

By letter dated October 1, 2013, OWCP advised appellant that she needed to submit additional information in support of her claim. It requested that appellant describe in detail the employment-related conditions or incidents which she believed contributed to her emotional condition.

In a September 18, 2013 statement, received by OWCP on October 28, 2013, appellant alleged that management subjected her to harassment and treated her in a discriminatory manner for approximately three to four years. She asserted that the employing establishment made her work alone in areas to which other employees had not been assigned and made her work the floor on weekends, despite the fact that she asked management not to assign her weekend work. Appellant alleged that these actions on the part of management were retaliatory. She reported that she had filed Equal Employment Opportunity (EEO) claims in response to the harassment and retaliation that she was subjected to. Appellant asserted that this harassment and retaliation created a very stressful work environment. In addition, she alleged that there were incidents in which some of her employees had been on drugs and had engaged in physical altercations with her, other managers, and the postal police. Appellant also alleged that there were situations where employees had brought guns onto the postal premises. She further alleged that management harassed her about work performance after failing to provide her with sufficient staff to complete her assignments. Appellant asserted that as a result of these situations she experienced problems with sleeping, eating, and her interpersonal relationships.

In a June 26, 2013 report, received by OWCP on October 31, 2013, Dr. Ramesh Parikh, a Board-certified psychiatrist, advised that appellant had been off work since June 2013 because her job had become too stressful. He related that she was irritable, moody, sad, easily angered, and had difficulty concentrating. Appellant reported to him that some of these stresses began three or four years ago. She also informed him that management required her to work nights supervising up to 50 people, which led to her gaining considerable weight and undergoing lap band surgery. Dr. Parikh advised that appellant was involved in a work incident in which one of her charges threatened her with a gun, which was essentially her breaking point. Appellant had to take leave from work and she remained off work for six months. She related that she returned to work for six weeks; however, another incident occurred in which another one of her employees became violent while using illegal drugs, though the violence was not directed toward her. Dr. Parikh reported that she continued working until she could no longer function at the workplace. Appellant was taken off of work for six months, until October 2012. Dr. Parikh asserted that she felt overwhelmed and unable to adjust to the work environment, becoming extremely anxious, agitated, getting loud at times, and having crying episodes and yelling at people. He opined that, as a result of this work-related stress, appellant began eating more and gaining weight, and she experienced chest pain to the extent that she feared having a heart attack.

Dr. Parikh diagnosed major depressive disorder, severe anxiety disorder, and severe avoidant and schizoid personality. He concluded that that appellant's work stressors had been gradually building up to the point where she was unable to cope with work pressures or perform and function at work. Dr. Parikh opined that all of her current mental stressors were the direct result of the pressures that she was experiencing at work. He advised that the manner in which she was treated by her supervisors and the manner in which she was responding had aggravated her preexisting psychological stressors and led him to conclude that her current condition was directly related to the pressures of her job at the employing establishment.

In response to OWCP's October 1, 2013 developmental letter, appellant submitted an October 17, 2013 statement in which she made the following allegations:

(1) In September 2010 one of her employees, J.J., brought a gun to work. This was very disturbing to her because she had to give him a notice about him being on disability. The employee allegedly told her "I know what to do with you," and the postal police found empty beer cans and a gun in his car. She felt threatened by this incident and did not believe that management handled it properly;

(2) On January 25, 2011 employee F.J. was on illegal drugs and became violent, fighting with her, a distribution manager, and the postal police. This was very stressful for her;

(3) She was twice required to work the entire first floor on Saturday and Sunday nights (November 18 to 19, 2012 and April 7 to 8, 2013). This involved five different sections of the mail distribution units, an assignment which exceeded her capacities. She either had to supervise all of these units by herself or sometimes train someone to work the areas to assist her. She asserted that this was extremely stressful because she lacked sufficient employees and equipment to run the area, yet she was still required to meet the dispatch mail quota and numbers and make deadlines. In addition, on many occasions management personnel said demeaning and degrading things to her and cursed and yelled at her. She asserted that management had since realized that this was too much responsibility for one person and had since assigned some additional employees to help to work that area.

