

ISSUE

The issue is whether appellant has established an emotional condition in the performance of duty causally related to compensable factors of her federal employment.

FACTUAL HISTORY

On June 25, 2015 appellant, then a 40-year-old medical support assistant, filed an occupational disease claim (Form CA-2) alleging that she had anxiety attacks, dizziness, fainting, and vomiting as a result of her federal employment. On the claim form she described the nature of the disease or illness as schizoaffective, bi-polar personality type.

In a March 7, 2015 memorandum, an employing establishment workers' compensation program manager indicated that appellant was hired on July 27, 2014 and her employment was terminated on December 4, 2014.⁴ A March 12, 2015 letter from the employing establishment reported that her employment was terminated during her probationary period for misconduct. The employing establishment indicated that appellant had requested mediation through its Equal Employment Opportunity (EEO), and the parties reached a settlement agreement wherein the employing establishment agreed to cancel the termination and accept her resignation.

Appellant submitted a July 13, 2015 statement reporting that she had been diagnosed with schizoaffective, bi-polar personality type, with post-traumatic stress disorder (PTSD) due to military sexual trauma and that she had been in recovery since 1989.⁵ She felt that her condition had been aggravated by her federal employment. As to specific incidents, appellant discussed incidents commencing May 2, 2014. She described times when she felt ashamed during her vocational rehabilitation. There was a reference to the assistant chief of social work calling appellant at home and she reported that she felt bullied. Other references are to individuals, such as coworker L.K., who got upset at appellant and caused her to feel threatened.

Appellant alleged that on August 20, 2014 she was punched by a coworker, C.V. On August 25, 2014 another coworker yelled at her. Other incidents included a pharmacist getting angry at appellant, workers treating her poorly, and her supervisors ignoring her or making her feel bullied. Appellant noted that she worked overtime, on October 1, 2014 she was reassigned to supervisor S.L.'s team, and she felt S.L. put pressure on her. According to her, on November 16, 2014 she filed a police report. Appellant felt like she was being followed and the whole world hated her. On November 21, 2014 she alleged that she had received a crank telephone call and S.L. later told her she was a liar.

The record contains a brief statement from appellant regarding an August 7, 2015 incident. She reported that she went to "transportation" to get cash, and a patient's spouse asked

⁴ In a January 24, 2014 letter, an employing establishment rehabilitation counselor indicated that appellant was currently participating in a vocational rehabilitation program. The counselor indicated that she was in a training program to determine feasibility of further employment.

⁵ A March 16, 2015 letter from the employing establishment indicated that appellant had a 100 percent service-connected disability.

her to move out of the way for a patient with a walker. Appellant alleged that someone made an obscene gesture.

With respect to additional evidence, on July 6, 2015 appellant submitted numerous treatment notes and lab reports.⁶ By report dated September 23, 2014, Dr. Maria Hamilton, a psychologist, indicated that she discussed with appellant the need to balance her activity as she had been working a lot of overtime. She diagnosed schizoaffective disorder with depression and anxiety. In a report dated October 8, 2014, Dr. Hamilton wrote that appellant reported a negative interaction with a peer and work supervisor, regarding her unfriendly demeanor. In a report dated January 6, 2015, Dr. Jayant Geete, a psychiatrist, indicated that appellant did not want her mother involved in her care. In a February 20, 2015 report, Dr. Michael Miranda, a psychiatrist, diagnosed schizoaffective disorder and PTSD. In a March 7, 2015 report, Dr. Alysha Bundy, a psychologist, reported that appellant had hired a counselor when she was fired, and the termination was ultimately changed to a resignation.

The record contains a May 1, 2015 letter from the employing establishment relating that on November 20, 2014 appellant had made a complaint of inappropriate access to her medical records. The employing establishment indicated that an investigation determined that three staff members had accessed her medical chart without a correlation to services provided to her.

Additional medical evidence submitted included a July 17, 2015 note from Dr. Geete, who wrote that appellant had been receiving continuing treatment for PTSD, schizoaffective disorder, and borderline personality disorder. She reported that appellant had 100 percent service-connected disability and she had significant impairment due to severe symptoms. In a July 22, 2015 report, Dr. Tracy Westlake, noted that appellant had been hospitalized in the past for schizoaffective disorder.

