



## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts of the case as presented in the prior Board decisions are incorporated herein by reference. The relevant facts are as follows.

On December 29, 2005 appellant, then a 49-year-old distribution clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained “mental stress and physical stress” as a result of her federal employment. Specifically, she alleged that on August 29, 2005 a supervisor, B.F., yelled at her regarding overtime. Appellant alleged that on September 1, 2005 the supervisor pushed her and grabbed leave slips in a hostile manner. She was issued a removal notice and on November 16, 2005 employing establishment inspectors had her arrested. Appellant’s supervisor noted on the reverse side of the claim form that appellant had not worked since September 1, 2005.

In a December 12, 2005 letter, an employing establishment manager wrote that appellant had been suspended as of September 1, 2005 for assaulting a supervisor while submitting a leave slip. The record contains a memorandum of telephone call dated June 26, 2006, which notes that, according to supervisor, N.C., she was allowed to go to the medical unit on August 29, 2005. When N.C., went to look for appellant, she was not in the medical unit. The supervisor returned to his workstation and she presented him with a leave slip that he refused to sign. Appellant then began hitting the supervisor on his back and appellant was arrested for assault.

By decision dated June 27, 2006, OWCP denied appellant’s claim for compensation. It found that the evidence of record did not establish that an injury occurred in the performance of duty.

On July 14, 2006 appellant requested a hearing before an OWCP hearing representative. A hearing was held on December 28, 2006. Appellant testified that on August 29, 2005 she told supervisor, B.F. that she could not work overtime because she had been injured on August 17, 2005. According to her, B.F. yelled at her when stating that if she was on the list she had to work overtime. Appellant also referred to three days of work for which she had not received pay. As to September 1, 2005, she alleged that the supervisor gave her a medical slip to go to the medical unit, but asked to go with her. Appellant felt this was harassment. She did go to the medical unit alone, but found that it was closed. When appellant returned to work, she again requested to go to the medical unit, but was refused. She wrote “denied medical treatment” on a leave slip, and the supervisor crossed it out. The supervisor then “snatched it out of my hand.” Appellant denied hitting the supervisor.

As to November 16, 2005, appellant reported that she had gone to the police department because she had filed a complaint of harassment. She alleged “the inspectors” had told her husband they had a warrant for her arrest, and the police threw her down a flight of stairs. According to appellant, the inspectors came to her home and told her she had to come to the

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<sup>3</sup> Docket No. 14-1351 (issued October 20, 2014); Docket No. 11-0512 (issued September 28, 2011); Docket No. 09-2022 (issued May 18, 2010).

employing establishment. She reported that she had filed an Equal Employment Opportunity (EEO) claim, but it was denied.

By decision dated March 15, 2007, the hearing representative affirmed the June 27, 2006 decision. The hearing representative found that appellant had not established any compensable work factor with respect to her claim for compensation.

On May 25, 2007 appellant requested reconsideration of the March 15, 2007 OWCP decision. By letter dated June 8, 2007, OWCP advised her that it was unclear what decision or issues she wanted OWCP to reconsider. Appellant resubmitted the reconsideration request on March 19, 2008. She also submitted a March 13, 2008 report from Dr. Atlener Artis-Trower, a psychiatrist, who diagnosed post-traumatic stress disorder.

By decision dated June 2, 2009, OWCP denied merit review of the claim. It found that appellant had neither raised substantive legal questions, nor submitted new and relevant evidence.

On August 5, 2009 appellant appealed to the Board. The Board, by order dated May 18, 2010, remanded the case to OWCP.<sup>4</sup> The Board found that OWCP had delayed issuing a decision on reconsideration, jeopardizing appellant's right to a review of the merits of the claim. The case was remanded for a merit decision.

OWCP issued a decision dated June 28, 2010, again denying merit review of the claim. On December 23, 2010 appellant appealed to the Board. In an order dated September 28, 2011, the Board again remanded to case to OWCP for a decision on the merits of the claim.<sup>5</sup>

By decision dated November 10, 2011, OWCP reviewed the merits of the claim and denied modification. It found that appellant had not established that her alleged injury occurred in the performance of duty.

The record indicates that appellant submitted a reconsideration request dated October 20, 2012 and received on November 15, 2012. The evidence submitted included a September 1, 2005 letter indicating that she was placed on an off-duty status without pay. Appellant also submitted an October 17, 2015 notice of removal for improper conduct on September 1, 2005<sup>6</sup> and a settlement agreement dated September 29, 2006, indicating that the removal be rescinded and she would be allowed to retire. She also submitted witness statements regarding an October 7, 2003 incident.<sup>7</sup>

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<sup>4</sup> Docket No. 09-2022 (issued May 18, 2010).

