

coworkers on or before August 5, 2015 aggravated preexisting post-traumatic stress disorder (PTSD) related to her military service.² The employing establishment noted that appellant stopped work on or before January 22, 2016 and thereafter used Family and Medical Leave Act (FMLA) leave.

In a letter dated February 23, 2016, OWCP described the type of evidence needed to establish appellant's claim, including a detailed account of the incidents alleged to have caused the claimed condition, and an opinion from her attending physician explaining why those events would be competent to cause an aggravation of PTSD. It afforded appellant 30 days to submit such evidence.

In response, appellant provided a series of notes, e-mails, and statements alleging that from July 31 through November 3, 2015, her coworkers in the radiology department brought personal projects to work, spent hours in the breakroom while patients waited, used rude or obscene language in conversations among themselves, discussed current events involving politics and racism, used leave irregularly, arrived late, and left early. She asserted that before she would arrive at work coworkers would use her computer to log in patients, would move her chair, and would rearrange items on her desk. Appellant argued that her coworkers were hostile to her, discarded her food from the break room refrigerator on August 25, 2015, and did not invite her to a birthday party in the break room on October 22, 2015. She alleged that on August 31, 2015, a manager came to her workstation to introduce himself to her and to meet with other employees in the unit. Appellant noted that on October 28, 2015, she asked her supervisor to reassign her to another unit. She alleged that on November 2, 2015, a coworker yelled at her when she moved a desk chair, and that on November 3, 2015, coworker, T.M. confronted and yelled at her. Appellant became afraid and called the police. Although she was assigned to a new office, she contended that on November 16 and 20, 2015, a coworker opened her door and apologized for doing so. Appellant further contended that on December 3, 2015, her supervisor asked her to remove her belongings from her office so she could be assigned a new work space. She refused, and the supervisor yelled at her.

In a December 3, 2015 e-mail, appellant's supervisor instructed appellant to return to the radiology department, noting the supervisor's commitment to "the safety and maintenance of a nonhostile work environment for all employees." Appellant signed her name indicating her refusal to return to radiology.

The employing establishment provided a statement on March 4, 2016, asserting that appellant was inappropriately concerned about her coworkers' behavior and had a limited knowledge of how the radiology department worked.

By decision dated September 28, 2016, OWCP denied the claim, finding that appellant had failed to establish any compensable factors of employment. Thus, appellant did not establish an injury in the performance of duty. OWCP accepted as factual, but noncompensable, the

² Appellant received mental healthcare from October 2012 to March 2013 and in October 2015 for PTSD as the result of a traumatic event while in military service. Dr. Jonathan Skonicki, an attending Board-certified psychiatrist, noted on December 12, 2014 that appellant had a history of PTSD and general anxiety disorder (GAD). He opined that appellant's PTSD symptoms were ongoing, and possibly permanently disabling.

August 31 and October 28, 2015 conversations with managers, but found that these were administrative matters not within the performance of duty. OWCP further found that appellant's monitoring of her coworkers' behavior was not within the performance of duty. Additionally, it found that appellant had not established any of the other alleged incidents as factual.

Appellant requested reconsideration on October 18, 2016. She submitted additional evidence.

Appellant provided documents dated June 30, 2014 to November 4, 2015 requesting to transfer to another unit as a reasonable accommodation for stress. She alleged patterns of hostility and unprofessionalism within various work locations. The employing establishment authorized a transfer to the radiology department on July 23, 2015. On November 4, 2015 appellant's supervisor granted her request to transfer out of the radiology unit due to the alleged November 2, 2015 verbal altercation with coworker, T.M. Appellant had an active case with the employing establishment's office of resolution management, with no final decision as of June 24, 2016. She again requested to transfer in August and September 2016.

In statements dated May 20 and June 13, 2016, four employing establishment privacy officers and records clerks affirmed that anyone who accessed appellant's medical records from March 4, 2014 onward did so only in their professional capacity, pursuant to her medical care at the employing establishment.

In an August 9, 2016 e-mail, an employing establishment supervisor requested that the radiology staff work together to improve communication. He asked appellant to alert her coworkers if a patient was waiting for a technician.

Appellant also submitted a December 3, 2016 leave request and various incomplete documents of an Equal Employment Opportunity pleading.

By decision dated December 7, 2016, OWCP denied modification of the prior decision, finding that the additional evidence failed to establish any compensable factors of employment "under the performance of duty."

LEGAL PRECEDENT

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.³

³ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

Appellant has the burden of proof to establish 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.⁴ 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.⁵

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.⁶ 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.⁷

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.⁸ Mere perceptions of harassment, retaliation or discrimination are not compensable under FECA.⁹

ANALYSIS

Appellant does not attribute her claimed emotional condition to her regular or specially assigned duties as a medical assistant under *Cutler*.¹⁰ Rather, this case is based on appellant's allegations of harassment and unprofessionalism by coworkers and supervisors. On February 23, 2016 OWCP advised appellant of the type of evidence needed to establish her claim. Appellant provided additional statements reiterating her allegations and medical evidence. OWCP accepted as factual that a supervisor visited her unit and spoke to her on August 31, 2015, and that she requested reassignment on October 28, 2015. However, OWCP denied the claim on December 7, 2016, finding that these accepted factors were not compensable and that the remainder of her allegations were not established as factual.

OWCP accepted that on August 31, 2015, an employing establishment manager visited appellant's work unit, introduced himself to her, then met with other employees. It is unclear

⁴ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁵ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁶ *See Charles D. Edwards*, 55 ECAB 258 (2004); *Norma L. Blank*, 43 ECAB 384 (1993).

⁷ *Lori A. Facey*, 55 ECAB 217 (2004); *Norma L. Blank*, *id.*

⁸ *Marlon Vera*, 54 ECAB 834 (2003).

⁹ *Kim Nguyen*, 53 ECAB 127 (2001).

¹⁰ *See supra* note 3.

from the record as to what aspect of this conversation appellant alleged as causative. The Board has held, however, that not every statement uttered in the workplace will give rise to coverage under FECA.¹¹ There is insufficient evidence to support that this incident rises to the level of a compensable factor of employment.

Regarding appellant's October 28, 2015 request for transfer due to her frustration over perceived unprofessionalism and hostility by coworkers, the Board has held that denials 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 her regular or specially assigned work duties, but rather constitute her desire to work in a different position or environment.¹² Therefore, appellant has not established a compensable factor of employment in this regard.

Additionally, appellant has not substantiated any of her allegations of harassment. She provided no witness statements or other corroborating evidence. The August 9, 2016 supervisory e-mail requesting that the radiology staff improve communication and for appellant to alert coworkers if a patient was waiting unattended, do not establish any incident of harassment or verbal abuse. As these incidents were not established as factual, they do not constitute compensable employment factors.¹³

The Board finds that appellant failed to establish any compensable factor of employment. As appellant has not established any compensable factor of employment, the medical evidence need not be addressed.¹⁴

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

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

¹² *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

¹³ *See supra* notes 8, 9.

¹⁴ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 7, 2016 is affirmed.

Issued: June 6, 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