

FACTUAL HISTORY

On March 8, 2012 appellant, then a 52-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging an aggravation of hypertension due to work-related stress involving her supervisors on February 27, 2012. She noted that she was undergoing physical therapy for a mild stroke along with counseling and speech therapy. The employing establishment noted that appellant's account of events differed from a witness account of events.

In a statement dated February 27, 2012, appellant stated that upon entering her work space on February 23, 2012 she began to feel overwhelmed with anxiety, she began to panic and her heart race increased. She stated that she felt like she had to be on guard as she was not sure of what the encounter with J.J., Acting CFS Manager, would be like on this day after the way she had treated appellant on Thursday, February 23, 2012. Appellant claimed that J.J. had verbally falsely accused her of trying to run something and yelled at her in the presence of two CFS employees M.C. and D.W. She further described an altercation with J.J., quoting J.J. as stating, "I am tired of people trying to run things, I know how I want things done and I do not need you telling people what to do, you know better." Appellant stated that she was shaken and hurt and began to cry. She alleged that another coworker, M.C., approached her and stated, "[Y]ou never told [D.W.] what to do, why is [J.J.] upset with you, I was standing right here, I never heard you tell her what to do." On February 27, 2012 when J.J. approached appellant and spoke to her, appellant experienced a sharp pain on the left side of her forehead causing head pain and causing a twitch on the left side of her face. Appellant alleged that, after work, she drove to the emergency room, where she was told that her numbness and headaches were indications of "mini-strokes" brought on by severe stress. She believed that her stressful environment with J.J. caused physical and mental damage to her body.

In a statement dated March 14, 2012 from coworker M.C., she related that she was working by herself when two coworkers later came to perform the same task, one of whom was appellant and the other of whom was D.W. She noted that J.J. came and asked appellant if she had instructed D.W. how to perform the task. M.C. stated that appellant had not told D.W. what to do, to which J.J. replied that appellant should not instruct any of her coworkers as to how to perform their jobs. She stated, she did not see J.J. yelling or shouting at appellant while appellant was in the room. Furthermore, M.C. denied making the statement which appellant had attributed to her in the February 27, 2012 statement. On the contrary, she stated that on the way out of the room their conversation was short and mainly appellant was complaining about D.W.

In a statement dated March 15, 2012, J.J. recalled the events alleged to have occurred by appellant, but noted that she did not remember the actual dates or times. She noted that she had instructed D.W. to perform a task in a particular manner, and noted that D.W. was not performing the task in the manner that she had directed, which was not to throw out a magazine. D.W. had explained to J.J. that appellant had told her to do it a different way. J.J. noted that she had asked appellant why she told D.W. to perform the task, but appellant had responded that D.W. was lying. Appellant then called upon M.C., asking her whether she had heard appellant tell D.W. to throw out the magazine, to which M.C. responded that she had not heard anything. J.J. stated that he was not irate or in a rage.

In a statement dated April 5, 2012, D.W. contended that J.J. had been upset and had attempted to get her and appellant to perform their jobs in a different manner. She noted that she felt that J.J. should not have been on the floor at all and that the incident had occurred over one envelope.

On April 30, 2012 appellant responded to several of the witness statements. She asserted that M.C.'s accusation that she had fabricated M.C.'s quote in her February 27, 2012 statement was false.

By letter dated March 23, 2012, OWCP advised appellant of the evidence needed to establish her claim. It afforded her 30 days to submit this additional evidence and requested that she respond to its inquiries. OWCP also requested that the employing establishment respond to its inquiries by letter dated March 29, 2012.

In a report dated April 4, 2012, Dr. Darrell E. Thigpen internal medicine specialist, diagnosed appellant with a cerebral vascular accident, a late effect cerebrovascular accident, and a tension/stress headache. He noted that she began having left-sided weakness, facial numbness, tingling left arm with associated headaches during, and after a verbal hostile attack by her supervisor. The initial onset occurred February 23, 2012, which resulted in hospitalization after a second hostile-like verbal attack on February 27, 2012.

By letter dated March 14, 2012, the employing establishment controverted appellant's claim contending that her contentions have been contradicted by witnesses.

On May 9, 2012 OWCP scheduled an appointment with a second opinion physician and forwarded appellant's medical files along with a statement of accepted facts (SOAF) to resolve the matter of whether her conditions were work related. The appointment included a functional capacity evaluation (FCE).

In a note dated April 27, 2012, Dr. Thigpen noted that appellant remained unable to work.

In a second opinion report dated June 11, 2012, Dr. Prem Pillay, Board-certified in cardiovascular medicine, examined appellant, reviewed her medical records, and reviewed the SOAF. He diagnosed accelerated hypertension causing mild stroke based on her medical history, but noted no residual weakness. Dr. Pillay determined that this suggested a complete resolution, which was confirmed by the FCE. He opined, that the hypertension was accelerated by the employment factors due to increased stress from verbal abuse. Dr. Pillay further noted that appellant could return to her previous job without restrictions.

