

the office of the Coahoma County Farm Service Agency to the office of the Quitman County Farm Service Agency caused her to have more frequent anxiety and panic attacks because there would be two employees in the Quitman County office against whom she had filed complaints for discrimination, harassment, intimidation, hostile work environment, and physical assault while working at the Coahoma County office.² Appellant indicated that she experienced a panic attack on November 18, 2013 when she entered the Quitman County office. She noted that she first became aware of her claimed conditions on June 28, 2013 and that she first realized on November 18, 2013 that they were caused or aggravated by her employment. Appellant stopped work on November 18, 2013.³

In a December 10, 2013 e-mail, a supervisor reported that she entered the Quitman County office at 7:45 a.m. on Monday, November 18, 2013 and observed appellant lying on a desk gasping for air and beating her hands on the desk. She related that appellant claimed to have experienced panic attacks over the weekend and on the way to work that morning. The supervisor called 911 and emergency medical technicians took appellant to the Quitman County Hospital.

In a December 11, 2013 letter, the employing establishment controverted the claim. She noted that appellant's panic attacks initially occurred "outside of work" and she had not submitted medical evidence supporting an occupational disease.

On December 12, 2013 OWCP requested that appellant submit additional factual and medical evidence in support of her occupational disease claim. It also requested additional information from the employing establishment.

On December 18, 2013 OWCP received a statement in which appellant provided details about the claimed incidents and conditions at work that she felt caused the emotional condition. Appellant noted that in June 2013 her immediate supervisor advised her that she would be permanently transferred to the office of the Quitman County Farm Service Agency. The Quitman County location had two employees with whom she had previous dealings at the office of the Coahoma County Farm Service Agency: a county executive director against whom she filed an Equal Employment Opportunity (EEO) complaint in January 2012 for alleged harassment and discrimination and a farm loan program technician who assaulted her on December 20, 2012. In July 2013, she made a reasonable accommodation request in which she asked that she not be transferred from the Coahoma County office to the Quitman County office. Appellant indicated that on November 1, 2013 the employing establishment advised that her

² Appellant claimed that the actions of these employees caused two office climate assessments to be conducted, the second of which was conducted in August 2013.

³ Appellant did not return to the Quitman County office after November 18, 2013. OWCP had previously accepted in January 2012, under a separate claim file (xxxxxx072), that appellant sustained aggravation of major depression, recurrent episode. It had accepted two employment factors: her nonselection for a program technician position and her nonreceipt of a key to the Coahoma County office. The Board notes that this accepted emotional condition is not related to the claimed emotional condition of the present claim. OWCP also had previously accepted, under a separate claim file (xxxxxx832), that appellant sustained a left black eye on December 20, 2012. In a December 20, 2012 statement, appellant indicated that the injury occurred when a coworker, who also worked as a farm loan program technician at the Coahoma County office, threw a notepad which struck her left eye.

reasonable accommodation request had been denied and that she had to report to work at the Quitman County office. She claimed that on November 18, 2013 she suffered panic attacks while driving to the Quitman County office and also had a panic attack upon arriving at the Quitman County office on that date. Appellant failed in her attempts to go to work on November 19 and 25, 2013 because she suffered panic attacks while driving to work and had to turn around and return home.

Appellant submitted documents from 2011 in which she asserted that the county executive director at the office of the Coahoma County Farm Service Agency harassed her and discriminated against her with respect to job assignments and promotions. She felt that the county executive director improperly required her to perform farm loan duties that were not within her responsibilities.⁴ The record contains documents regarding an EEO complaint appellant filed in January 2011 with respect to the alleged actions of the county executive director.⁵

In a memorandum concerning an October 13, 2011 office climate assessment, an employing establishment official explained that a finding had been made that the work climate in the Coahoma County office “has not been satisfactory.” The state executive director for the employing establishment official found that, based on an investigation, employees at the Coahoma County office tended to speak to each other in an “angry, aggressive, accusatory, and/or disrespectful manner.”

Appellant submitted a number of documents, dated between June and November 2013, concerning her transfer from the Coahoma County office to the Quitman County office and her reasonable accommodation request asking that she be allowed to remain at the Coahoma County office.

In a November 1, 2013 response from the employing establishment to appellant’s reasonable accommodation request, appellant was advised that, due to changes in workload and lack of staffing, farm loan teams had to be realigned to continue providing adequate service to customers. As a result of this realignment of teams, the positions currently in Coahoma County were being moved to Quitman County, effective November 17, 2013.⁶ The official denied her request to remain in the Coahoma County office as there would no longer be any farm loan technician positions there after November 17, 2013. Appellant appealed the denial of her reasonable accommodation request, but on November 14, 2013 the employing establishment denied her appeal.