An employing establishment supervisor, S.L., submitted a September 29, 2015 statement, contending that he had no knowledge of any employees threatening appellant and that she had a history of making false statements. The supervisor indicated that he was not appellant's supervisor at the time of the alleged incident with C.V., and had no knowledge of any allegation. As to overtime, S.L. explained that she volunteered for overtime as she indicated that she needed the extra money. He indicated that overtime was not required and appellant was never discouraged or prohibited from taking breaks.

On November 19, 2015 OWCP prepared a statement of accepted facts (SOAF) indicating that one compensable work factor had been established: three staff members had improperly accessed appellant's medical records. It indicated that no additional compensable work factors were established.

OWCP referred appellant, the SOAF, and medical records, to Dr. Alvin Burstein, a Board-certified psychiatrist, and Dr. H. Daniel Blackwood, a clinical psychologist. In a report dated December 14, 2015, Dr. Blackwood provided a history and indicated that appellant completed an Minnesota Multiphasic Personality Inventory (MMPI). He reported that diagnostic

⁶ The treatment notes do not always provide identification of the author. Some of the notes were prepared by a physician assistant.

possibilities from the MMPI profile included paranoid schizophrenia, PTSD, and mixed personality disorder with schizoid, dependent, compulsive, and passive-aggressive features.

In a report dated January 8, 2016, Dr. Burstein provided a history and results on examination. He diagnosed schizoaffective disorder, and by history PTSD and borderline personality disorder. Dr. Burstein noted the SOAF confirmed that staff members had improperly accessed appellant's medical records. He opined, "There is no evidence that [appellant's] psychiatric condition is different now than it has been in the past. Since appellant had a preexisting psychotic disorder with symptoms largely of a paranoid and an often sexual nature, and her current symptomatology is consistent to what it was before working, and while she was working, there is no evidence that her work impacted her psychiatric condition, [t]herefore, the work factors did not contribute to her condition." Dr. Burstein noted that there was no evidence that work aggravated appellant's emotional condition. He further opined that she was disabled from work as a medical support assistant, but any disability was not causally related to her medical file being accessed.

By decision dated January 26, 2016, OWCP denied the claim for compensation. It found that the medical evidence did not establish a condition casually related to the accepted compensable work factor.

On February 8, 2016 appellant requested reconsideration. In a February 2, 2016 letter, she alleged that the "emotional stress and pressure" that the employing establishment "put upon me to work hard" caused her to break her left leg on December 2, 2014 while on a treadmill.⁷ Appellant wrote that being sent around to different clinics, working overtime, and having her medical chart accessed put pressure on her to lower her body weight. According to her, other employees snapped their fingers at her and wrote her up without proper cause. Appellant alleged that upper management harassed her and threatened using her mother to scare her. She asserted that on August 25, 2015 a clerk called the police because she talked back to him. Appellant submitted chiropractor reports with respect to low back treatment. On February 10, 2016 she submitted additional treatment notes for her psychiatric condition.

By decision dated March 24, 2016, OWCP reviewed the merits of the claim and denied modification. It found that appellant had not established any additional compensable work factors and that the evidence of record did not establish her claim.

LEGAL PRECEDENT

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 factors of her federal employment.⁸ To establish her claim that she sustained an emotional condition in the performance of duty, appellant 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

⁷ Appellant also referred to falling off a bicycle and fracturing her right hand on January 27, 2015.

⁸ *Pamela R. Rice*, 38 ECAB 838 (1987).

(3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.⁹

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 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 his or her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.¹⁰ 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.¹¹

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.¹² 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.¹³

ANALYSIS

Appellant has alleged that she sustained an emotional condition casually related to factors of her federal employment. The record indicates that she underwent vocational rehabilitation and then worked as a medical support assistant from July 27 to December 4, 2014. The compensable work factor accepted by OWCP in this case was based on a May 1, 2015 letter from the employing establishment. In this letter the employing establishment acknowledged that three staff members had accessed appellant's medical chart without a proper basis. It is well established that administrative error is a compensable work factor.¹⁴

The Board has reviewed the evidence of and finds that appellant has not established any additional compensable work factors.