(4) There were numerous occasions when management disciplined her or threatened her with discipline, allegedly without sufficient cause. On January 14, 2012 she received a Letter of Warning. She appealed and the action was later rescinded. On September 19, 2012 appellant had to be hospitalized due to panic attacks which she attributed to work-related stress. She was off work on September 20 and 21, 2012 and thought she was having a heart attack. On October 18, 2012 the employing establishment denied her request to attend a family funeral which was scheduled initially on her off day. She alleged that management intentionally changed the leave schedule in order to force employees to readjust their days off, an action which inconvenienced many people and was done out of meanness and spite. On November 23 and 25, 2012 management conducted pre-disciplinary interviews, but she was not disciplined. She believed that these interviews were conducted simply to harass her. On January 24, 2013, she received a Letter of Absence Inquiry from management. She believed that management intentionally listed the wrong dates in the letter in an attempt to confuse her, which is typical of the harassment management regularly perpetrates toward her.² She related that she was disciplined for missing a dispatch and was not provided an interview to submit her side of the story.

² Appellant alleged that this letter requested documentation to support time off beginning January 13, 2013, although her absence began January 17, 2013.

(5) On February 22, 2013 a manager granted appellant leave without pay (LWOP) instead of approving the paid sick leave she had requested. This prevented her from receiving her regular pay, in addition to her holiday pay, which made her go to another manager to persuade him to change her pay status;

(6) On March 11, 2013 three managers were talking in a derogatory manner toward her, a conversation which was broadcast over the employing establishment's radio system. This was an incident which embarrassed and humiliated her;

(7) On April 12, 2013 a manager talked in a derogatory manner toward her and yelled at her;

(8) On June 3, 2013 two managers called her into the office and harassed her about staffing;

(9) She had been subjected to disrespectful treatment and harassment by management since October 18, 2012. This resulted in the deterioration of her mental and emotional health. She experienced crying episodes, sleeplessness, and developed an eating disorder which caused her to undergo lap band surgery. The employing establishment created a hostile work environment and appellant feared for her safety and her life. She admitted having "an attendance issue," but only because of all of the harassment she continually received and the stress to which she was subjected.

In a November 12, 2013 statement, Ms. Samika N. Collins, a manager of distribution operations (MDO) controverted appellant's claim and rebutted her assertions. With regard to appellant's statement that employees had brought guns onto the postal premises and that she had been threatened and was caused stress by these incidents, management advised that on August 28, 2010 the postal police noticed a gun in an employee's car. This employee received a notice of removal on October 3, 2010, but never threatened a supervisor or employee, including appellant. Other than this incident, Ms. Collins asserted that the employing establishment was not aware of any other employee who had been disciplined for this type of misconduct and that there was no substantiation for her allegations.

The employing establishment rebutted her account of the November 14, 2010 incident involving the employee's use of illegal drugs. Ms. Collins asserted that during the six months appellant took off from work allegedly due to her emotional condition, appellant was actually undergoing plastic surgery. Appellant was conducting an investigative interview with this employee after he requested sick leave because of his illness and he did not want to fill out the proper paperwork. She contacted an MDO who requested his time card. When the employee refused to provide it, the MDO called the postal police and an altercation ensued between the recalcitrant employee and postal police. There was no violence toward appellant or the MDO since the MDO had taken control over the incident. The employee received a notice of removal on March 4, 2011 and was removed on November 30, 2011. Ms. Collins asserted that management had a zero tolerance policy when it came to dealing with such disturbances.

Ms. Collins noted that appellant alleged that she was harassed by several managers, in particular, R.I., but failed to provide any substantiation or corroboration for any alleged, specific incidents of harassment and failed to identify which managers were harassing her other than R.I. She further asserted that many of the periods for which she claimed harassment were not consistent with its attendance records.³ With regard to her allegations of being overburdened by insufficient staff and being forced to work weekends, Ms. Collins reported that she was not given any responsibilities above and beyond those assigned to other supervisors who performed similar tasks. She further advised that there is no mail delivered on Sunday morning and that the majority of postal employees are not at work during the weekend. Ms. Collins also noted that appellant had five hours of sick leave and a negative 64 hours of annual leave.