Appellant also submitted medical evidence in support of her emotional condition claim. In a report dated July 24, 2013, Dr. Barry A. Vinick, an attending clinical psychologist, diagnosed “major depression, recurrent, severe” and opined that stress related to appellant’s

⁴ For example, in a December 9, 2011 e-mail to an employing establishment official, appellant asserted that the actions of the county executive director were “intimidating, offensive, and harassing.”

⁵ In February 2012, an EEO official indicated that appellant’s claim was being referred for investigation.

⁶ The official noted that appellant’s job as a farm loan program technician would remain at the same salary level after the transfer.

“workplace environment” significantly impacted her mood disorder. He posited that part of this stress was due to a proposed transfer to the Quitman County office and recommended that appellant stay in the Coahoma County office. In an October 3, 2013 report, Dr. Vinick provided the additional diagnoses of panic disorder, generalized anxiety disorder, and fibromyalgia. In a November 26, 2013 report, he noted that appellant reported experiencing more frequent and severe panic attacks due to a transfer to a new work location.⁷

On January 8, 2014 an employing establishment controverted appellant’s allegations regarding her emotional condition claim. It noted that the two office climate assessments were conducted due to the concerns of several employees, including appellant, and noted that the evidence of record did not show that the factors (alleged in appellant’s December 5, 2013 claim) contributed to the claimed occupational disease.

In a January 23, 2014 decision, OWCP denied appellant’s emotional condition claim because she had not established any compensable employment factors. It found that appellant’s transfer to the office of the Quitman County Farm Service Agency in November 2013 did not constitute a compensable employment factor.

On February 20, 2014 appellant requested a review of the written record by an OWCP hearing representative. She argued that the evidence of record, including the two office climate assessments and the medical evidence, showed that she sustained a work-related medical condition.

In a July 7, 2014 decision, OWCP’s hearing representative set aside its January 23, 2014 decision and remanded the case for further development. She indicated that OWCP’s January 23, 2014 decision did not adequately explain why appellant had not established any compensable employment factors. The hearing representative directed OWCP to issue a decision which considered all the relevant evidence and provided reasons for the decision.

Appellant submitted additional medical evidence in support of her claim.

In a statement received on September 22, 2014, the employing establishment official explained that appellant did not perform any work after she arrived at the employing establishment on November 18, 2013. Appellant had immediately suffered a panic attack upon arriving at the office of the Phillips County Farm Service Agency on August 25, 2014 and left for the hospital *via* ambulance before performing any work.⁸

By decision dated November 18, 2014, OWCP denied appellant’s emotional condition claim because had not established any compensable work factors. It found that appellant had not established any wrongdoing with respect to appellant’s transfer to the office of the Quitman County Farm Service Agency. OWCP also found that the county executive director had not subjected appellant to harassment or discrimination. It acknowledged the existence of the

⁷ Appellant submitted a November 18, 2013 emergency room report which showed that she suffered an anxiety attack on that date.

⁸ While the current claim was being filed, appellant filed a (Form CA-2a) alleging a recurrence of disability on August 25, 2014 due to a November 18, 2013 work injury.

separate case file for a December 20, 2012 injury (file xxxxxx832) and noted, “If you have any medical problems associated with this work injury, you will need [to] submit your concerns in writing as this case file is still open for medical treatment for the left black eye.”

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.⁹ 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.¹⁰

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.¹¹ 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.¹² 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.¹³

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from the employee’s performance of his or her regular duties, these could constitute employment factors.¹⁴ 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.¹⁵

An employee 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

⁹ *Lillian Cutler*, 28 ECAB 125 (1976).

¹⁰ *Gregorio E. Conde*, 52 ECAB 410 (2001).

¹¹ *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 556 (1991).

¹² *William H. Fortner*, 49 ECAB 324 (1998).

¹³ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁴ *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

¹⁵ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

adversely affected by employment factors.¹⁶ This burden includes the submission of a detailed description of the employment factors or conditions which he or she believes caused or adversely affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.¹⁷

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.¹⁸ If an employee 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, it must base its decision on an analysis of the medical evidence.¹⁹

ANALYSIS

On December 5, 2013 appellant filed an occupational disease claim alleging an emotional condition due to various incidents and conditions at work.²⁰ OWCP denied the claim because she had not established any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.

