

FACTUAL HISTORY

On September 6, 2016 appellant, then a 40-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 26, 2016 she was stressed when a postal customer snatched mail out of her hand and her supervisor informed her that she had escalated the situation.³ She stopped work on August 27, 2016 and first received medical care on August 31, 2016. On the reverse side of the form, appellant's supervisor indicated that when she first spoke with appellant regarding the incident, appellant did not emphasize that she was stressed.

In an undated narrative statement received on September 16, 2016, appellant reported that on August 26, 2016 at approximately 10:30 a.m. she was approached on Challedon Road by a man asking her if she delivered mail on Tucker Lane. He informed her that he was waiting for a check, but it had the wrong address on it. Appellant told him that she would be delivering mail to Tucker Lane shortly. As she approached Tucker Lane, she noticed the man sitting on a motorcycle in front of the cluster box. As appellant proceeded to the cluster box, he told her that his check was addressed to apartment A1 at his street address, but he actually lived in apartment A4. She saw the check and observed that mailbox 2104 A4 did not have his name on it. As such, appellant requested that he provide her identification. The man provided identification and she noticed that while the names were the same, the addresses were different. She asked him if he had anything else to show her documenting his current address as the addresses did not match. The man became very hostile stating that he lived there and did not have anything else to provide her. Appellant informed him that she would not be able to give him any mail without something documenting that he lived there. He then snatched the check out of her hand and rapidly walked back to his motorcycle yelling that he did not care if she called the police. Appellant then called the employing establishment and informed her supervisor of the incident. She was instructed to inform the rental office who informed her that the man was not on the lease for that apartment, but they often saw his motorcycle there. Appellant called the employing establishment again, but her supervisor had left for the day. She then explained the situation to her night supervisor who instructed her to notify the supervisors' manager. Appellant further contacted the police who questioned her regarding the incident. She received a call from the Postal Inspector who stated that they would investigate the incident. At about 1:30 p.m., appellant reported receiving a call from her supervisor who informed her that she spoke with the Postal Inspector and was informed that the man did live at that address and the check belonged to him. Appellant's supervisor related that he should not have snatched the check out of her hand, but that appellant escalated the situation by asking him for his identification. Appellant stated that her job duties involved putting mail in the box and not having to talk to customers. She argued that she felt stressed, harassed, violated, assaulted, and threatened by the actions of this man and her supervisor's reaction regarding her role in the incident.

³ Appellant has seven other traumatic injury claims with a date of injury ranging from August 26, 2004 through February 4, 2016. The record before the Board contains no other information pertaining to her prior traumatic injury claims.

An August 26, 2016 Medstar emergency department note documents treatment on that date for situational stress.

In a September 15, 2016 note, Keyza Turner, a licensed clinical social worker reported that appellant attended her initial psychiatric evaluation and was diagnosed with post-traumatic stress disorder (PTSD).

In an August 31 and September 14, 2016 note, Dr. Ahmed Mohammed, a Board-certified psychiatrist, reported that appellant was under his care for work-related stress and could not return to work until September 16, 2016.

By letter dated September 30, 2016, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed. She was afforded 30 days to submit the necessary evidence.

Appellant responded to an OWCP questionnaire on October 14, 2016. She stated that, immediately following the incident, she contacted her supervisor and sought emergency medical treatment. Appellant noted no other injury since the initial incident and no similar disability prior to the injury. She identified Good Samaritan Hospital as the facility where she received emergency room treatment from Kelly Schutz, a physician assistant.

In a September 15, 2016 psychological assessment, Ms. Turner described an incident at work where a man was verbally aggressive and hostile to appellant when he snatched a check out of her hand while delivering mail. She diagnosed PTSD.

By decision dated October 31, 2016, OWCP denied appellant's claim finding that she failed to establish a diagnosed medical condition which was causally related to the accepted work incident. It found an accepted factor of employment due to the incident on August 26, 2016 when an angry and hostile man snatched a check out of her hand while on her postal route. However, the medical reports she had provided did not establish a diagnosed medical condition which could be causally related to the accepted employment factor. OWCP also found that appellant failed to establish a compensable factor of employment when her supervisor informed her that she escalated the situation by asking for the customer's identification. It noted that she failed to submit evidence that her supervisor acted in a derogatory or harassing manner by communicating this information.

On November 14, 2016 appellant requested reconsideration of OWCP's decision.

In a November 10, 2016 note, Reverend Dr. Barnett Smith, signed PhdMC, of MSU & Associates, Mental Health Counseling reported that, following several sessions with appellant, he found the prior PTSD diagnosis to be unfounded. Rather, he opined that she sustained situational stress from the initial shock and restricted her from returning to work.

By letter dated December 5, 2016, Reverend Dr. Smith, signed PhdMH, reported that he had been treating appellant for six weeks after she had undergone a full psychological profile. He noted that she initially sought treatment for what was thought to be some form of PTSD which he did not find to be accurate. Rather, Reverend Dr. Smith found signs of situational stress and recommended continued sessions.

By decision dated January 10, 2017, OWCP denied modification of the October 31, 2016 decision finding that evidence of record failed to establish that the August 26, 2016 employment incident caused a diagnosed medical condition.

LEGAL PRECEDENT

A claimant has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by factors of his or her federal employment.⁴ To establish an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.⁵

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

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.⁸ Mere perceptions of harassment or discrimination are not compensable under FECA.⁹ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.¹⁰ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹¹ A claimant must

⁴ See *Pamela R. Rice*, 38 ECAB 830 (1987).

