

ISSUE

The issue is whether appellant has established an emotional condition in the performance of duty.

FACTUAL HISTORY

On April 16, 2014 appellant, then a 32-year-old registered nurse, filed an occupational disease claim (Form CA-2) asserting that she sustained an emotional condition beginning on August 26, 2012 when the employing establishment disclosed confidential medical information related to a kidnapping and sexual assault which was unrelated to her federal employment.

On her claim form and in two accompanying narrative statements, appellant explained that on August 26, 2012 she sought emergency treatment at the employing establishment after being sexually assaulted. She alleged that nurse supervisors C.H., J.L., and L.T. revealed details of the crime to appellant's coworkers who were not involved in her care. Beginning on August 27, 2012 appellant and her sister, who also worked at the employing establishment, received social media messages about the assault from coworkers³ and persons in the community who had no direct knowledge of the event. Coworkers allegedly gossiped about the assault at work. Appellant complained to her supervisor, who held a meeting about confidentiality rules and circulated a memorandum. She asserted that, during an employing establishment investigation, C.H. admitted that appellant's privacy was violated. Appellant contended that, while she recovered from her injuries in approximately one month, she did not return to work until November 2012 due to emotional trauma and humiliation caused by her coworkers' knowledge of the assault and their continued remarks. She stated that her coworkers frequently inquired how she was feeling or gave her hugs. Appellant asserted that the invasion of her privacy victimized her for a second time. She resigned from the employing establishment on December 29, 2012 because she felt she could no longer work in an environment where her coworkers knew the details of her assault. Appellant moved to another county to "avoid the humiliation [she] experienced as an employee ... due to [the employing establishment's] disclosures. [She] suffered losses which include moving expenses, lost wages, and lost sick leave and vacation time." Appellant noted that she filed a lawsuit against the employing establishment for privacy violations under the Health Insurance Portability and Accountability Act (HIPAA).

On May 1, 2014 OWCP advised appellant of the additional evidence needed to establish her claim, including factual evidence corroborating the alleged improper disclosure, and medical evidence supporting a causal relationship between that disclosure and a diagnosed condition. It afforded her 30 days to submit additional evidence.

Appellant submitted May 2014 witness statements from her coworkers regarding the disclosure of her medical information. T.H., a registered nurse, asserted that during the night shift of August 26, 2012, L.T. told him details of appellant's kidnapping and rape to persuade

³ Appellant provided redacted August 27, 2012 Facebook messages from C.H. and another individual, indicating that they had heard disturbing news related to appellant. C.H. stated that she was "told in confidence only as it impacts staffing."

him to take extra shifts during appellant's absence. Several hours later, L.T. directed emergency room staff into a break room, then told the employees that appellant had been sexually assaulted. When T.H. remarked that this was a HIPAA violation, L.T. ended the meeting. T.H. reported the HIPAA violation to a staff physician and to C.H. Coworker S.E. recalled that supervisors C.H., C.S., and L.T. assembled the staff and told them appellant had been raped.⁴ Coworker R.F. commented that a technician went to a different floor of the hospital to tell the nursing staff about appellant's assault. Dr. D.K., an emergency room physician, recalled that L.T. told him that "nursing coverage was adjusted for the day because [appellant] had been brought in for evaluation and treatment earlier." Dr. D.K. did not ask for any further details, but L.T. told him details of the kidnapping, rape, and the nature of appellant's injuries.

In a June 10, 2014 letter, the employing establishment's medical records administrator and privacy officer acknowledged that on "October 3, 2013 [the employing establishment] became aware of a breach of [appellant's] personal health information, which occurred on August 26, 2012. The incident involved protected health information being inappropriately disclosed by the lead charge nurse, [L.T.], to a coworker at [the employing establishment] who did not have a need to know such information in order to perform their official duties. Specifically, [L.T.] disclosed the reason for [her] treatment at [the employing establishment] on August 26, 2012, when attempting to obtain coverage for [her] that day." The employing establishment provided HIPAA orientation to staff and recommended appropriate corrective measures to protect appellant's health information and that of the employing establishment's other patients.

Appellant also submitted reports dated from September 25 to December 12, 2012 from Dr. Gabriel Longhi, an attending licensed clinical psychologist, who related appellant's account of the employing establishment's improper disclosure of her medical information, her reactions to her loss of privacy, and coworker comments after she returned to work. Dr. Longhi diagnosed an adjustment disorder caused by the improper disclosures of confidential information related to the attack. He opined that "the breach had a stronger reaction in her than the actual sexual assault."

By decision dated August 5, 2014, OWCP denied appellant's emotional condition claim as it did not pertain to the performance of her duties. It found that she established as factual, but not compensable, that appellant's coworkers "heard about the assault and were talking freely of the incident," that employing establishment staff continued to discuss the assault for several weeks, that appellant felt reassaulted by her "employer's dissemination of private information," that coworkers approached her about the assault nearly every day, that appellant felt these interactions and disclosures were a second assault upon her, that she felt unable to work after these disclosures, and that she subsequently resigned. OWCP found that none of these factors occurred in the performance of duty, as they were related to appellant's status as a patient, and not to her assigned duties as a registered nurse. It further found that there was no evidence of administrative error in disclosing appellant's private health information, as "treating staff had knowledge of facts as part of providing treatment which they then passed along verbally."

⁴ S.E. sent text messages to appellant's sister in November 2012 stating that she was told at a meeting by C.H. and C.S. that one of their fellow nurses had been raped.

