

FACTUAL HISTORY

On June 30, 2015 appellant, then a 57-year-old mail processor filed a notice of occupational disease (Form CA-2) claiming that she sustained an emotional condition in the performance of duty due to a pattern of harassment by management. In accompanying statements, she alleged that supervisor K.B. yelled at her on April 19, 2015 regarding taking her lunch late and threatened to take away her position. Appellant alleged that on May 11, 2015, supervisors K.B. and A.P. yelled at her and removed her time card because they thought she did not work on Mother's Day, but appellant claimed that she had reported to work that day. She asserted that, by removing her time card from the rack on May 11, 14, and 28, and June 15 to 22, 2015, managers were retaliating against her for filing an Equal Employment Opportunity (EEO) complaint.

In a July 1, 2015 letter, supervisor A.P. asserted that on April 19, 2015 she was walking toward appellant and K.B. at the time of the alleged altercation, but that she did not hear K.B. yell or scream. Instead, appellant approached A.P. "screaming and yelling about her time card missing" and alleging that someone had interfered with her money. Appellant later apologized for yelling.

Dr. Dadhija Patel, an attending osteopath Board-certified in internal medicine, provided a June 11, 2015 letter relating appellant's account of harassment at work, causing anxiety.

In a July 10, 2015 letter, OWCP advised appellant of the additional evidence needed to establish her claim, including factual corroboration of the alleged harassment, and a statement from her attending physician explaining how and why those factors could have caused the claimed emotional condition. Appellant was afforded 30 days to submit such evidence.

In response, appellant submitted additional statements reiterating her prior allegations. She also provided chart notes dated June 10, 2015 to March 7, 2016 from Dr. Pradeep Thapar, an attending Board-certified psychiatrist, finding her disabled for work due to major depressive disorder and generalized anxiety. Dr. Thapar prescribed medication.³

In a July 8, 2015 letter, a union official noted meeting with manager J.G. on June 29, 2015. J.G. asserted that she was unaware that appellant had filed EEO complaints against K.B. She explained that appellant's time card could have been missing because she "did not leave it in the rack in Automation as [appellant was] instructed by" supervisor W.P. J.G. called W.P. and verified that he had instructed appellant to leave her time card in the Automation division, and not to take it with her to the Priority Mail division. J.G. noted that since appellant began leaving her time card in Automation as instructed, there had not been a problem with it not being in the rack when she clocked in.

In an e-mail received on August 7, 2015, manager J.G. denied yelling at appellant, harassing her, or pressuring her to drop her EEO claim.

In a July 29, 2015 e-mail, supervisor W.P. related that appellant had accused supervisors of moving or hiding her time card. W.P. explained that as appellant worked in different

³ Appellant also submitted medication management notes from a nurse practitioner. She claimed compensation (Form CA-7) from July 9 to 24, 2015, and from December 26, 2015 to April 1, 2016.

divisions and often arrived after work was assigned at noon, it was sometimes difficult for her to recall where she had last clocked out. W.P. instructed appellant to leave her time card in the rack at the Automation unit, punch out for lunch at Automation, “and to end [appellant’s] tour leaving her time card in the card area.” After appellant began complying with these instructions, she had no difficulty locating her card and had not accused others of moving it.

By decision dated March 31, 2016, OWCP denied the claim, finding that appellant had not established any compensable factors of employment. It found that she had not established the April 19 or May 11, 2015 incidents as factual, as supervisory witness statements contradicted her version of events. Additionally, OWCP found that appellant submitted insufficient evidence to establish that management personnel had hidden her time card as alleged. As appellant had failed to establish any compensable work factors, OWCP did not address the medical evidence.

On April 25, 2016 appellant requested reconsideration. She submitted April 6 and May 4, 2016 notes from Dr. Patel diagnosing major depressive disorder and generalized anxiety disorder. Appellant also filed claims for compensation from April 16 to June 24, 2016.

By nonmerit decision dated July 7, 2016, OWCP denied reconsideration, finding that the evidence submitted was irrelevant or immaterial to appellant’s burden to establish compensable work factors. It noted that the medical evidence was irrelevant as appellant had not established any compensable employment factors.

