

**United States Department of Labor
Employees' Compensation Appeals Board**

D.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Doraville, GA, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 17-0073
Issued: July 11, 2017**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 17, 2016 appellant filed a timely appeal from a September 13, 2016 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant submitted new evidence on appeal. The Board's jurisdiction however is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board lacks jurisdiction to review this new evidence on appeal. *See* 20 C.F.R. § 501.2(c)(1).

On appeal, appellant contends that the medical evidence of record establishes her current anxiety and depression for which she takes medication. She also contends that she reduced her work schedule to four hours a day due to these conditions.

FACTUAL HISTORY

On April 21, 2014 appellant, then a 44-year-old manager, filed an occupational disease claim (Form CA-2) alleging that on November 9, 2014 she first became aware of her stress and anxiety and realized that her conditions were caused or aggravated by false allegations, extreme potential disciplinary measures, discrimination, and conditions of employment regarding her work duties and responsibilities. She stopped work on the filing date of her claim.

Appellant submitted an April 20, 2016 medical report from Dr. Patricia A. Jones, a Board-certified psychiatrist, who advised that appellant would be tentatively off work through May 4, 2016.

By letter dated May 10, 2016, OWCP informed appellant of the deficiencies of her claim and requested that she respond to its inquiries. It also requested that the employing establishment respond to her allegations.

In a January 20, 2016 certification of health care provider form for the Family and Medical Leave Act (FMLA), Daniel Serritella, Ph.D. and licensed psychotherapist, diagnosed depression and anxiety. Dr. Serritella placed appellant off work from January 15 to April 1, 2016.

In a May 23, 2016 narrative statement, appellant related that in June 2015 after an internal investigation conducted by the employing establishment's Office of Inspector General regarding false allegations made against her by an employee she was told not to report to work. She experienced mild symptoms of sleepiness, agitation, rapid heart beating, sadness, and loss of appetite, interest, and focus. Appellant noted that on September 15, 2015 she was interviewed regarding the allegations. In October 2015, she requested a review of the investigative findings, but claimed that she did not receive any findings or results of the investigations, as requested, which she claimed violated employing establishment policies and standard operating procedures.

Appellant stated that, in November 2015, she received a notice of proposed reduction in grade by five levels from an EAS 22 to an EAS 17 despite the fact that this notice stated that no harassment had been found. She noted that her symptoms worsened at that time and she sought medical treatment from Dr. Serritella who advised her not to return to work until April 2016. Nonetheless, appellant returned to work at the beginning of March 2016 because she felt better and hoped to continue her employment. When she returned, however, she was not allowed to return to her official position. During the last week in March 2016, appellant received a notice of decision which reduced her from a manager to a supervisor and assigned her to the Ralph McGill Station, where she had previously been subjected to the false allegations.

Appellant contended that she was completely devastated as the action appeared to be punitive, personally motivated, and an act of over aggression to support a position of authority by a new incoming postmaster. Approximately, two days later she explained that she received

an amendment to the previous notice which indicated that a new assignment was to the West End Station as a level 20 supervisor. On or about April 5, 2016 appellant reported to work at this location.

Appellant claimed that she dreaded retaliation by a high-level management official in this office who she had named in another ongoing case. She claimed that for almost 11 months she had been mocked, ridiculed, and humiliated, and was the subject of numerous rumors or speculations throughout the employing establishment due to a lack of confidentiality and harsh unwarranted personal actions. Appellant noted a recommendation from her physician that she attend two-hour sessions of group therapy, four days a week. She alleged that Postmaster O.C. decided not to allow her to return to her official job duties/tasks or to be transferred to another office. Appellant further alleged that W.W., Manager, customer service operations, conducted the investigative interview, issued the notice of proposed reduction, and denied her the opportunity to transfer to another office to resume her official job duties as a station manager. She also contended that her emotional conditions were caused by P.M., a human resources manager, and S.R., a district manager.

By decision dated June 15, 2016, OWCP denied the claim finding no compensable factors.

In an appeal request form and a letter dated June 22, 2016, appellant requested reconsideration.