⁵ See *S.J.*, Docket No. 12-1512 (issued February 12, 2013).

⁶ *Supra* note 2; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

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

⁸ *K.W.*, 59 ECAB 271 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

⁹ *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁰ *J.F.*, 59 ECAB 331 (2008).

¹¹ *G.S.*, Docket No. 09-0764 (issued December 18, 2009); *Ronald K. Jablanski*, 56 ECAB 616 (2005); *Penelope C. Owens*, 54 ECAB 684 (2003).

establish a factual basis for his or her allegations of harassment or discrimination with probative and reliable evidence.¹²

Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.¹³ Additionally, physical contact by a coworker or supervisor may give rise to a compensable work factor, if the incident is established factually to have occurred as alleged.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.¹⁶ 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.¹⁷

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a postal customer snatching a check out of her hand while she was delivering mail on August 26, 2016 and because her supervisor accused her of escalating the situation. OWCP accepted that a check was snatched from her hand while she was inquiring about a customer's address, but denied her emotional condition claim because she did not establish that the accepted employment factor caused a diagnosed medical condition. The Board finds that the evidence of record is insufficient to establish that appellant sustained an injury causally related to the accepted employment factor.

Appellant has established one compensable factor of employment, that the August 26, 2016 employment incident where a male customer became hostile and grabbed a check out of her hand while she was delivering mail on her Postal route. 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 traumatic injury claim for an emotional condition, appellant must also submit rationalized medical evidence establishing an emotional or

¹² *Beverly R. Jones*, 55 ECAB 411 (2004).

¹³ *Marguerite J. Toland*, 52 ECAB 294 (2001).

¹⁴ *Denise Y. McCollum*, 53 ECAB 647 (2002); *Helen Casillas*, 46 ECAB 1044 (1995).

¹⁵ *D.L.*, 58 ECAB 217 (2006); *Jeral R. Gray*, 57 ECAB 611 (2006).

¹⁶ *K.W.*, 59 ECAB 271 (2007); *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

¹⁷ *Robert Breeden*, *supra* note 8.

psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.¹⁸

In August 31 and September 14, 2016 notes, Dr. Mohammad reported that appellant was under his care for work-related stress. The physician failed to provide a firm medical diagnosis nor any opinion regarding the cause of a medical condition. Nor did Dr. Mohammad discuss the August 26, 2016 employment incident which appellant has alleged caused her injury. Without any mention of the August 26, 2016 employment incident, any findings made could not establish causal relationship.¹⁹ Medical opinion evidence must reflect a correct history and offer a medically sound explanation by the physician of how or why the specific employment factor caused or aggravated appellant's claimed condition.²⁰ Thus, Dr. Mohammed's opinion is of limited probative value and is insufficient to establish her emotional condition claim.²¹

The reports of Reverend Dr. Smith dated November 10 and December 5, 2016 are also insufficient to establish appellant's claim.²² His credentials remain unclear as he noted both PhdMH and PhdMC under his signature line. While a clinical psychologist is considered a physician under FECA, there is no indication that Reverend Dr. Smith is a clinical psychologist.²³ As he is not a physician as defined under FECA, his reports are of no probative value.²⁴

The additional disability certificates from the licensed clinical social workers are also insufficient to establish appellant's claims as they are not signed by a physician. Social workers, are not physicians as defined under FECA, therefore their opinions are of no probative value.²⁵ Thus, the Board finds that appellant has not submitted rationalized medical evidence establishing a diagnosed medical condition causally related to the August 26, 2016 compensable employment factor.²⁶

¹⁸ See *William P. George*, 43 ECAB 1159, 1168 (1992).

¹⁹ *S.Y.*, Docket No. 11-1816 (issued March 16, 2012).

²⁰ *M.R.*, Docket No. 14-0011 (issued August 27, 2014).

²¹ See *L.M.*, Docket No. 14-0973 (issued August 25, 2014); *R.G.*, Docket No. 14-0113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

²² *F.S.*, Docket No. 10-1398 (issued May 12, 2011).

²³ 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. See also *Roy L. Humphrey*, 57 ECAB 238 (2005).

²⁴ *Id.*

²⁵ The Board has held that medical evidence must be from a qualified physician and that a social worker is not a physician as defined under FECA such that an opinion from a social worker is of no probative medical value. See *S.S.*, Docket No. 13-1919 (issued May 16, 2014); 5 U.S.C. § 8101(2) (defines the term physician).

²⁶ *M.M.*, Docket No. 06-0998 (issued August 28, 2006).

The Board notes that appellant also alleged that her supervisor informed her that she escalated the August 26, 2016 incident when she asked the customer for his identification. Appellant stated that her supervisor made her feel like it was her fault that the incident happened. She provided no corroborating evidence or witness statements to establish that she was harassed by her supervisor.²⁷ Rather, appellant has provided general stated assertions that she was dissatisfied with her supervisor's reaction towards her following the August 26, 2016 incident. Mere perceptions of harassment or discrimination are not compensable. Rather, appellant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.²⁸ The Board finds that she has failed to establish that she was subjected to harassment by her supervisor.

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 in the performance of duty causally related to a compensable employment factor.

²⁷ *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

²⁸ *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the January 10, 2017 and October 31, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 18, 2017
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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