United States Department of Labor
Employees' Compensation Appeals Board

M.H., Appellant	)	
and	)	**Docket No. 16-1049**
	)	**Issued: November 4, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Dulles, VA, Employer	)	

Appearances:
Gale R. Thames, for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On April 22, 2016 appellant, through her representative, filed a timely appeal from a January 19, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

[3] On July 15, 2016 appellant, through her representative, requested oral argument before the Board. As appellant's oral argument request was made more than 60 days after the April 22, 2016 filing of the present appeal, her request is untimely and the Board will proceed to consideration of the case on the record. *See* 20 C.F.R. § 501.5(b) (providing that a request for oral argument must be submitted in writing to the Clerk of the Board no later than 60 days after the filing of the appeal).

ISSUE

The issue is whether appellant met her burden of proof to establish a stress-related condition in the performance of duty.

FACTUAL HISTORY

On October 17, 2014 appellant, then a 42-year-old postal inspector, filed an occupational disease claim (Form CA-2) claiming that she sustained a swelling condition called idiopathic angioedema, which particularly affected her face and hands, due to exposure to work factors over time.[4] She asserted that she sustained sporadic episodes of swelling after she was harassed by her prior supervisor "regarding my OWCP injury."[5] Appellant indicated that she first became aware of her claimed condition on July 25, 2014 and that she first realized on August 5, 2014 that it was caused or aggravated by her employment. She stopped work on September 27, 2014. Appellant's immediate supervisor completed her portion of the Form CA-2 on November 6, 2014 and included an attachment in which she indicated that appellant's claims of harassment by her former supervisor were investigated and found to be unwarranted.

Appellant submitted an August 28, 2014 document in which she indicated that, on June 20, 2014, she had a telephone conference with her prior supervisor about an e-mail he had sent on that date. She asserted that the supervisor was "aggressive, threatening, and harassing which completely took me by surprise and caused immediate stress." Appellant indicated that the harassment continued for weeks and that she had a meeting with the head of the inspector division about this claimed harassment. She indicated that she noticed that she suffered swelling and large hives after some of the incidents of harassment.

Appellant submitted medical evidence in support of her claim, including reports in which attending physicians diagnosed her with idiopathic angioedema and acute stress disorder.

In a letter dated December 8, 2014, OWCP requested that appellant submit additional factual and medical evidence in support of her claim. On December 8, 2014 it also requested additional information from the employing establishment.

Appellant submitted photocopies of photographs she took in mid-July 2014 which she characterized as showing swelling in her hands, feet, and face. She also submitted additional medical evidence in support of her claim.

In a December 30, 2014 statement, appellant's current, immediate supervisor indicated that appellant's prior supervisor had a conversation with appellant in June 2014 about a request that she account for her activities during her workday so that he could use that information to evaluate her workload and assign her duties that were within the confines of her light-duty

[4] OWCP previously accepted that appellant sustained a work-related left knee injury on March 19, 2013. At the time she filed her Form CA-2 in October 2014, she was working in a light-duty position due to the March 19, 2013 injury. This other claim is not before the Board on the present appeal.

[5] Evidence of record reveals that appellant worked this prior supervisor until some point in September 2014.

restrictions. The current supervisor noted that the prior supervisor denied making threatening or harassing statements to appellant and that appellant had not exhibited any signs of distress during or after their conversations.

In a decision dated February 23, 2015, OWCP denied appellant's claim for a stress-related condition because she had not established any compensable employment factors. It found that she had not established her claims of harassment, discrimination, and wrongdoing with respect to administrative matters.

By appeal request form dated June 25, 2015, received July 2, 2015, appellant requested reconsideration of the February 23, 2015 decision.

In a June 25, 2015 statement, appellant indicated that on June 20, 2014 while performing her light-duty assignment she received an e-mail from her prior supervisor which outlined changes to her normal assigned work duties. She indicated that she was asked to provide a weekly report which showed the work she was performing. Appellant noted that on June 20, 2014 she telephoned her supervisor to inquire why the changes were being made. She contended that his tone during the conversation was threatening and harassing and that he indicated that she needed to find her own work to perform or the employing establishment would ship her to Washington, DC to perform data entry work. Appellant claimed that as a result of receiving the June 20, 2014 e-mail from her supervisor and the follow-up conversation she had with him the same day, she became physically and emotionally stressed. She claimed that no other inspector had to report their work activities to such an extent and indicated that she began to experience enormous anxiety due to the fear of losing her job.