By decision dated March 26, 2014, OWCP denied appellant's claim finding that she failed to establish any compensable factor of employment and thus fact of injury was not established. It found that the incidents of harassment did not occur as alleged, as she provided no evidence corroborating or substantiating these alleged incidents.

By letter dated May 15, 2014, appellant requested reconsideration. She reiterated her previous allegations and asserted that she had provided documentation showing that she had been disciplined unjustly by the employing establishment.

In an April 2, 2014 report, Dr. Parikh reiterated that appellant continued to focus on her work issues. He related that appellant was recently asked to contact the employee assistance program due to her problems with coworkers. Appellant was preoccupied with how her coworkers were making fun of her, hiding her stuff, and harassing her by engaging in acts like killing insects on her station. Dr. Parikh advised that when appellant confronted another supervisor who had taken one of her employees, her manager yelled at her instead and she became so upset that she sent an email complaining about this harassment. He reiterated his previous diagnoses and his opinion that her conditions were caused by work factors.

In an April 10, 2014 report, Dr. Parikh reiterated his previous findings and conclusions in addition to appellant's accounts of work-related incidents in which management allegedly acted inappropriately and caused her stress and anxiety. Appellant did not submit any additional factual evidence in support of her request for reconsideration.

By decision dated August 22, 2014, OWCP denied modification of the March 26, 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*,⁴ the Board

³ The employing establishment advised that its records showed that appellant was off work intermittently from October 2012 to June 6, 2013. It asserted that she was out due to scheduled and unscheduled absences for the following periods in which she also alleged harassment: December 29, 2012 through January 5, 2013; January 17 to February 4, 2013; March 16 to 31, 2013; April 18, 2013; and May 18 to 19, 2013.

⁴ 28 ECAB 125 (1976).

explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.⁵ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.⁶ 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.⁷ 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 as an employee's frustration in not being permitted to work in a particular environment or to hold a particular position.⁸

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.⁹ 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.¹⁰ A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹¹

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.¹²

⁵ *Supra* note 1

⁶ See *Robert W. Johns*, 51 ECAB 136 (1999).

⁷ *Supra* note 4.

⁸ *Id.*

⁹ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁰ *Kim Nguyen*, 53 ECAB 127 (2001). See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹¹ *Roger Williams*, 52 ECAB 468 (2001).

¹² *Alice M. Washington*, 46 ECAB 382 (1994).

ANALYSIS

Appellant has alleged an emotional condition due to being overworked due to staffing shortages. Pursuant to *Cutler*¹³ this allegation could constitute a compensable employment factor if appellant establishes that her regular job duties or a special assignment caused an emotional condition. The Board has held that overwork, when substantiated by sufficient factual information to corroborate appellant's account of events, may be a compensable factor of employment.¹⁴ The Board finds, however, that appellant submitted no evidence supporting her allegation that she was unable to complete her supervisory duties due to a staffing shortage. Without evidence substantiating the allegation, appellant has failed to meet her burden of proof to establish a compensable factor of employment under *Cutler*.¹⁵ As appellant did not otherwise attribute her claimed condition to particular duties performed on particular dates, she has not established an employment factor under *Cutler*.¹⁶

Appellant further attributed her emotional condition to stress caused by staffing shortages. In *McEuen*,¹⁷ the Board held that an employee's emotional reaction to administrative actions or personnel matters is not covered under FECA as such matters pertain to procedures and requirements of the employing establishment and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under FECA would attach if the facts surrounding the administrative or personnel action established error or abuse by employing establishment superiors. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁸

Appellant has provided no evidence supporting for her allegations sufficient to establish error or abuse in an administrative action under *McEuen*. Regarding her allegations that management did not provide her sufficient staff to complete the workload, appellant did not provide any evidence that the employing establishment acted in an abusive or unreasonable manner in this regard. Appellant asserted that she lacked sufficient employees and equipment to run the area, yet she was still required to meet the dispatch mail quota and numbers in order to make deadlines. However, she has not submitted evidence regarding the necessary staffing levels, nor has she described any unreasonable actions by management which prevented proper staffing.¹⁹

¹³ *Supra* note 4.

