

ISSUE

The issue is whether appellant met her burden of proof to establish an emotional condition causally related to factors of her federal employment.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as presented in the Board's prior order remanding case are incorporated herein by reference.

Appellant, a 41-year-old community relations specialist, filed an occupational disease claim (Form CA-2) for an emotional condition on December 13, 2012, alleging that she was subjected to stress due to her working conditions on December 10, 2012.⁴ She asserted that she was arriving at a town hall meeting on that date when she began having chest pains and vomiting. Appellant was taken to the hospital and underwent additional tests, which indicated that she had sustained a heart attack.

By letter dated December 31, 2012, OWCP advised appellant that she needed to submit additional information in support of her claim. It asked appellant to describe in detail the employment-related conditions or incidents, which she believed had contributed to her emotional condition, and to provide specific descriptions of all practices, incidents, etc., which she believed affected her condition. Appellant was afforded 30 days to submit this additional evidence.

In a statement received by OWCP on January 18, 2013, appellant asserted that she initially experienced symptoms shortly after arriving at the town hall meeting. She contended that the progression of her heart attack began two weeks earlier at which time she had been working long hours and late nights and felt very tired and weak. Appellant advised that management told her one week prior to the heart attack that employees were to "stand down" due to threats against the employing establishment. The day prior to her heart attack was a Sunday. Appellant explained that she spent most of that day off preparing for the town hall meeting scheduled for the next day. She also noted that the previous week had been very busy due to meeting Hurricane Sandy survivors and attending Town hall meetings. Appellant related that on the day she had her heart attack, she began to vomit and sweat shortly after she walked to the Town hall meeting. She experienced severe chest pains and began to have pain in her teeth and jaw. Appellant was not aware that she was having a heart attack, but knew something was not right.

Appellant asserted that the stress of her job aggravated her condition. She explained that her job produced stress for employing establishment employees because they did not know what was next, whether their lives were in danger, or whether they would be safe while attending Town hall meetings. Appellant reported having no previous cardiac/heart-related symptoms or high blood pressure problems.

³ Docket No. 14-1100 (issued October 1, 2014).

⁴ OWCP referred to this claim as one based on traumatic injury.

A January 9, 2013 hospital report, received by OWCP on April 21, 2014, indicated that appellant had been seen in the emergency room for a myocardial infarction in December 2012. Appellant underwent a catheterization and was diagnosed with critical left main coronary disease. She underwent a two-vessel bypass procedure.

In a letter dated February 12, 2013, appellant explained that she had been “deployed” to New Jersey as a reservist to assist with Hurricane Sandy relief efforts.

By decision dated March 20, 2013, OWCP denied appellant’s claim as she failed to establish any compensable factor of employment and thus fact of injury had not been established. It accepted the fact that she attended a Town hall meeting on December 10, 2012 and subsequently sustained a heart attack. OWCP found, however, that appellant failed to meet her burden of proof to establish a compensable factor of employment which caused or contributed to her heart attack.

On March 20, 2014 appellant, through counsel, requested reconsideration.

By decision dated March 27, 2014, OWCP denied appellant’s request for reconsideration without a merit review, finding the request was untimely filed and that appellant failed to demonstrate clear evidence of error. It found the request untimely because it was received more than one year after the merit decision was issued. Therefore, appellant was not entitled to a merit review of the March 20, 2013 decision.

By order remanding case dated October 1, 2014,⁵ the Board set aside the March 27, 2014 decision, finding that appellant had filed a timely request for reconsideration. The Board noted the date of the event from which the designated period of time begins to run shall not be included when completing the time period. Thus, the Board found the request for reconsideration had been timely filed on March 20, 2014. The Board remanded the case for OWCP to consider, under the standard for reviewing timely requests for reconsideration, appellant’s request for reconsideration.

On remand, by decision dated August 6, 2015, OWCP denied modification of the March 20, 2013 decision. It found that appellant had failed to establish that the alleged work factors occurred as claimed. OWCP noted that she alleged that she experienced stress because she was working extended hours and was dealing with threats to the employing establishment’s workers, which led to her heart attack. It found, however, that she presented no factual evidence to establish that she had been working extended hours or that an actual threat was made against the employing establishment’s workers. OWCP asserted that in the absence of corroboration this must be considered a reaction to hearsay or rumors. It further found that her heart attack occurred upon arrival at the town hall meeting, not as a result of participating in the meeting. OWCP therefore concluded that she failed to implicate any compensable factors of employment because she failed to substantiate her allegations with probative and reliable evidence.

⁵ *Supra* note 3.