<sup>5</sup> Docket No. 11-0512 (issued September 28, 2011).

<sup>6</sup> The notice of removal found that appellant had pushed and hit B.F.

<sup>7</sup> Appellant filed a traumatic injury claim (Form CA-1) on November 4, 2003 identifying October 7, 2003 as the date of injury. That claim was assigned OWCP File No. xxxxxx927.

Appellant resubmitted her reconsideration request on January 9, 2014. By decision March 12, 2014, OWCP found that the reconsideration request was untimely filed and failed to demonstrate clear evidence of error. It found that appellant had not requested reconsideration until January 9, 2014.

On May 28, 2014 appellant again appealed to the Board. In a decision dated October 20, 2014, the Board set aside the March 12, 2014 decision.<sup>8</sup> The Board found that appellant had submitted a reconsideration request prior to January 9, 2014 and even though the October 20, 2012 reconsideration request provided a received date of November 15, 2012 in iFECS, OWCP date stamp was November 7, 2012. A November 7, 2012 received date would render the reconsideration request timely with respect to the November 10, 2011 OWCP merit decision. The case was therefore remanded to OWCP for an appropriate decision.

By decision dated February 12, 2015, OWCP reviewed the merits of the claim. It found that appellant had not established a compensable work factor, and therefore had not met one of the requirements for establishing her claim for compensation.

On February 11, 2016 appellant again requested reconsideration. She submitted medical evidence from Dr. Artis-Trower, and character witness statements. Appellant submitted a brief portion of testimony from B.F., dated February 2, 2006, in a District of Columbia Superior Court criminal case. B.F., testified “I grabbed it back. [Appellant] grabbed it and almost before it left my hand I just snatched it back.” A coworker provided a witness statement dated September 30, 2005, asserting that on September 1, 2005 she saw supervisor B.F., snatch a piece of paper out of appellant’s hand.

By decision dated May 11, 2016, OWCP reviewed the merits of the claim and denied modification. It found that appellant had not met her burden of proof to establish a compensable work factor.

### **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.<sup>9</sup> 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 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.<sup>10</sup>

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 illness has

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<sup>8</sup> Docket No. 14-1351 (issued October 20, 2014).

<sup>9</sup> *W.M.*, Docket No. 15-1080 (issued May 11, 2017); *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>10</sup> *Id.*, see also *Donna Faye Cardwell*, 41 ECAB 730 (1990).

some connection with the employment, but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it, but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. On the other hand, where disability results from an employee's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>11</sup>

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.<sup>12</sup> Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.<sup>13</sup>

The Board has addressed the difficulty in determining whether interactions between employees will give rise to coverage under FECA where harassment is alleged through verbal altercations or difficult relationships between employees.<sup>14</sup> The difficulty in such claims is the subjective nature of a claimant's perceptions to his or her work environment. To support a claim for compensation, the claimant must specifically delineate those factors or incidents to which the emotional condition is attributed and submit supporting factual evidence verifying that the implicated work situations or incidents occurred as alleged. Vague or general allegations of perceived harassment, abuse or difficulty arising in the employment are not sufficient to give rise to compensability under FECA.<sup>15</sup>

### ANALYSIS

In the present case, appellant has alleged that she sustained stress as a result of interactions with a supervisor on August 29 and September 1, 2005. She has also noted administrative actions of the employing establishment such as an October 15, 2005 notice of removal, and has referred to November 16, 2005 incidents involving the local police and employing establishment inspectors.

Appellant has not attributed her emotional condition to the performance of her regular or specially assigned duties as a mail processor under *Cutler*.<sup>16</sup> Therefore, the initial question is whether she has alleged and substantiated compensable work factors.

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<sup>11</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>12</sup> *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

<sup>13</sup> *Margreate Lublin*, 44 ECAB 945, 956 (1993).

<sup>14</sup> *E.H.* Docket No. 11-0798 (issued March 22, 2012); *Paul Trotman-Hall*, 58 ECAB 189 (2006).

<sup>15</sup> *Id.*

<sup>16</sup> *See supra* note 9.