The record contains a copy of the June 20, 2014 e-mail from the prior supervisor to appellant. The supervisor indicated that he asked appellant to provide a weekly report of the work she was doing. The e-mail showed that he noted that he needed the reports to find out what work appellant was doing and if he needed to provide additional work for her. The supervisor explained that he was requesting the reports to determine if she was being gainfully employed while she was working in her light-duty assignment. He also stated that he needed the reports to assess what work appellant was actually doing at what particular point each week.

Appellant submitted copies of weekly work assignment reports she completed in June and July 2014, a May 6, 2014 "domicile review" report, and copies of correspondence with her congressional representative. She also submitted additional medical reports in support of her claim.

In a statement dated August 12, 2015, appellant's prior supervisor noted that appellant had been placed in a light-duty assignment due to an approved workers' compensation injury. He denied her allegations that he had threatened her job or threatened to have her transferred to Washington, DC. The supervisor described his request for appellant to provide him with a weekly work report and explained why it was needed to ensure that she had sufficient work available to do in her light-duty assignment. He asserted that it was never his plan to require appellant to submit the reports for many months, but rather he only intended the requirement to last long enough to assess her workload.

By decision dated January 19, 2016, OWCP denied modification of its February 23, 2016 decision denying appellant's claim for a stress-related condition, finding that she had failed to establish any compensable employment factors.

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.[6] 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.[7]

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.[8] 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.[9] 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.[10]

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[11] 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.[12]

Appellant has the burden of establishing by the weight of the reliable, probative, and substantial evidence that the condition for which she claims compensation was caused or

[6] *Lillian Cutler*, 28 ECAB 125 (1976).

[7] *Gregorio E. Conde*, 52 ECAB 410 (2001).

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

[9] *William H. Fortner*, 49 ECAB 324 (1998).

[10] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[11] *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

[12] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

adversely affected by employment factors.[13] This burden includes the submission of a detailed description of the employment factors or conditions which appellant 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.[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 record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.[16]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete and accurate factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[17]

ANALYSIS

Appellant alleged that she sustained a stress-related condition as a result of a number of employment incidents and conditions. OWCP denied her 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. The Board notes that appellant's allegations do not pertain to her regular or specially assigned duties under *Lillian Cutler*.[18] Rather, appellant has alleged error and abuse in administrative matters and harassment and discrimination on the part of a supervisor.

[13] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[14] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

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

[16] *Id.*

[17] *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

[18] *See supra* note 6.

Appellant alleged that her prior supervisor committed wrongdoing by sending her an e-mail on June 20, 2014 which outlined changes to her normal assigned work duties. She asserted that this supervisor improperly asked her to provide a weekly report which showed the work she was performing. Appellant claimed that, as a result of receiving the June 20, 2014 e-mail from her supervisor and the follow-up conversation she had with him the same day, she became physically and emotionally stressed. She claimed that no other inspector had to report their work activities to the same extent. Such 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. 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.[19]

Appellant has not established error or abuse with respect to these administrative matters. She provided no supporting evidence, such as the findings of grievances or complaints, regarding her claimed administrative work factors. The supervisor who sent the e-mail on June 20, 2014 and required the production of weekly reports submitted a statement in which he explained that the reason for the reports was to ensure that appellant had sufficient work available to perform in her light-duty assignment.[20] Appellant has not shown that the supervisor's actions constituted anything other than legitimate managing actions of a supervisor or that the supervisor otherwise committed error or abuse with this respect to administrative matters.[21] Thus, she 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 when she telephoned her prior supervisor on June 20, 2014, to inquire why changes were being made to her work tasks, his tone during the conversation was threatening, aggressive, and harassing and that he threatened to transfer her to Washington, DC to perform data-entry work. She claimed that the prior supervisor subjected her to harassment and discrimination due to her light-duty status. The Board notes that appellant's prior supervisor denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisor.[22] Appellant alleged that the supervisor made statements and engaged in actions which she believed constituted harassment and discrimination, but she provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that

[19] *See supra* note 9.

[20] The June 20, 2014 e-mail that the supervisor sent to appellant contains a similar explanation of the rationale for producing the weekly reports.

[21] Appellant submitted copies of weekly work assignment reports she completed in June and July 2014, a May 6, 2014 "domicile review" report, and copies of correspondence with her congressional representative. However, none of these documents shows error or abuse in administrative matters by management.

[22] *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).

the actions actually occurred,[23] nor did she submit the findings of grievances or complaints showing harassment and discrimination by her supervisors. Thus, she 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 an emotional condition in the performance of duty.[24]

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 a stress-related condition in the performance of duty.

[23] *See William P. George*, 43 ECAB 1159, 1167 (1992). Appellant alleged that she sustained stress because she feared losing her job, but the Board has held that fear of a reduction in force or other form of job loss is not compensable. *See supra* note 7.

[24] 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 January 19, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 4, 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