¹⁴ See *Bobbie D. Daly*, 53 ECAB 691 (2002); *T.M.*, Docket No. 15-1774 (issued January 20, 2016).

¹⁵ *K.S.*, Docket No. 15-1426 (issued December 29, 2015).

¹⁶ *Supra* note 4.

¹⁷ See *Thomas D. McEuen*, *supra* note 10.

¹⁸ See *G.C.*, Docket No. 15-1231 (issued February 2, 2016).

¹⁹ *Georgia F. Kennedy*, 35 ECAB 1151 (1984).

Appellant has also provided insufficient evidence to establish that the employing establishment acted unreasonably or committed error in discharging its administrative duties with regard to her work assignments. She alleged that she was twice required to work the entire first floor on Saturday and Sunday nights, which was comprised of five different sections of the mail distribution units. These allegations were not substantiated. Appellant has not provided any additional information or corroborating evidence, such as witness statements, regarding the circumstances of her work assignments so as to establish the context under which they were made. Ms. Collins reported that appellant was not given any responsibilities above and beyond those assigned to other supervisors who performed similar tasks. She also noted that there was no mail delivered on Sunday morning and that the majority of postal employees are not at work during the weekend. Appellant did not submit any evidence to substantiate that any of her work assignments were in error or were abusive.

Regarding appellant's allegation that she developed stress due to the uncertainty of her job duties and her insecurity about maintaining her position, the Board has previously held that a claimant's job insecurity is not a compensable factor of employment under FECA.²⁰ The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under FECA.²¹

Although the handling of disciplinary actions is generally related to the employment, it is an administrative function of the employing establishment.²² The Board notes that appellant asserted that several of the disciplinary actions taken by management, including letters of warning, predisciplinary interviews, and letters of absence of inquiry were either rescinded or not fully processed by the employing establishment. However, the mere fact that personnel actions were later modified or rescinded does not, in and of itself, establish error or abuse.²³ The Board finds that appellant has failed to establish error or abuse with regard to her allegation that the employing establishment acted improperly in issuing her letters of warning, letters of absence inquiry and predisciplinary interviews. As appellant has failed to show that management's actions demonstrated error or abuse on the part of management, they are not compensable.²⁴

The Board similarly notes that matters pertaining to leave use are generally not covered under the Act as they pertain to administrative actions of the employing establishment and not to the regular or specially assigned duties the employee was hired to perform.²⁵ Appellant has provided no substantiation for her assertions that management's handling of leave was arbitrary or unfair. Ms. Collins reported that as of November 12, 2013 appellant had a balance of 5 hours of sick leave and negative 64 hours of annual leave, indicating that she had been awarded ample

²⁰ See *Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

²¹ See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

²² See *Janet I. Jones*, 47 ECAB 345 (1996).

²³ *Supra* note 21.

²⁴ *Id.*

²⁵ *Elizabeth Pinero*, 46 ECAB 123 (1994).

leave for numerous periods. Appellant admitted that she had an attendance problem in her October 2013 statement. Thus, the Board finds that as appellant has failed to show that these actions amounted to error or abuse on the part of management, they are not compensable.