With respect to an August 29, 2005 incident, appellant alleges that a supervisor yelled at her regarding her decision not to work overtime the following day. She did not provide additional detail or supporting statements. The Board has held that the raising of a voice during the course of a conversation does not warrant a finding of verbal abuse.<sup>17</sup>

Appellant alleges that, on September 1, 2005, the supervisor asked to go with appellant to the medical unit, which she felt was harassment. There is no probative evidence of record establishing harassment. The request to accompany appellant was not unreasonable and any perception of harassment would be self-generated.<sup>18</sup>

It was also alleged that later that day the supervisor pushed appellant and grabbed a leave slip she had presented. There was no evidence submitted that corroborates her allegation that the supervisor pushed her. A witness indicated that the supervisor grabbed the leave slip. The record also contained brief testimony from the supervisor dated February 2, 2006, as part of criminal proceedings. Assuming the supervisor was referring to the September 1, 2005 incident, he acknowledged that he grabbed the paper as appellant also tried to grab it. However, the establishment of an incident does not establish that it was a compensable work factor. There is no evidence of record establishing that the actions of the supervisor were so unreasonable as to constitute a compensable work factor. Not every dispute or argument between employees establishes a compensable work factor.<sup>19</sup> The actions of the supervisor must be unreasonable under the circumstances.<sup>20</sup> Physical contact by a supervisor or coworker may give rise to a compensable work factor,<sup>21</sup> but there was no evidence of physical contact in this case. The Board finds that the actions of the supervisor on September 1, 2005 do not rise to the level of a compensable work factor.

As to appellant's allegations regarding improper pay and a notice of removal dated October 15, 2005, such actions are administrative functions of the employing establishment.<sup>22</sup> Only if there is error or abuse by the employing establishment is a compensable work factor established.<sup>23</sup> Appellant did not submit any evidence regarding the pay issue. The record contains a settlement agreement dated September 29, 2006 that rescinds the removal, but the rescission of a disciplinary action does not itself establish a compensable work factor. There is no admission or acknowledgment of error by the employing establishment, and the mere fact that

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<sup>17</sup> *Carolyn S. Philpott*, 51 ECAB 175, 179 (1999).

<sup>18</sup> The mere perception of harassment is not compensable. *Sandra F. Powell*, 45 ECAB 877, 886 (1994); *see also K.G.*, Docket No. 07-1687 (issued February 21, 2008).

<sup>19</sup> *See Robert P. Chamberlain*, Docket No. 01-1494 (issued October 23, 2003).

<sup>20</sup> *See Shirin S. Marshall*, Docket No. 03-1127 (issued July 6, 2004); *see also R.W.*, Docket No. 11-0362 (issued October 24, 2011).

<sup>21</sup> *Gary N. Fiocca*, Docket No. 05-1209 (issued October 18, 2005).

<sup>22</sup> *T.H.*, Docket No. 16-1164 (issued February 24, 2017); *C.T.*, Docket No. 08-2160 (issued May 7, 2009).

<sup>23</sup> *Id.*

an administrative action is later modified or rescinded does not, in and of itself, establish error or abuse.<sup>24</sup>

Appellant also refers to events on November 16, 2005, reporting that she was arrested, but she discusses the actions of local police as well inspectors from the employing establishment. She does not provide clear statement as to the sequence of events, or any probative supporting evidence that would establish error or abuse by the employing establishment. There is a reference to an EEO complaint, but no findings or other relevant evidence were submitted in this regard.<sup>25</sup>

The Board accordingly finds that appellant has not alleged and substantiated a compensable work factor in this case. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.<sup>26</sup>

On appeal, counsel argues that the snatching of a document by a supervisor is not an administrative matter and should be a compensable work factor, but as discussed above, the evidence of record did not establish the supervisor pushed appellant or otherwise made physical contact. The actions of the supervisor did not rise to the level of a compensable work factor. Counsel also refers to other claims and other alleged incidents. The claim in this case was based on specific incidents in 2005. Counsel asserts that appellant was bruised by the city police when she was arrested. As noted above, the alleged actions of the local police do not establish error or abuse by the employing establishment.

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 an emotional condition in the performance of duty causally related to a compensable work factor.

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<sup>24</sup> See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Richard J. Dube*, 42 ECAB 916 (1991) (reduction of a disciplinary letter to an official discussion did not constitute abusive or erroneous action by the employing establishment).

<sup>25</sup> See *J.M.*, Docket No. 16-0312 (issued June 22, 2016).

<sup>26</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 11, 2016 is affirmed.

Issued: June 5, 2017  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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