LEGAL PRECEDENT

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are situations when an injury or illness has some connection with the employment but nonetheless does not come within the coverage of workers' compensation as they are found not to have arisen out of the employment. 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.⁵ 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.⁶

To establish a claim that he or she sustained an emotional or stress-related condition in the performance of duty, an employee must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) medical evidence establishing that he or she has an emotional or stress-related disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the condition. If a claimant implicates a factor of employment, OWCP should determine whether the evidence of record substantiates that factor. Allegations alone are insufficient to establish a factual basis for an emotional condition claim and must be supported with probative and reliable evidence. If a compensable factor of employment is established, OWCP must then base its decision on an analysis of the medical evidence.⁷

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA.⁸ However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.⁹ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.¹⁰

For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not

⁵ *Supra* note 2; *see also* *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

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

⁷ *G.S.*, Docket No. 09-764 (issued December 18, 2009).

⁸ *See* *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

⁹ *See* *William H. Fortner*, 49 ECAB 324 (1998).

¹⁰ *Ruth S. Johnson*, 46 ECAB 237 (1994).

determinative of whether such harassment or discrimination occurred.¹¹ A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and Equal Employment Opportunity complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.¹² The issue is whether the claimant has submitted sufficient evidence under FECA to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹³ The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by OWCP and the Board.¹⁴

ANALYSIS

Appellant alleged that after she was sexually assaulted on August 26, 2012, three nurse supervisors spoke individually with staff members then called a meeting to inform appellant's coworkers that she had been kidnapped and raped, revealing details of the crime to coworkers who were not involved in appellant's care. Witness statements from three coworkers and an emergency room physician corroborate that the nursing supervisors made such remarks, conducted such a meeting, and revealed appellant's private medical information. The employing establishment also corroborated that a nurse supervisor improperly revealed appellant's confidential medical information. OWCP accepted the employing establishment's disclosure as factual, but found that it was related to her status as a medical patient at the employing establishment, not to her federal employment. It further found that coworker remarks about the assault, that appellant felt newly attacked, and her resignation were factual, but noncompensable.

The Board finds that the employing establishment's unauthorized disclosures of appellant's confidential medical information regarding her kidnapping and sexual assault were directly related to her federal employment as a nurse. Nurse supervisors who were in charge of appellant's work unit disclosed appellant's confidential medical information in meetings and conversations that they convened to address staffing issues caused by appellant's absence while she was recovering from the assault. The supervisors disclosed appellant's confidential medical information during those meetings and conversations in order to persuade appellant's coworkers to cover her work shifts. As such, the information divulged arose, not only out of her status as a patient at the employing establishment's medical facility, but also out of her status as an employee.

The Board notes that appellant's contentions do not pertain to the performance of her regular or specially assigned duties. Therefore, she has not alleged a compensable factor under *Lillian Cutler*.¹⁵

¹¹ See *Michael Ewanichak*, 48 ECAB 364 (1997).

¹² See *Charles D. Edwards*, 55 ECAB 258 (2004); *Parley A. Clement*, 48 ECAB 302 (1997).

¹³ See *James E. Norris*, 52 ECAB 93 (2000).

¹⁴ *Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁵ *Lillian Cutler*, *supra* note 5.

The Board finds that appellant's allegation that the employing establishment disclosed her private medical information relates to an administrative matter under *Thomas D. McEuen*.¹⁶ The Board has held that the unauthorized disclosure of confidential information can be a compensable factor of employment if corroborated by factual evidence and causally connected to the claimant's federal employment.¹⁷ In *Belnavis*,¹⁸ a hospital employee's personal medical information was improperly accessed from the employment establishment computer system by her supervisor and used to harass the employee. In the case at bar, no such malfeasance was alleged. However, the disclosure was acknowledged by the employment establishment medical records administrator and privacy officer, who characterized it as protected health information and found that it was inappropriately disclosed to a coworkers who did not have a need to know such information to perform their official duties. Although the disclosure was made in an effort to obtain coverage in the absence of the employee, it does not mitigate that an error of disclosure was made by the employment establishment. The staffing issues caused by appellant's absence could have been addressed without disclosing appellant's sensitive private health information and revealing details of the crime. The Board, therefore, finds that the disclosure of appellant's confidential medical information by nurse supervisors, C.H., J.L., and L.T. constituted error on the part of the employing establishment, and that appellant consequently has established a compensable factor of employment.

As appellant has established a compensable factor of employment, it must now be determined whether the medical evidence of record is sufficient to establish causal relationship between that factor and the claimed emotional condition. OWCP must base its decision on an analysis of the medical opinion evidence. Therefore, the case will be remanded to OWCP for this purpose.¹⁹ Following this and any other development deemed necessary, OWCP shall issue an appropriate decision in the case.

CONCLUSION

The Board finds that the case is not in posture for a decision.

¹⁶ *Thomas D. McEuen*, *supra* note 8.

¹⁷ *Dorthea M. Belnavis*, 57 ECAB 331 (2006).

¹⁸ *Id.*

¹⁹ *See T.F.*, Docket No. 12-0439 (issued August 20, 2012); *Robert Bartlett*, 51 ECAB 664 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 5, 2014 is set aside, and the case is remanded for additional development consistent with this opinion.²⁰

Issued: September 22, 2017
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

²⁰ James A. Haynes, Alternate Judge, participated in this decision but was no longer a member of the Board effective November 16, 2015.