Appellant submitted the November 9, 2015 notice of proposed reduction in pay or grade signed by W.W. which proposed to reduce appellant from a level 22 manager, customer services, with an annual salary of \$84,451.00 to a level 17 supervisor, customer service, with an annual salary of \$76,006.00 because she exhibited inappropriate behavior with a male city letter carrier from January to October 2014. W.W. had noted that text messages from appellant revealed that her actions were improper and violated section 665.16 of the employee and labor relations manual. W.W. provided samples of these text messages which included, "Thank u Happy Easter to u too dear;" "Unfortunately u make me feel regret for taking a personal interest n u for absolutely no reason ...;" "How r u Can't sleep;" "U r so you I wish I could answer that in graphic detail ...;" "Feeling pretty sentimental for some strange reason and NO but I do wish u were here gn my funny valentine miss u;" and "Kind of thought I might want 2 come by but I'm n gn." W.W. noted that, during the September 15, 2015 interview, appellant denied having a relationship or contact with W.C. However, W.W. possessed approximately 60 pages of text messages to the contrary. Appellant also denied inviting W.C. to her residence for dinner, but W.W. responded that she sent him a text message that read, "Is u interested n coming to dinner Sunday at 4." W.W. indicated that, while appellant's actions did not rise to the level of sexual harassment, they were inappropriate and unethical given her role as a manager.

In a March 29, 2016 letter decision, the employing establishment finalized its reduction of appellant's pay and grade.

A Merits Systems Protection Board (MSPB) order dated May 19, 2016 scheduled a preliminary status conference regarding appellant's appeal of the employing establishment's November 9, 2015 notice.

In a May 25, 2016 letter, the employing establishment rescinded its November 9, 2015 notice and the March 29, 2016 decision noting administrative error. It indicated that appellant would remain an EAS 22 manager, customer services, and would be compensated accordingly.

Appellant submitted an April 25, 2016 referral form for inpatient medical treatment from a social worker with an unknown signature.

In a June 22, 2016 report, Dr. Katia A. Fordin, a Board-certified family practitioner, noted a history of appellant's medical treatment and listed her current medications. She also noted appellant's active problems which included, among other things, reactive depression and anxiety. In prescriptions dated April 21 and June 8, 2016, Dr. Fordin ordered medication to treat appellant's diagnosed conditions.

By decision dated September 13, 2016, OWCP affirmed as modified the June 15, 2016 decision. It accepted as compensable employment factors that appellant had issued the November 9, 2015 notice of proposed reduction in pay or grade, the March 29, 2016 decision finalizing the reduction in pay or grade, and the May 25, 2016 rescission of the March 29, 2016 decision to appellant. OWCP also accepted as a compensable work factor that on May 19, 2016 appellant was issued the MSPB May 19, 2016 preliminary status conference order. However, it denied her emotional condition claim because the medical evidence of record failed to contain a rationalized medical opinion as establishing a causal relationship between her diagnosed conditions and the accepted employment factors.

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.³ To establish that he or she sustained 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 her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.⁴

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 her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁵ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-

³ *Pamela R. Rice*, 38 ECAB 838 (1987).

⁴ *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁵ *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.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 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, it must base its decision on an analysis of the medical evidence.⁸

ANALYSIS

Appellant has not attributed her emotional condition to the performance of her regular or specially assigned duties as a manager under *Lillian Cutler*.⁹ Rather, her claim pertains to her allegation that the employing establishment wrongfully investigated and disciplined her based on false accusations of her inappropriate behavior with a male subordinate. Matters involving discipline and investigations into allegations of wrongdoing are noncompensable administrative functions of the employing establishment actions unless the employee shows management committed error or abuse.¹⁰ To support such a claim, a claimant must establish a factual basis by providing probative and reliable evidence.¹¹ OWCP properly accepted as compensable factors of employment that appellant received the November 9, 2015 notice of proposed reduction in her pay or grade, the March 29, 2016 decision finalizing the reduction in her pay or grade, and the MSPB May 19, 2016 preliminary status conference order regarding these actions, which were rescinded on May 25, 2016 due to the acknowledgement of administrative error in reducing her pay or grade. The Board, therefore, finds that appellant has established error.

Regarding appellant's contention that she was wrongfully investigated, she asserted that she was told not to report to work during the investigation and that employing establishment management refused to provide findings or results of the investigation. The employing establishment retains the right to investigate an employee if wrongdoing is suspected or as part of the evaluation process.¹² The record supports that the employing establishment had a

⁶ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁷ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁸ *Id.*

⁹ *Supra* note 5.

¹⁰ *N.Y.*, Docket No. 12-0886 (issued March 26, 2015); *Donney T. Drennon-Gala*, 56 ECAB 469 (2005); *Thomas O. Potts*, 53 ECAB 353 (2002).

¹¹ *See Barbara J. Nicholson*, 45 ECAB 843 (1994).

¹² *Jeral R. Gray*, 57 ECAB 611 (2006).

legitimate reason to investigate appellant's behavior. In the November 9, 2015 notice of proposed reduction in pay or grade, W.W., manager, customer service operations, noted that the basis for this action was appellant's inappropriate and unethical behavior with a male letter carrier. She noted several sample text messages that appellant had sent to the letter carrier which indicated an inappropriate personal relationship with a subordinate. W.W. related that such behavior was inappropriate and unethical given her role as a manager and violated the employee and labor relations manual, but it did not rise to the level of sexual harassment. The Board finds that in this case the employing establishment acted reasonably and did not commit error or abuse in investigating appellant's possible inappropriate and unethical behavior.¹³ Appellant has failed to establish a compensable employment factor in this regard.

Appellant alleged that the employing establishment acted improperly with regard to her transfer to Ralph McGill Station, where she had previously been subjected to false allegations. In addition, she asserted that Postmaster O.C. and W.W. denied her requests to transfer to another office. The Board has held that denial by an employing establishment of a request for a different job, promotion, or transfer are not compensable factors of employment as they do not involve the employee's ability to perform appellant's regular or specially assigned work duties, but rather constitute her desire to work in a different position.¹⁴ Appellant did not submit any evidence of error or abuse on the part of the employing establishment in handling these administrative matters. Thus, she has not established a compensable employment factor in these regards.

The Board finds that appellant failed to establish any additional compensable factors. As OWCP determined that she had established specific compensable factors that involved the reduction of her pay and grade, the Board must review the medical evidence.¹⁵

Dr. Jones' April 20, 2016 report found that appellant would be tentatively off work through May 4, 2016. However, she did not provide an opinion addressing whether appellant's disability for work was caused or aggravated by the accepted employment factors. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹⁶ Moreover, Dr. Jones did not diagnose an emotional condition caused or aggravated by the accepted work factor.¹⁷

¹³ *Id.*

¹⁴ *D.R.*, Docket No. 16-0605 (issued October 17, 2016); *Donald W. Bottles*, 40 ECAB 349, 353 (1988) (an employee's dissatisfaction with being transferred constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable).

¹⁵ *Tina B. Francis*, 56 ECAB 180 (2004); *C.E.*, Docket No. 10-461 (issued November 23, 2010).

¹⁶ See *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁷ A probative medical report includes findings an examination, a firm diagnosis, and medical rationale supporting the opinion offered. See *M.B.*, Docket No. 17-0314 (issued May 17, 2017); *K.W.*, Docket No. 16-1176 (issued November 2, 2016).

Similarly, Dr. Fordin's June 22, 2016 report and April 21 and June 8, 2016 prescriptions are of diminished probative value. She diagnosed appellant with depression and anxiety and placed her off work from January 15 to April 1, 2016. Dr. Fordin did not offer an opinion as to whether these conditions and resultant disability were caused or aggravated by the accepted work factor.¹⁸

Also of record is the January 20, 2016 FMLA form from Dr. Serritella, a licensed psychotherapist, and April 25, 2016 referral form for inpatient medical treatment from a social worker. Evidence from a psychotherapist or social worker does not constitute competent medical evidence under FECA as neither is considered as a physician as defined under section 8102(2) of FECA.¹⁹

The Board finds that appellant has failed to submit any rationalized probative medical evidence to establish that she sustained an emotional condition causally related to the accepted employment factor. Appellant, therefore, did not meet her burden of proof.

On appeal, appellant contends that the medical evidence of record establishes her current anxiety and depression for which she takes medication. She also contends that she reduced her work schedule to four hours a day due to these conditions. As the Board found above, appellant did not submit any rationalized probative medical evidence supporting a causal relationship between her diagnosed emotional condition and the accepted employment factor.

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 failed to meet her burden of proof to establish an emotional condition in the performance of duty.

¹⁸ See *supra* note 16.

¹⁹ 5 U.S.C. § 8101(2), which provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *R.W.*, Docket No. 16-1899 (issued February 21, 2017) (social worker); *I.W.*, Docket No. 09-2307 (issued September 1, 2010) (psychotherapist). See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

ORDER

IT IS HEREBY ORDERED THAT the September 13, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 11, 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