LEGAL PRECEDENT -- ISSUE 1

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. 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.⁴

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 adversely affected by employment factors.⁵ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁶

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

⁴ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁶ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

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.⁷ 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.⁸

For harassment or discrimination to give rise to a compensable disability under FECA, there must be probative and reliable evidence that harassment or discrimination did in fact occur.⁹ Mere perceptions of harassment, retaliation, or discrimination are not compensable under FECA.¹⁰

ANALYSIS -- ISSUE 1

Appellant has not attributed her emotional condition to the performance of her regular or specially assigned duties as a mail processor under *Cutler*.¹¹ Rather, this case is solely based on her allegation that her supervisors yelled at her on April 19 and May 11, 2015, and retaliated against her for filing an EEO complaint by moving or hiding her time card on May 11, 14, 25, and 28, and June 15 to 22, 2015. On July 20, 2015 OWCP advised appellant of the type of evidence needed to establish her claim. Appellant provided additional statements reiterating her allegations and medical evidence. OWCP denied the claim on March 31, 2016, finding that she had failed to establish any of her allegations as factual or compensable.

Appellant failed to submit any witness statements or other evidence corroborating her account of events. Instead, Supervisor A.P. provided a witness statement asserting that neither she nor K.B. yelled at appellant on April 19, 2015 as alleged. Rather, they claimed it was appellant who had yelled at them.

Regarding appellant's allegation that management moved or hid her time card in retaliation for her filing an EEO claim, Manager J.G. and Supervisor W.P. submitted letters explaining that appellant often left her time card in the wrong work unit, leading her to believe that someone had moved it. When she followed instructions to leave her time card in the Automation area rack, she no longer experienced difficulties with locating her card.

The Board finds that appellant has not met her burden of proof to establish any of her allegations as factual or compensable. Appellant submitted no evidence corroborating her account of events and the witness statements tend to negate her recollections. As she has not

⁷ See *Charles D. Edwards*, 55 ECAB 258 (2004); *Norma L. Blank*, 43 ECAB 384 (1993).

⁸ *Lori A. Facey*, 55 ECAB217 (2004); *Norma L. Blank*, *id.*

⁹ *Marlon Vera*, 54 ECAB 834 (2003).

¹⁰ *Kim Nguyen*, 53 ECAB 127 (2001).

¹¹ See *supra* note 3.

established any compensable factor of employment, the medical evidence need not be addressed.¹²

On appeal, appellant contends that additional evidence accompanying her appeal request is sufficient to establish her claim. However, the Board may not consider evidence for the first time on appeal that was not before OWCP at the time it issued the final decision in the case.¹³

LEGAL PRECEDENT -- ISSUE 2

To require the office to reopen a case for merit review under section 8128(a) of FECA,¹⁴ section 10.606(b)(3) of Title 20 of the Code of Federal Regulations provides that a claimant must: (1) show OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.¹⁵ Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.¹⁶

In support of a request for reconsideration, a claimant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.¹⁷ Appellant need only submit relevant, pertinent evidence not previously considered by OWCP.¹⁸ When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether OWCP properly applied the standards set forth at section 10.606(b)(3) to the claimant's application for reconsideration and any evidence submitted in support thereof.¹⁹

ANALYSIS -- ISSUE 2

Appellant requested reconsideration on April 18, 2016. She did not offer an argument. In support of her request, appellant submitted claims for wage-loss compensation and medical reports from Dr. Patel. OWCP denied reconsideration by decision dated July 7, 2016, finding that her request form, claim forms, and Dr. Patel's reports were irrelevant.

The Board finds that OWCP appropriately denied reconsideration. The critical issue in the March 31, 2016 merit decision was that appellant had not established any compensable factors of employment. To be relevant, the evidence submitted on reconsideration must address

¹² *Margaret S. Krzycki*, 43 ECAB 496 (1992).

¹³ *Supra* note 2.

¹⁴ 5 U.S.C. § 8128(a).

¹⁵ 20 C.F.R. § 10.606(b)(3).

¹⁶ *Id.* at § 10.608(b). *See also D.E.*, 59 ECAB 438 (2008).

¹⁷ *Helen E. Tschantz*, 39 ECAB 1382 (1988).

¹⁸ *See supra* note 14. *See also Mark H. Dever*, 53 ECAB 710 (2002).

¹⁹ *Annette Louise*, 54 ECAB 783 (2003).

that issue. The compensation claim forms and the medical evidence are not relevant to establishing appellant's allegations as factual. Therefore, they do not comprise a basis for reopening the case.²⁰

A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence or argument. Appellant did not do so in this case. Therefore, pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant has not established an emotional condition in the performance of duty. The Board further finds that OWCP properly denied appellant's request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 7 and March 31, 2016 are affirmed.

Issued: January 13, 2017
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

²⁰ *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).