

anxiety due to “trying to get support from management for the last four years....” She asserted that her coworkers did not work with her and that management failed to provide her with assistance. Appellant did not stop work.

By letter dated September 30, 2013, OWCP requested that appellant submit supporting factual and medical evidence. It asked that she complete a questionnaire providing specific information about the factual aspect of her claim, including identifying the specific dates of any alleged incidents, the names of the parties involved, and a detailed description of the work factors she believed responsible for her condition. OWCP also requested that appellant submit witness statements and the results of any grievances or complaints connected with an identified work factor. In a separate letter dated September 30, 2013, it asked that the employing establishment review and comment on appellant’s allegations and provide information about her work duties. No response was received by the employing establishment or appellant.

In a decision dated November 4, 2013, OWCP found that appellant had failed to establish an emotional condition in the performance of duty. It determined that she had not established a factual basis for her claim or provided any supporting medical evidence, as appellant had not responded to its request for a factual statement identifying the implicated employment factors.

By letter dated October 23, 2013, received by OWCP on November 7, 2013, appellant’s supervisor submitted a statement that he had been appellant’s supervisor since September 2011, and that the work environment did not cause her condition. He noted that appellant did not work overtime or perform stressful duties. Her supervisor related that appellant had what some viewed as a “hateful attitude towards others.” He advised that appellant did her work in a professional manner, but had difficulty controlling anger when interacting with coworkers.

Documents submitted included a May 7, 2012 developmental counseling form for engaging in unbecoming conduct on May 4, 2012 and a developmental counseling form on February 12, 2013 for her interactions with employees during duty hours.

E-mails dated January and February 2013, reflect that coworkers complained to appellant’s supervisor about appellant’s conduct. In a letter dated January 3, 2013, a coworker advised that appellant had refused to provide him a form that needed to be signed.

On April 18, 2014 appellant, through counsel, requested reconsideration. Counsel maintained that appellant had been experiencing harassment since June 7, 2011 from her coworkers. Appellant had filed claims alleging a hostile work environment which had been settled and, as a result, she was reassigned. When appellant went to her work location to “remove her personal effects,” counsel related:

“[Appellant] was violently attacked by a coworker who had harassed and discriminated again [her] for years. [The coworker] struck her in the face, and upon information, investigation and belief, conspired with other coworkers to have [her] unlawfully detained by the Military Police who used excessive force and did not allow [her] her most basic civil rights. In addition to the years of mental and emotional abuse she has previously complained about, the physical assault and subsequent unlawful detention has further contributed to her

deteriorating emotional state. [Appellant's] statement regarding the subject incident is attached hereto for your consideration."²

He also submitted a medical report in support of the reconsideration request.

By decision dated April 30, 2014, OWCP denied modification of the November 4, 2013 decision. It found that appellant had not adequately identified the specific incidents to which she attributed her condition.

On April 7, 2015 appellant, through counsel, again requested reconsideration. She submitted medical reports regarding her mental health treatment from 2007 through 2015. Appellant also submitted a June 20, 2013 medical report.

In a decision dated June 30, 2015, OWCP denied modification of its April 30, 2014 decision. It again found that appellant had not provided specific examples of the alleged harassment and abuse and thus had not factually established her claim.

On appeal counsel argues that appellant provided sufficient medical evidence to show that she sustained major depressive disorder. He maintains that managers and coworkers mistreated and harassed her, attempted to get her to quit work, and ridiculed her for adhering to regulations. Counsel asserts that a coworker assaulted appellant on January 15, 2014 when she tried to transfer her belongings to a new job.

On November 9, 2015 the Director of OWCP filed a memorandum in justification of OWCP's decision requesting that the Board affirm the June 30, 2015 decision as appellant did not establish a factual basis for her claim or provide evidence supporting her allegations of harassment.

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.³ 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.⁴

For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence introduced which establishes that the acts alleged or implicated by the

² The record does not contain a statement from appellant.

