

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

T.S., Appellant

and

**DEPARTMENT OF AGRICULTURE, FOREST
SERVICE, Albuquerque, NM, Employer**

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**Docket No. 16-1470
Issued: September 11, 2017**

Appearances:
*Daniel M. Goodkin, Esq., for the appellant*¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 7, 2016 appellant, through counsel, filed a timely appeal from a February 12, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

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

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.³ On February 12, 2013 appellant, a 48-year-old administrative support clerk, filed an occupational disease claim (Form CA-2), alleging that she developed an emotional condition due to ongoing stress at the workplace. By decision dated June 10, 2015, the Board affirmed a January 9, 2014 OWCP merit decision which denied appellant's claim finding that the evidence of record failed to establish an emotional condition arising from a compensable factor of employment. The Board accepted that the following events occurred, but were not compensable factors of her federal employment: (1) in the interim between a change in supervisors, appellant temporarily assumed some extra duties; (2) appellant believed she had been promised a promotion if she temporarily performed some supervisory job functions; (3) when appellant's new supervisor began work, she asked appellant to stop performing any jobs that she had been performing in the absence of any supervisor and appellant felt manipulated by not being allowed to finish those activities which she had begun; (4) her supervisor assigned her additional work that was not within the scope of her job responsibilities, including completing a spreadsheet in the midst of performing her tasks as a unit collection officer; (5) appellant's supervisor was away from the office much of the time; (6) counselors were far away from appellant's residence and it was difficult to get there because gas was so expensive; (7) appellant became stressed when she became backed up in making bank deposits in December 2012 when the system for making deposits changed; and (8) appellant began experiencing financial hardship due in part to paying a mortgage on a house in California and rent for a residence near her workplace. The Board further found that the following alleged incidents did not occur: (1) a threatening note was left on her vehicle in June 2012. The facts of the case, as set forth in the Board's prior decision, are incorporated herein by reference.⁴

In a December 10, 2013 letter, District Ranger Grady McMahan acknowledged that in December of 2012 the employing establishment was going through a nationwide change to a new financial system. He indicated that the transition was bumpy and payments were being processed very slowly, and even had to be entered by hand at times. Mr. McMahan stated that everyone was aware of this problem nationwide and it was a problem for every collection officer in the employing establishment. He asserted that "many e-mail messages were sent out about the dysfunction and being patient with systems until they were fixed." Mr. McMahan stated that throughout his time working with appellant he worked to assure her that she was doing a good job and did not push her to get more work done.

On January 20, 2016 appellant, through counsel, requested reconsideration. Counsel argued that OWCP erroneously combined employment factor number seven with appellant's allegation that she was assigned work outside the scope of her job duties. He claimed that her position as an administrative support clerk required entering bank deposits and she became stressed when she became backed up in making bank deposits in December 2012 when the

³ Docket No. 14-0807 (issued June 10, 2015).

⁴ On June 12, 2015 counsel filed a petition for reconsideration of the Board's June 10, 2015 decision. In an order dated January 20, 2016, the Board denied appellant's petition for reconsideration as it failed to establish any error of fact or law warranting further consideration. *Order Denying Petition for Reconsideration*, Docket No. 14-0807 (issued January 20, 2016).

system for making deposits changed. Counsel reargued that appellant's anxiety over the fact that she was not able to get those deposits processed on time, causing her to become backed up in making the deposits due to the change in the system used to make deposits, must be compensable as it was her job to make those deposits.

By decision dated February 12, 2016, OWCP denied modification of its prior decision, finding the evidence of record insufficient to establish a compensable factor of employment, specifically the allegation of appellant becoming stressed when she became backed up in making bank deposits in December 2012 when the system for making deposits changed. It found that the employing establishment expressed that they have been more lenient during the transition period between one financial system to another, offered assistance to employees in order to resolve any issues during the transition period, and advised employees to be "patient with systems until they were fixed."

LEGAL PRECEDENT

To establish that she sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.⁵

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.⁶ However, disability is not compensable when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.⁷

An employee's emotional reaction to administrative or personnel matters generally falls outside of FECA's scope.⁸ Although related to the employment, administrative and personnel matters are functions of the employing establishment rather than the regular or specially assigned duties of the employee.⁹ However, to the extent the evidence demonstrates that the employing

⁵ See *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁶