unreasonably.²⁰

OWCP reviewed appellant's allegations that management effectively condoned N.B.'s behavior and tolerated a hostile work environment and found that while she disapproved of how the employing establishment managed the workplace and dealt with his behavior, this did not rise to the level of a compensable act. As such, appellant's allegations constitute mere perceptions or generally stated assertions of dissatisfaction with a certain superior at work which do not support her claim for an emotional disability.²¹

Appellant has provided a detailed statement regarding the events of March 28, 2014. However, she has failed to provide any evidence that management allowed N.B. to violate the no-contact restriction. What has been established is that appellant was surprised and taken aback when he showed up at work on a day when she thought that he was not going to present at the worksite. It is also apparent that appellant believed that management was required to apprise her in advance of his presence at the worksite. This, by itself, is insufficient to establish that management acted unreasonably on March 28, 2014. The fact that the employing establishment did not provide her with advance notice of N.B.'s attendance at work on March 28, 2014 does not constitute abuse or unreasonable conduct on the part of management.

The remainder of appellant's allegations concern her perception that registered nurse C.L. ignored her health care needs on March 28, 2014 and refused to assist her when she was in a state of physical and mental distress. However, personal perceptions alone are insufficient to establish an employment-related emotional condition.²² The Board finds that appellant has not

²⁰ See *Alfred Arts*, 45 ECAB 530 n.8 at 543-44 (1994).

²¹ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

²² *L.G.*, Docket No. 14-1054 (issued October 21, 2014).

submitted sufficient corroborative evidence to substantiate her allegations that management tolerated or condoned abusive and inappropriate behavior, or a hostile work environment, on the part of her coworkers N.B. and C.L. on March 28, 2014. For these reasons she has not established a compensable factor of employment and thus did not meet her burden of proof.

Where a claimant has not established any compensable employment factors, the Board need not consider the medical evidence of record.²³

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 has not established that she sustained an emotional condition on March 28, 2014 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the February 5, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 5, 2016
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

²³ A.K., 58 ECAB 119 (2006).