

FACTUAL HISTORY

On November 17, 2014 appellant, then a 63-year-old data collection technician, filed an occupational disease claim (Form CA-2) alleging that she was exposed to workplace violence by a coworker who took his anger out on her on or about 4:30 a.m. on September 17, 2014. She stopped work on September 18, 2014. Appellant's supervisor reported that the claim should be for a traumatic injury, not an occupational disease. She indicated that appellant first reported the condition to her on November 25, 2014.

In a November 17, 2014 statement, appellant stated that on September 17, 2014, at approximately 4:30 a.m., she was exposed to unsafe, hostile, and aggressive workplace violence. A male coworker came to work angry and lashed out at her. He was very irrational, asking what time appellant came in, what she was doing, and berating her in the presence of other clerks. Appellant finally told a coworker that she was getting angry and hurt because of the way he was behaving and treating her. The coworker apologized and told appellant that none of it was her fault. He then turned from her and started yelling at another female clerk, demanding his mail. Appellant alleged that the coworker continued to act out until 7:00 a.m. She alleged that his behavior scared her and her body started to shake uncontrollably. Appellant called her supervisor and reported that the coworker's behavior was not acceptable and that it made her angry, hurt, and humiliated. She reported that her supervisor told her that the coworker was having a problem at home with his sick mother. Appellant indicated that her supervisor came to the worksite, but the issue was not resolved. She stated that she went home feeling humiliated. Appellant felt tearful until night time as she kept playing the incident over and over. She indicated that she had a hard time functioning at home and she had irregular heartbeats. On September 18, 2014 appellant notified her manager of her coworker's actions and she stayed out of work on September 19, 2014 as she was not feeling well. She indicated that, since the incident with her coworker, she has not slept well, has not been eating well, and could not concentrate. Appellant was also irritable, tearful, and anxious. She indicated that she was seeing a psychiatrist.

In a November 10, 2014 report, Dr. James Jen Kin, a psychiatrist, indicated that appellant was first seen on October 14, 2014 with several repeat visits, for a hostile work environment involving her and a coworker, which resulted in her feeling humiliated and angry. Appellant continued to hear the coworker berating her. Dr. Kin diagnosed major depression, which he opined that was related to the job-related incident. He advised that appellant had no history, symptoms, or problems before this incident and that she had decompensating symptoms following this incident.

In a December 4, 2014 letter, the employing establishment indicated that the claim was for traumatic injury. It also provided a witness statement from Supervisor E.P., who witnessed what occurred on the morning of September 17, 2014 between appellant and her coworker. In an October 10, 2014 e-mail, E.P. indicated that, on the day of the origin-destination information system (ODIS) test, the coworker and appellant arrived at the employing establishment. While he was doing his reports, he saw the coworker explaining to her how large the volume was going to be for her ODIS test. E.P. was not being rude, nor was he yelling at appellant. He indicated that the coworker's voice was a little loud due to clerks unloading the truck and pulling equipment into the building, which created loud noise. E.P. believed that it was all just a

misunderstanding and that appellant misunderstood, but that the coworker was just trying to help her.

In a December 29, 2014 letter, OWCP advised appellant that the evidence submitted was insufficient to establish her claim as it was insufficient to support that she was injured while performing any duty of her employment. It requested that she provide additional factual information by completing the attached questionnaire and to submit medical evidence in which her physician provides an opinion supported by a medical explanation regarding the cause of her emotional condition. Appellant was afforded 30 days to submit the requested information.

In a February 4, 2015 statement, appellant responded to OWCP's questions pertaining to the factual aspects of her claim. She alleged that the coworker arrived at work on September 17, 2014 at about 4:30 a.m., very angry, hostile, and aggressive. Appellant was met with hostility from the coworker asking "who sent and called the station of the upcoming test, why this new supervisor, [E.P.], which our office has no knowledge of, was not notified or talked to on the [tele]phone, when I notified the station about our upcoming test." She noted that E.P. was the coworker's friend. Appellant stated that the coworker was upset, and yelled, demanding to know why she had not talked to E.P. and why he did not receive their e-mail notification. She indicated that she had to keep answering his questions in front of E.P. and she was embarrassed and humiliated. Appellant left the coworker and E.P. after the confrontation and went to her work area. She stated that the coworker came to her work area again, very angry and confrontational, and continued to berate her. Appellant indicated that the coworker was not happy because E.P. did not place everything needed for his test at his station. She stated that setting up and putting things for the test was the coworker's job, not the supervisor's job. Appellant also alleged that the coworker continued to harass her by asking her what time she had reported to the station and what she was doing. She alleged that he crossed the line by asking her for her reporting time as he was not her supervisor or manager, rather they were on lateral employees. Appellant told him that she had enough of his blaming, bullying, and harassment, he then backed down, apologized, and stated that nothing was her fault. She explained that the E.P. was not on the e-mail list, so he did not get the notification that she and her manager had sent. Appellant stated that she called her supervisor that morning to report that the coworker was out of control. Her supervisor was very upset and apologetic. Appellant stated that her supervisor told her that the coworker should have called her or their manager if he had a problem with her. Appellant's supervisor also told her that the coworker had been having a lot of family problems and dealing with a lot of issues. Her supervisor asked her to finish her test and go home. Appellant's supervisor stated that she would come over to the station to talk to the coworker. Appellant indicated that her supervisor showed up at the station later that morning and she was told to go home. On her way out of the station, the coworker bid her goodbye sarcastically. An employee who heard him and saw his demeanor told him to chill out and go home. Appellant also described her reactions to the incident. She indicated that she was scared and had a fear of going to work. Appellant was also suicidal and had some physical ailments. She alleged that she had not previously experienced an emotional condition.