³ 5 U.S.C. § 8101 *et seq.*; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Gregorio E. Conde*, 52 ECAB 410 (2001).

employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.⁵ A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and Equal Employment Opportunity complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.⁶ The issue is whether the claimant has submitted sufficient evidence under FECA to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁷ The primary reason for requiring factual evidence from the claimant in support of 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.⁸

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.⁹ 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.¹⁰

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish stress, depression, and anxiety due to factors of her federal employment. Appellant generally alleged that she experienced stress trying to gain the support of management. OWCP denied her claim finding that she had not established a factual basis for the claim as she failed to adequately describe the work factors to which she attributed her condition.

On September 30, 2013 OWCP asked appellant to provide a detailed description of the work factors that caused her condition, including the dates of the alleged incidents and the names of any involved parties. Appellant did not respond with the information requested by OWCP. Her supervisor, however, did respond and denied that employment caused appellant's condition.

A claimant must specifically identify the employment factors or incidents alleged to have caused her condition and establish a factual basis for her allegations with probative and reliable

⁵ See *Michael Ewanichak*, 48 ECAB 364 (1997).

⁶ See *Charles D. Edwards*, 55 ECAB 258 (2004); *Parley A. Clement*, 48 ECAB 302 (1997).

⁷ See *James E. Norris*, 52 ECAB 93 (2000).

⁸ *Beverly R. Jones*, 55 ECAB 411 (2004).

⁹ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁰ *Id.*

evidence.¹¹ Appellant's counsel asserted that a coworker struck her in the face at an unspecified date. He also maintained that military police used excessive force in detaining her and violated her civil rights. Counsel contended that appellant experienced harassment starting in June 2011 and that she and the employing establishment had settled her claims regarding a hostile work environment. He indicated that he was submitting a statement from appellant but it was not received by OWCP.

To the extent that appellant is claiming harassment, and discrimination, the Board has held that 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.¹² A claimant, however, must substantiate allegations of harassment and discrimination with probative and reliable evidence.¹³ Appellant did not submit any factual evidence in support of her allegations of harassment, or, as requested by OWCP, identify the dates and details of any alleged work incidents; thus, she has not established a compensable work factor.

Appellant's counsel also contended that a coworker struck appellant in the face on an unspecified date and that the military police wrongly used force in detaining her in connection with this incident. Although physical contact may constitute a compensable work factor, there must be probative factual evidence supporting that such contact actually occurred.¹⁴ Appellant did not provide the date of the alleged altercation nor describe it in sufficient detail to warrant development of the allegation. She further submitted no witness statements or other evidence to support her allegation of physical contact. Consequently, appellant has not established a factual basis for her allegation.

For the foregoing reasons, appellant has not factually established any compensable employment factors under FECA and, therefore, has not met her burden of proof to establish an emotional condition in the performance of duty.

On appeal counsel alleges that managers and coworkers harassed appellant, tried to make her quit work, and made fun of her for abiding by regulations. As discussed, however, appellant has the burden to establish a factual basis for the claim by supporting her allegations with probative and reliable evidence.¹⁵

¹¹ See *C.H.*, Docket No. 12-1927 (issued March 29, 2013); *B.H.*, Docket No. 12-1851 (issued February 20, 2013).

¹² *T.G.*, 58 ECAB 189 (2006); *Doretha M. Belnavis*, 57 ECAB 311 (2006).

¹³ *C.W.*, 58 ECAB 137 (2006); *Robert Breeden*, 57 ECAB 622 (2006).

¹⁴ See *P.D.*, Docket No. 13-1142 (issued August 1, 2013); *Marilyn Jones*, Docket No. 05-382 (issued January 19, 2006).

¹⁵ See *Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990). See also *B.H.*, *supra* note 11.

Counsel maintains that the medical evidence is sufficient to establish that appellant experienced major depressive disorder. As appellant has not established a factual basis for her claim, however, the Board will not address the medical evidence.¹⁶

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 met her burden of proof to establish that she sustained an emotional condition due to a factor of her employment.

ORDER

IT IS HEREBY ORDERED THAT the June 30, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 5, 2016
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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