By decision dated July 5, 2012, OWCP accepted appellant's claim for aggravation of hypertension.

In a new SOAF dated April 3, 2013, OWCP noted that appellant had stopped work on February 28, 2012 and had not returned. It further noted that it had authorized physical therapy and group psychotherapy for her. OWCP observed that there were no accepted factors of employment.

On April 3, 2013 OWCP proposed to vacate its July 5, 2012 decision. It noted that the decision had been issued prematurely without consideration of fact of injury. OWCP noted that another letter requesting factual information would be sent to appellant and the employing establishment, followed by appropriate development and a *de novo* decision.

On April 4, 2013 OWCP sent appellant and the employing establishment development letters, which noted that she had submitted insufficient evidence to support her allegation that J.J. verbally attacked her, moved her to alienate her, threatened her, or intended to antagonize or intimidate her.

In a statement dated April 25, 2013, appellant alleged that she suffered from hypertension and consequential injuries of left-sided weakness and post-traumatic stress disorder causally related to the alleged behavior of her supervisor, J.J. She requested clarification as to why OWCP listed events that she had previously thought had been accepted by OWCP as events that OWCP found did not occur. The remainder of appellant's statement was substantially duplicative of her original February 27, 2012 statement and responses to OWCP's inquiries.

By decision dated June 27, 2013, OWCP rescinded acceptance of the claim due to a lack of factual evidence regarding the alleged work-related incidents. It reiterated that there were no accepted events that were compensable factors of employment. OWCP found that appellant had failed to establish that the incident had occurred as described.

On July 8, 2013 appellant requested a hearing before an OWCP hearing representative. The hearing was held on October 24, 2013. At the hearing, appellant contended that the witness statements were sufficient to establish her claim. She alleged that the employing establishment's human resources department failed to perform a sufficient investigation into the alleged work-related incidents and reiterated her account of what occurred on the relevant dates. Appellant stated that, in the week prior to the incident on February 23, 2012, she had no medical issues or issues of stress in her personal life. She noted that she had won a grievance before the Equal Employment Opportunity Commission (EEOC) for a later incident in which she has attempted to return to work, but the employing establishment called the postal police on her. However, appellant also noted that another EEOC complaint was ongoing. She stated that she had returned to work, but that it had been "strained." Appellant claimed that J.J. had actually written the statement attributed to M.C. After the hearing, appellant resubmitted witness statements.

By letter dated December 6, 2013, the employing establishment submitted comments on the transcript of the hearing held on October 24, 2013. It noted that, while appellant had stated that a coworker witnessed the entire incident, this coworker's statement contradicted appellant's description of the incident. The employing establishment also noted that appellant was mixing information regarding her claim before the EEOC with aspects of her workers' compensation claim. It stated that she had received numerous releases from her physicians to return to work, but had not yet returned to work.

By decision dated January 9, 2014, the hearing representative found that OWCP had properly rescinded acceptance of appellant's claim in its June 27, 2013 decision.

The hearing representative concluded that appellant had not met her burden of proof to establish the factual component of the claim and as such OWCP properly met its burden of proof to rescind acceptance of the claim.

On December 26, 2014 appellant requested reconsideration of OWCP's decision dated January 9, 2014. With her request, she attached a statement, alleging that the hearing representative had totally ignored the statements and facts that she had provided and simply agreed with the employing establishment's witnesses. Appellant also submitted several reports from her physicians.

By decision dated May 28, 2015, OWCP denied modification of the January 9, 2014 hearing representative decision.

LEGAL PRECEDENT

Pursuant to section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his or her own motion or on application.³ The Board has upheld OWCP's authority under this section to reopen a claim at any time on its own motion and, where supported by the evidence, set aside or modify a prior decision and issue a new decision.⁴ The Board has noted, however, that the power to annul an award is not arbitrary and that an award for compensation can only be set aside in the manner provided by the compensation statute.⁵

Workers' compensation authorities generally recognize that compensation awards may be corrected, in the discretion of the compensation employing establishment and in conformity with statutory provision, where there is good cause for so doing, such as mistake or fraud. Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits. This also holds true where OWCP later decides that it erroneously accepted a claim.⁶

OWCP bears the burden of justifying rescission of acceptance on the basis of new evidence, legal argument, and/or rationale.⁷ Probative and substantial positive evidence⁸ or sufficient legal argument⁹ must establish that the original determination was erroneous. OWCP must also provide a clear explanation of the rationale for rescission.¹⁰

³ 5 U.S.C. § 8128.

⁴ See *John W. Graves*, 52 ECAB 160, 161 (2000). See 20 C.F.R. § 10.610.

⁵ *Delphia Y. Jackson*, 55 ECAB 373 (2004).

⁶ See *V.C.*, 59 ECAB 137 (2007).

⁷ See *John W. Graves*, *supra* note 4; *Alice M. Roberts*, 42 ECAB 747, 753 (1991).

⁸ See *Michael W. Hicks*, 50 ECAB 325, 329 (1999).