Appellant has alleged that she sustained an emotional condition due to working overtime. An allegation of overwork could be a compensable work factor, if it is substantiated by the

⁹ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

¹⁰ *Lillian Cutler*, 28 ECAB 125 (1976).

¹¹ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹² See *Brian H. Derrick*, 51 ECAB 417, 421 (2000).

¹³ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

¹⁴ *Id.*

evidence,¹⁵ but she provided little evidence supporting a compensable work factor in this regard. A general allegation of voluntarily working long hours does not establish a compensable work factor.¹⁶ Supervisor S.L. indicated that any overtime work was voluntary, and there is no evidence substantiating a compensable work factor as to overtime.

The record indicates that appellant's employment and the parties subsequently reached a settlement agreement, wherein the employing establishment accepted her resignation. The modification or reduction of a disciplinary action does not itself establish error or abuse in an administrative matter. There is no admission or acknowledgment of error by the employing establishment, and the mere fact that an administrative action is later modified or rescinded does not, in and of itself, establish error or abuse.¹⁷

In addition, appellant has alleged that certain work incidents contributed to an emotional condition. Some of the incidents describe interactions with others at vocational rehabilitation, where she felt like she was being bullied or threatened, but the allegations do not establish any error or abuse by the employing establishment, and no supporting evidence was provided. 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.¹⁸

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 insufficient to give rise to compensability under FECA.¹⁹ Appellant has alleged that she felt bullied, or made general allegations that coworkers snapped their fingers at her or improperly "wrote her up" without providing any relevant detail or supporting evidence. She also alleged harassment from upper management. Appellant provided no clear explanation or supporting evidence to establish harassment in this case.

Appellant described an incident where she alleged that she was hit in the stomach after beginning work as a medical support assistant on July 27, 2014. Certainly, physical contact, arising in the course of employment, may be a compensable work factor if substantiated by the evidence of record,²⁰ but there is little detail provided as to the alleged incident, and the

¹⁵ *Bobbie D. Daly*, 53 ECAB 691 (2002).

¹⁶ *T.H.*, Docket No. 16-1164 (issued February 24, 2017).

¹⁷ 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).

¹⁸ *E.H.*, Docket No. 11-0798 (issued March 22, 2012); *Paul Trotman-Hall*, 58 ECAB 189 (2006).

¹⁹ *Id.*

²⁰ See *D.S.*, Docket No. 15-0585 (issued July 11, 2016).

supervisor reported no knowledge of the incident. Appellant provided no witness statements or any evidence to support that the incident occurred as alleged.

Therefore, the Board finds that the only compensable work factor is the erroneous accessing of appellant's medical chart by coworkers, which was accepted by OWCP. Since a compensable work factor has been established, the medical evidence is reviewed to determine if a diagnosed condition is established as causally related to the compensable work factor.²¹

The medical evidence does not establish an employment-related injury. To be of probative value, the opinion of the physician must be based on a complete factual and medical background, must be of reasonable medical certainty, and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.²² None of the attending physicians provided a rationalized opinion establishing a diagnosed condition causally related to the compensable work factor. Dr. Geete, for example, diagnosed PTSD, schizoaffective disorder, and borderline personality disorder, without discussing the compensable work factor. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.²³

The only rationalized opinion of record was from Dr. Burstein, the second opinion psychiatrist. In the January 8, 2016 report, he provided a complete history and results on examination. Dr. Burstein opined that the work factor did not contribute to a diagnosed condition, noting that appellant had a preexisting psychiatric condition that had remained unchanged. His report represents the weight of the medical evidence.²⁴

On appeal, appellant contends that OWCP mistakenly denied her claim. As discussed above, the Board has considered the evidence of record and finds that she has not established her emotional condition claim.

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 10.607.²⁵

CONCLUSION

The Board finds that appellant has not established an emotional condition in the performance of duty causally related to compensable work factors.

²¹ *Supra* note 11.

²² *See G.S.*, Docket No. 16-1443 (issued February 23, 2017); *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

²³ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

²⁴ Dr. Blackwood merely provided results of MMPI clinical testing.

²⁵ To the extent appellant is alleging that, a consequential physical injury occurred on December 2, 2014, she may file a claim for a traumatic injury (Form CA-1) before OWCP.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 24, 2016 is affirmed.

Issued: May 12, 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