Appellant alleged that management erred by failing to deal appropriately with the incident in which an employee allegedly brought a loaded gun to the workplace and the incident in which an employee under the influence of drugs became defiant, unruly, and engaged in a violent confrontation with management. These assertions were refuted by Ms. Collins in her November 12, 2013 statement. Ms. Collins advised that on August 28, 2010 a postal policeman noticed a gun and two empty beer cans in an employee's car and that this employee consequently received a notice of removal on October 3, 2010. She asserted, contrary to appellant's assertion, that the employee did not threaten appellant or any other employee. Ms. Collins also rebutted appellant's assertion that employees brought guns to the workplace, stating that no other incidents had occurred in which employees were found to have guns on the premises or were disciplined for this type of conduct. In addition, she rebutted her account of the November 14, 2010 incident involving the unruly employee under the influence of illegal drugs. Appellant alleged that she was interviewing an employee who claimed to have an illness which required time off who requested sick leave, but refused to fill out the proper paperwork. She asserted that the employee became hostile, violent, and started a physical altercation with her. Ms. Collins, however, reported that appellant contacted a superior who called the postal police. An altercation thereafter ensued between the employee and the postal police. Ms. Collins asserted that appellant was not involved in this physical altercation because the supervisor took control of the situation. She reported that management had a zero tolerance policy with regard to such incidents, which was reflected when it issued a notice of removal on March 4, 2011 to the unruly employee and removed him on November 30, 2011. Ms. Collins also asserted that during the six months off from work referenced by Dr. Parikh, in which appellant was allegedly disabled due to her emotional condition, she was actually undergoing plastic surgery. Verbal altercations and difficult relationships with coworkers and supervisors/managers, when sufficiently detailed and supported by the record, may constitute compensable factors of employment.²⁶ However, this does not imply that every ostensibly abusive or threatening statement uttered in the workplace will give rise to coverage under FECA. For appellant to prevail on her claim, she must support her allegations with specificity and reliable evidence. The Board finds that appellant's statements and actions are not proven with specific dates and times and as such are not sufficiently established as true.

The Board finds that these allegations on the part of appellant were refuted by Ms. Collins' responses. Ms. Collins sufficiently addressed each of her allegations and demonstrated that management acted appropriately in its administrative capacity with regard to each of these situations which arose in the work environment.²⁷

²⁶ *L.M.*, Docket No. 13-267 (issued November 15, 2013).

²⁷ The evidence submitted by an employing establishment on the basis of their records will prevail over the assertions from the claimant unless such assertions are supported by documentary evidence. *See generally Sue A. Sedgwick*, 45 ECAB 211, 218 n.4 (1993);

Appellant has also not established her allegations that management engaged in a pattern of harassment, intimidation, or discrimination. She asserted that her problems begin around October 18, 2012, when management began to subject her to disrespectful treatment and harassment. Appellant alleged that on March 11, 2013 three managers were talking in a derogatory manner toward her, a conversation which was broadcast over the employing establishment's radio system; that on April 12, 2013 a manager talked in a derogatory manner toward her and yelled at her; and that on June 3, 2013 two managers called appellant into the office and harassed her about staffing. She alleged that these incidents and others created a hostile work environment. Appellant has also asserted that she was harassed in retaliation of EEO claims she has filed. However, these assertions are not supported by the record. The primary reason for requiring factual evidence from the claimant in support of her allegations of harassment 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.²⁸ Appellant did not provide sufficient evidence to establish that she was harassed by management or treated in a discriminatory manner.²⁹ Mere perceptions of harassment or discrimination are not compensable; a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.³⁰

The Board has reviewed all of appellant's allegations of harassment, abuse, and mistreatment on the part of management, and finds that while she disapproved of how the employing establishment managed the workplace, this did not rise to the level of a compensable act. 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 condition.³¹ She has not submitted evidence sufficient to establish that the employing establishment engaged in a pattern of harassment and intimidation toward her or created a hostile workplace environment.

The Board finds that appellant has not established a compensable work factor. For this reason, the medical evidence will not be considered.³² The Board will affirm the August 22, 2014 decision denying compensation for an alleged emotional condition.

Appellant may submit new evidence or argument with a written request for reconsideration 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.

²⁸ *Beverly R. Jones*, 55 ECAB 411 (2004).

²⁹ See *Joel Parker, Sr.*, 43 ECAB 220 (1991) (the Board held that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

³⁰ *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

³¹ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

³² *A.K.*, 58 ECAB 119 (2006).

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish an emotional condition causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the August 22, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 1, 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