⁹ See, e.g., *Beth A. Quimby*, 41 ECAB 683, 688-89 (1990).

¹⁰ See *supra* note 6.

To establish a claim of an emotional condition sustained in the performance of duty, an employee must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.¹¹

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.¹² 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.¹³ Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.¹⁴ 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 frustration from not being permitted to work in a particular environment or to hold a particular position.¹⁵

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.¹⁶ 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.¹⁷ 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.¹⁸

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.¹⁹ If a claimant does implicate a factor of

¹¹ *V.W.*, 58 ECAB 428, 431 (2007); *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

¹² *L.D.*, 58 ECAB 344, 350 n.8 (2007); *Robert Breeden*, 57 ECAB 622, 625 (2006).

¹³ *A.K.*, 58 ECAB 119, 121 (2006); *David Apgar*, 57 ECAB 137, 140 (2005).

¹⁴ 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309, 314 (2001); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

¹⁵ *J.F.*, 59 ECAB 331, 338 (2008); *Gregorio E. Conde*, 52 ECAB 410, 411-12 (2001).

¹⁶ See *Matilda R. Wyatt*, 52 ECAB 421, 423 (2001); *Thomas D. McEuen*, 41 ECAB 387, 391-92 (1990).

¹⁷ See *William H. Fortner*, 49 ECAB 324, 325 (1998).

¹⁸ *Ruth S. Johnson*, 46 ECAB 237, 241 (1994).

¹⁹ *D.L.*, 58 ECAB 217, 220 (2006).

employment, OWCP should then determine whether the evidence of record substantiates that factor.²⁰ 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.²¹

ANALYSIS

Appellant alleged that an aggravation of hypertension caused by a supervisor, J.J., yelling at her and berating her on February 23 and 27, 2012. By decision dated July 5, 2012, OWCP accepted her claim for aggravation of hypertension, but failed to discuss the factual aspect of her claim. On April 3, 2013 it proposed to rescind its July 5, 2012 decision as it determined the facts as alleged by appellant had not been established. The rescission was made final as of June 27, 2013. Appellant subsequently requested an oral hearing, after which an OWCP hearing representative issued a decision affirming OWCP's the January 9, 2014 rescission.

The Board finds that OWCP presented sufficient evidence to meet its burden of proof to rescind its acceptance of appellant's claim. OWCP had accepted the claim without analyzing the conflicting factual evidence from witnesses, supervisors, and coworkers as to what actually occurred on the relevant dates. At the time of acceptance, it treated the claim as a traumatic injury even though appellant had claimed numerous dates of alleged abuse by her supervisor.

Moreover, it accepted the claim for aggravated hypertension induced by psychological stress without analyzing whether any of the alleged abusive actions taken by appellant's supervisor fell under the performance of duty. The Board has held that the manner in which a supervisor exercises his or her discretion falls outside the coverage of FECA. This principle recognizes that a supervisor or manager 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 evidence establishing error or abuse.²² For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.²³ Mere perceptions of harassment or discrimination are not compensable under FECA.²⁴ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.²⁵ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.²⁶ A claimant must

²⁰ *David C. Lindsey, Jr.*, 56 ECAB 263, 269 (2005).

²¹ *Robert Breeden*, *supra* note 12.

²² *S.M.*, Docket No. 09-2290 (issued July 12, 2010); *Linda J. Edwards-Delgado*, 55 ECAB 401, 405 (2004).

²³ *K.W.*, 59 ECAB 271, 276 (2007); *Robert Breeden*, *supra* note 12.

²⁴ *M.D.*, 59 ECAB 211, 216-17 (2007); *Robert G. Burns*, 57 ECAB 657, 661 n.14 (2006).

²⁵ *J.F.*, 59 ECAB 331, 339 (2008); *Robert Breeden*, *supra* note 12.

²⁶ *G.S.*, Docket No. 09-764 (issued December 18, 2009); *Ronald K. Jablanski*, 56 ECAB 616, 620 (2005); *Penelope C. Owens*, 54 ECAB 684, 686 (2003).

establish a factual basis for his or her allegations of harassment or discrimination with probative and reliable evidence.²⁷

The Board finds that there are no compensable factors falling within the performance of duty as alleged by appellant because each of her allegation has been disputed by conflicting witness statements regarding the events of February 23 and 27, 2012.

OWCP provided clear explanations in establishing that its prior acceptance of the claim was erroneous, and as such, properly rescinded its acceptance. It explained that the factual basis of appellant's claim was not established due to conflicting witness statements. Therefore, OWCP presented sufficient evidence to rescind acceptance of her claim.

CONCLUSION

The Board finds that OWCP has met its burden of proof to rescind acceptance of appellant's claim for aggravation of hypertension.

ORDER

IT IS HEREBY ORDERED THAT the May 28, 2015 decision Office of Workers' Compensation Programs is affirmed.

Issued: August 4, 2016
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

²⁷ *Robert Breeden; supra* note 12; *Beverly R. Jones*, 55 ECAB 411, 416 (2004).