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*,⁶ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.⁷ There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under FECA.⁸ 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.⁹ In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a personal 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 such as an employee's frustration in 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 employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA.¹¹ 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.¹² 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.¹³

To establish that she sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric

⁶ 28 ECAB 125 (1976).

⁷ 5 U.S.C. §§ 8101-8193.

⁸ See *Robert W. Johns*, 51 ECAB 136 (1999).

⁹ *Cutler*, *supra* note 6.

¹⁰ *Id.*

¹¹ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹² *Kim Nguyen*, 53 ECAB 127 (2001). See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹³ *Roger Williams*, 52 ECAB 468 (2001).

disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.¹⁴

ANALYSIS

Appellant alleged that she sustained a heart attack because she was subjected to emotional stress while assisting relief efforts for Hurricane Sandy victims during the week prior to December 10, 2012 and upon her arrival at a town hall meeting on December 10, 2012. She asserted that she was arriving at a town hall meeting on that date when she began having chest pains and vomiting, was taken to the hospital, and underwent tests which showed that she had sustained a heart attack. OWCP found that appellant had attended the town hall meeting on December 10, 2012, but became ill shortly upon arriving. It denied her emotional condition claim, finding that she had not established any compensable employment factors. The Board must review whether the alleged incident and conditions of employment are covered employment factors under the terms of FECA.

Appellant has not attributed her emotional condition to actual performance of any specific job duties as an employee under the precedent set forth in *Cutler* during the week prior to December 10, 2012 or on that specific date. She has alleged that she was overworked and became ill because of working long hours. If established, these elements relate to her job duties under *Cutler*¹⁵ and would be compensable employment factors. The Board finds that appellant has submitted no evidence supporting her allegations that she was overworked by the employing establishment. As with all allegations, overwork must be established on a factual basis to be a compensable employment factor.¹⁶ Because appellant has not submitted any evidence corroborating these allegations, overwork cannot be deemed a compensable factor of employment.¹⁷

Regarding appellant's allegation that the employing establishment employees were receiving threats against their physical well-being, the Board has recognized that verbal threats when sufficiently detailed by the claimant and supported by evidence, may constitute compensable employment factors.¹⁸ Appellant has not established with corroborating evidence any specific threat and has not alleged or established that management ignored or tolerated any alleged threats or that it failed to take preventative action.¹⁹ The Board has recognized the

¹⁴ See *A.A.*, Docket No. 09-1661 (issued April 2, 2010).

¹⁵ *Supra* note 6.

¹⁶ *Sherry L. McFall*, 51 ECAB 436 (2000).

¹⁷ See *J.M.*, Docket No. 16-0312 (issued June 22, 2016).

¹⁸ *T.G.*, 58 ECAB 189 (2006).

¹⁹ *C.G.*, Docket No. 15-0909 (issued April 5, 2016).

compensability of physical threats in certain situations, but the factual aspects of such claimed threats must be established in order to show a compensable employment factor.²⁰

Appellant has provided a statement regarding the events of December 10, 2012. However, she has failed to provide any evidence to corroborate her allegations of an unsafe work environment or that her attendance in the town hall meeting caused the onset of stress and her heart attack. Appellant only alleged that she became ill and sustained a heart attack at the outset of the meeting. She has not established any compensable employment factors. Appellant's personal perception alone is insufficient to establish an employment-related emotional condition.²¹ For these reasons, she has not established a compensable factor of employment and thus did not meet her burden of proof.

Where a claimant has not established any compensable employment factors, the Board need not consider the medical evidence of record.²²

On appeal counsel argues that OWCP erred by failing to further develop the evidence in this case. He contends that, pursuant to *Cutler*, the employing establishment was required to respond to OWCP's June 17, 2015 developmental letter and provide a list of appellant's work duties.²³ Counsel further contends that, in light of management's stand down warning prior to the town hall meeting, that she feared for her safety, a fear that was related to work activities, this implicated a compensable work factor under *Cutler*. He argues that management was obliged to investigate the seriousness of the alleged threat and that its failure to do so was compensable. For the reasons previously set forth, the Board does not accept these contentions, as appellant has failed to meet her burden of proof.

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 established that she sustained an emotional condition causally related to factors of her federal employment.

²⁰ See *C.O.*, Docket No. 07-1290 (issued December 6, 2007); see also *Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991).

²¹ *L.G.*, Docket No. 14-1054 (issued October 21, 2014).

²² *A.K.*, 58 ECAB 119 (2006).

²³ The Board rejects counsel's argument that OWCP's omission regarding the developmental letter constituted reversible error. As noted above, the burden of proof to establish that management committed error or abuse, thereby implicating a compensable factor of employment, remains with the claimant in emotional condition cases. *Supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the August 6, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 16, 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