Appellant also submitted an After Visit Summary from Providence Health & Services, health screening results and clinical summary notes and medical reports from Dr. Kin.

By decision dated August 27, 2015, OWCP denied appellant's claim for compensation, finding that she had not established a compensable work factor. Specifically, it found that she had not provided witness statements to support her claim that her coworker acted in a verbally abusive manner toward her.

On appeal, appellant challenged the statement of E.P.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by factors of his or her federal employment.³ This burden includes the submission of detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

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 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 employing establishment rather than the regular or specially 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

³ *Pamela R. Rice*, 38 ECAB 838 (1987).

⁴ *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

⁵ *Supra* note 2; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

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

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).

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

The Board has also held that being spoken to in a raised or harsh voice does not in itself constitute verbal abuse or harassment.¹²

As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.¹³ In claims for a mental disability attributed to work-related stress, the claimant must submit factual evidence in support of her allegations of stress from harassment or a difficult working relationship. The claimant must specifically delineate those factors or incidents to which the emotional condition is attributed and submit supporting factual evidence verifying that the implicated work situations or incidents occurred as alleged. Vague or general allegations of perceived harassment, abuse, or difficulty arising in the employment are insufficient to give rise to compensability under FECA. Based on the evidence submitted by the claimant and the employing establishment, OWCP is then required to make factual findings which are reviewable by the Board. The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by OWCP and the Board.¹⁴

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.¹⁵ 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

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 *Beverly R. Jones*, 55 ECAB 411, 418 (2004).

¹³ See *Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

¹⁴ *E.C.*, Docket No. 15-0823 (issued February 2, 2016); *Paul Trotman-Hall*, 45 ECAB 229 (1993) (Groom, Alternate Member, concurring).

¹⁵ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.¹⁶

ANALYSIS

In the present case, appellant has alleged that she sustained an emotional condition as a result of her federal employment. The Board finds that she did not discuss in detail her work duties or allege a reaction to the performance of her regular or specially assigned duties.¹⁷ Rather, appellant has alleged that a male coworker created a hostile work environment when he walked up to her on September 17, 2014 and began berating her in front of other coworkers about work-related matters.

For harassment and discrimination to give rise to compensable disability, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable.¹⁸ A claimant must substantiate allegations of harassment and discrimination with probative and reliable evidence.¹⁹ Harassment and discrimination by supervisors and coworkers, if established as occurring and arising from the performance of work duties, can constitute a compensable work factor.²⁰ Appellant's allegation that she was berated by a coworker on September 17, 2014 was countered by E.P., a supervisor, who witnessed the exchange between appellant and her coworker. According to E.P., the coworker was not rude toward appellant, but rather was helping her by explaining how large the volume would be for her ODIS test. He also attributed the coworker's raised voice to the noisy room. The statement from E.P. provided a reasonable explanation of what transpired between appellant and the coworker on September 17, 2014 at 4:30 a.m. There is also no factual evidence to support appellant's allegation that the coworker reapproached her at her workstation later that morning and continued to berate her. Appellant did not submit any factual evidence in support of her allegations and thus has not established a compensable work factor.

To the extent appellant alleged that she was verbally abused by her coworker, the Board has generally held that being spoken to in a raised or harsh voice does not of itself constitute verbal abuse or harassment.²¹ In the instances she described above, the Board notes that the fact that a coworker questioned her in a raised tone of voice about work matters is insufficient, by itself, to warrant a finding that the coworker's actions amounted to verbal abuse. Appellant has not shown how a possible loud or raised voice rose to the level of verbal abuse or otherwise falls within the coverage of FECA.²² Additionally, she presented no corroborating evidence of any

¹⁶ *Id.*

¹⁷ *See Cutler, supra* note 5.

¹⁸ *Doretha M. Belnavis*, 57 ECAB 311 (2006).

¹⁹ *Robert Breeden*, 57 ECAB 622 (2006).

²⁰ *Doretha M. Belnavis*, 57 ECAB 311 (2006).

²¹ *T.G.*, 58 ECAB 189 (2006).

²² *See Peter D. Butt, Jr.*, 56 ECAB 117 (2004).

yelling by the coworker and E.P. indicated that the coworker's raised voice was due to the noisy room. While appellant challenged E.P.'s statement, noting that he was a friend of the coworker, she did not provide any witness statements to support her claim that the coworker acted in an abusive manner towards her. Therefore, she has not met her burden of proof to establish verbal abuse.

Appellant also expressed disappointment with regard to how her supervisor handled the September 17, 2014 incident with her coworker. The manner in which a supervisor exercises his or her discretion generally falls outside FECA's coverage. This principle recognizes that supervisors must be allowed to perform their duties, and at times employees will disagree with their supervisor's actions. Mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor.²³ There is no evidence that appellant's supervisor committed error or abuse by coming to the employing establishment and talking to her coworker. Thus, this is not a compensable employment factor.

Consequently, appellant has not established her claim for an emotional condition as she has not attributed her claimed condition to any compensable employment factors.²⁴

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

²³ *Linda J. Edwards-Delgado*, 55 ECAB 401, 405 (2004).

²⁴ As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the August 27, 2015 decision of the 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