



## ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

## FACTUAL HISTORY

On May 29, 2013 appellant, then a 58-year-old natural hazards programs assistant, filed an occupational disease claim (Form CA-2) alleging an emotional condition due to overwork and harassment at work.<sup>3</sup> She first became aware of her claimed condition on January 28, 2013 and on April 1, 2013 realized that it was caused or aggravated by her employment. Appellant did not stop work around the time she filed her Form CA-2.<sup>4</sup>

In a May 29, 2013 statement, appellant provided further details of the incidents and conditions which she believed caused her to develop stress-related conditions. She reported that she had worked for the employing establishment for 22 years and asserted that her current position involved many duties and responsibilities that were not specifically outlined in her position description. Appellant further asserted that she was required to perform overtime work between November 2012 and February 2013 and that she was on-call 24 hours per day. She indicated that she served as a team leader/manager and that overwork from her position had taken a toll on her physical and mental health. Appellant asserted that, over the past year, she had been sexually harassed, threatened, and bullied by coworkers. She advised that she had a pending Equal Employment Opportunity (EEO) complaint regarding these matters. Appellant noted that an attached document described additional claimed employment factors.

In an attached, unsigned, and undated document with the heading, "EEO Chain of Events," appellant reported that, beginning in November 2012, she was deployed to work for the employing establishment in New York City. She listed incidents in January and February 2013 that she believed constituted sexual harassment by coworkers. Appellant asserted that, during an employee party held on January 7, 2013, a coworker asked why she did not move to a hotel that was closer to a coworker and suggested that she "do something" with the coworker. On January 12, 2013 two coworkers encouraged appellant to have an affair with another coworker. Appellant indicated that on January 13, 2013 a coworker asked her when she was going to do laundry for the coworker with whom she was encouraged to have an affair. She claimed that, at an employee party held on January 26, 2013, a coworker touched her inappropriately and made an unwanted sexual comment to her. Appellant asserted that on three occasions (on February 8, 11, and 13, 2013) a coworker made derogatory comments to another coworker in her presence which she believed were directed at her.<sup>5</sup>

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<sup>3</sup> Appellant alleged that she suffered from nightmares, lack of sleep, headaches, migraines, chronic body pains, anxiety, mood swings, psychological distress, and palpitations.

<sup>4</sup> On the same form, appellant's supervisor indicated that appellant's regular work hours were 8:00 a.m. to 5:00 p.m., Monday through Friday.

<sup>5</sup> Appellant indicated that the coworker used Spanish words which would be translated into English as "bitch," "liar," and "uglier than the devil."

Appellant submitted an April 1, 2013 report in which Dr. Mahe T. Nadeem, an attending Board-certified physical medicine and rehabilitation physician, diagnosed post-traumatic stress disorder reaction.

In a June 17, 2013 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim. On June 17, 2013 it also requested additional information from the employing establishment.<sup>6</sup>

In a July 10, 2013 letter, counsel argued that the factual and medical evidence of record established the existence of work-related emotional conditions. In a response to OWCP's development letter, appellant answered various questions posed in that letter. She provided additional details about each of the instances of sexual harassment she claimed in her prior statements.

Appellant submitted copies of e-mails dated between January 30 and February 13, 2013. In some of these e-mails, she discussed the incidents of harassment that she alleged in connection with the present emotional condition claim. Appellant submitted additional medical evidence in support of her claim, including an April 4, 2013 report of Dr. Sat K. Khalsa, an attending clinical psychologist.

In a January 10, 2014 decision, OWCP denied appellant's claim for a work-related emotional condition because she had not established any compensable employment factors. It found that she had not submitted probative evidence supporting her claims of harassment and overwork.

Appellant submitted additional medical evidence including a May 9, 2014 report of Dr. Nadeem.

In a January 6, 2015 letter, appellant, through counsel, requested reconsideration of her claim. She submitted several witness statements in support of her claim. In a January 27, 2014 statement, a coworker asserted that she and appellant had been subjected to a pervasive hostile work environment including sexual harassment by men against women. She indicated that appellant was punished for reporting this harassment. In a February 2, 2014 statement, a friend of appellant noted that appellant informed her that a coworker inappropriately touched her in late 2012 or early 2013. In a July 8, 2014 statement, a coworker described an incident on or about December 3, 2012 when appellant fell to the ground while visiting an inspection site.

Appellant also submitted time and attendance sheets, certified by the employing establishment, dated between November 2012 and February 2013 which showed that she worked overtime for much of this period.<sup>7</sup> She submitted additional medical evidence in support of her claim, including a December 29, 2014 report of Dr. Anthony Moore, an attending Board-certified psychiatrist.

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<sup>6</sup> OWCP received a July 8, 2013 letter advising that the employing establishment could not respond to the development letter because appellant's EEO claim was being considered at that time.

<sup>7</sup> The records show that appellant routinely worked more than 40 hours per week during this period, including working six-day workweeks of approximately 60 to 70 hours on several occasions.