Appellant's allegations do not pertain to her regular or specially assigned duties under *Cutler*.²¹ Rather, she alleged error and abuse in administrative matters and harassment and discrimination on the part of her supervisor.

¹⁶ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹⁷ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹⁸ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁹ *Id.*

²⁰ OWCP had previously accepted in January 2012, under a separate claim file, that appellant sustained aggravation of major depression, recurrent episode. The Board notes that this accepted emotional condition is not related to the claimed emotional condition of the present claim. OWCP also had previously accepted, under a separate claim file, that appellant sustained a left black eye on December 20, 2012.

²¹ *See supra* note 9.

Appellant alleged that her employing establishment committed wrongdoing by proposing to transfer her from the office of the Coahoma County Farm Service Agency to the office of the Quitman County Farm Service Agency. She noted that in June 2013 she was advised that she would be permanently transferred to the Quitman County office, a location which now had two employees with whom she had previous dealings at the Coahoma County office.²²

The decision to reorganize an employing establishment entity or to transfer an employee from one division to another concerns an administrative and personnel matter.²³ The Board has found that 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. 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.²⁴

The Board finds that appellant failed to submit any evidence error or abuse with respect to the transfer from the Coahoma County office to the Quitman County office. Appellant did not submit evidence, such as a final decision of a complaint or grievance, which showed that the employing establishment had committed wrongdoing with respect to this matter. The employing establishment explained that, due to changes in workload and lack of staffing, farm loan teams had to be realigned in order to continue providing adequate service to customers. As a result of this realignment of teams, the positions currently in Coahoma County were being moved to Quitman County, effective November 17, 2013. The employing establishment denied appellant's July 2013 reasonable accommodation request to remain in the Coahoma County office as there would no longer be any farm loan technician positions at the Coahoma County office after November 17, 2013.²⁵ Thus, appellant has not established a compensable employment factor under FECA with respect to her claims that management committed error or abuse with respect to administrative matters.

Appellant claimed that the county executive director at the Coahoma County office subjected her to harassment and discrimination. The employing establishment denied that

²² On appeal appellant's counsel asserts that appellant alleged that she sustained an emotional condition due to the direct effects of her December 20, 2012 injury under OWCP File No. xxxxxx832, a separate claim which was accepted for a left black eye. Appellant made no such allegation in connection with the present occupational disease claim she filed on December 5, 2013, but rather she emphasized her reaction to the proposed transfer from the Coahoma County office to the Quitman County office. In its November 18, 2014 decision, OWCP acknowledged the existence of the separate case file for the December 20, 2012 injury and properly advised appellant, "If you have any medical problems associated with this work injury, you will need [to] submit your concerns in writing as this case file is still open for medical treatment for the left black eye."

²³ The Board notes that the transfer from the Coahoma County office to the Quitman County office does not pertain to appellant's regular or specially assigned duties under *Cutler*. Appellant suffered panic attacks while traveling to the Quitman County office for the first time on November 18, 2013 and was taken to the hospital shortly after her arrival. *See supra* note 9.

²⁴ *See supra* notes 11 through 13.

²⁵ The Board further finds that the employing establishment did not commit error or abuse in carrying out the administrative action of denying appellant's reasonable accommodation request.

appellant was subjected to harassment or discrimination and appellant failed to submit sufficient evidence to establish harassment or discrimination.²⁶ Appellant made vague and generalized claims that the county executive director was “intimidating” toward her and subjected her to harassment and discrimination with respect to work assignments and job placement, but she provided no corroborating evidence that such actions actually occurred.²⁷ Appellant filed an EEO complaint regarding these matters, but the record does not contain a final EEO decision.²⁸ Thus, appellant has not established a compensable employment factor under FECA with respect to the claimed harassment and discrimination.

For the foregoing reasons, appellant has not established any compensable employment factors under FECA and, therefore, has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.²⁹

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 did not meet her burden of proof to establish an emotional condition causally related to factors of her federal employment.

²⁶ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

²⁷ See *William P. George*, 43 ECAB 1159, 1167 (1992).

²⁸ Appellant alleged that office climate assessments of the Coahoma County office carried out by the employing establishment in October 2011 and August 2013 showed that the county executive director subjected her to harassment and discrimination. However, the memoranda of record describing these office climate assessments only contain general references to problems in the Coahoma County office and do not contain any reference specifically to appellant.

²⁹ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the November 18, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 14, 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