By decision dated May 28, 2015, OWCP denied modification of its January 10, 2014 decision denying appellant's emotional condition claim. It again found that she had not established any compensable employment factors with respect to the claimed harassment and overwork.

### **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.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup>

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that appellant has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to appellant's condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to appellant's stress-related condition.<sup>12</sup>

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.<sup>13</sup> If a claimant does implicate a factor of

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<sup>8</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>9</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>10</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

<sup>11</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>12</sup> *See Leslie C. Moore*, 52 ECAB 132, 134 (2000).

<sup>13</sup> *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

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.<sup>14</sup>

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.<sup>15</sup>

### ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. OWCP denied her emotional condition claim as she had not established any compensable employment factors. The Board must initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA. The Board notes that some of appellant's allegations pertain to her regular or specially assigned duties, as under *Cutler*.<sup>16</sup> She has also alleged harassment on the part of her coworkers.

Appellant asserted that she was required to perform overtime work between November 2012 and February 2013 and that she was on-call 24 hours per day. She indicated that she served as a team leader/manager and that overwork from her position had taken a toll on her physical and mental health. The Board finds that appellant submitted timesheets covering the period between November 2012 and February 2013 which show that she worked overtime for much of this period. The records show that appellant routinely worked more than 40 hours per week during this period, including working six-day workweeks of approximately 60 to 70 hours on several occasions. The employing establishment has not disputed this allegation. Therefore, the Board finds that appellant has established a compensable factor of employment with respect to working overtime between November 2012 and February 2013.<sup>17</sup>

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<sup>14</sup> *Id.*

<sup>15</sup> *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

<sup>16</sup> *See supra* note 8.

<sup>17</sup> *See T.S.*, Docket No. 14-807 (issued June 10, 2015) (the Board found that working overtime is sufficiently related to regular or specially assigned duties to constitute a compensable employment factor). The Board also finds that appellant has not established her claims that she was on-call 24 hours per day or that she performed many duties and responsibilities that were not specifically outlined in her position description.

Appellant claimed that her coworkers subjected her to harassment on numerous occasions. For example, she asserted that on several occasions between January 7 and 13, 2013 coworkers encouraged her to have an affair with another coworker. Appellant claimed that on January 26, 2013 a coworker touched her inappropriately and made an unwanted sexual comment to her. She also alleged that on three occasions in February 2013 a coworker made derogatory comments to another coworker in her presence which she believed were directed at her. The Board finds that appellant has not submitted sufficient evidence to establish that she was harassed as alleged.<sup>18</sup> Appellant alleged that coworkers made statements and engaged in actions which she believed constituted harassment, but she provided no corroborating evidence, such as probative witness statements, to establish that the statements actually were made or that the actions actually occurred.<sup>19</sup> On appeal, counsel argued that appellant's claims of harassment were established by witness statements of record. In a January 27, 2014 statement, a coworker asserted that she and appellant had been subjected to a pervasive hostile work environment including sexual harassment by men against women. However, this vague statement is of limited probative value because the witness did not identify any specific instances when such harassment occurred.<sup>20</sup> In a February 2, 2014 statement, a friend of appellant indicated that appellant informed her that a coworker inappropriately touched her in late 2012 or early 2013. However, the friend did not directly witness this claimed instance of harassment and her repeating of appellant's unsupported assertion lacks probative value.<sup>21</sup> Appellant indicated that she filed an EEO complaint with respect to some of these claimed incidents of harassment, but the record does not contain the findings or results of any such claim. Thus, she has not established a compensable employment factor under FECA with respect to the claimed harassment.

In the present case, appellant has established a compensable factor of employment with respect to working overtime between November 2012 and February 2013. However, her burden of proof is not discharged by the fact that she has established an employment factor which may give rise to a compensable disability under FECA. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.<sup>22</sup>

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<sup>18</sup> See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment with probative and reliable evidence).

<sup>19</sup> See *William P. George*, 43 ECAB 1159, 1167 (1992).

<sup>20</sup> The witness asserted that appellant was punished for reporting harassment, but she did not provide any particular instances when such punishment was carried out.

<sup>21</sup> In a July 8, 2014 statement, a coworker described an incident on or about December 3, 2012 when appellant fell to the ground while visiting an inspection site. However, appellant has not alleged that she sustained an emotional condition due to such an incident. She also submitted e-mails, dated in January and February 2013, in which she discussed the incidents of harassment that she alleged in connection with the present emotional condition claim. The Board notes that the statements in these e-mails have not been corroborated by any other evidence of record.

<sup>22</sup> See *M.D.*, 59 ECAB 211 (2007); *supra* note 19.

As OWCP found there were no compensable employment factors, it did not analyze or develop the medical evidence. The case will be remanded to OWCP for this purpose.<sup>23</sup> After carrying out this development, OWCP shall issue a *de novo* decision regarding appellant's emotional condition claim.

**CONCLUSION**

The Board finds the case is remanded to OWCP for further development.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 28, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: September 7, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>23</sup> See *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).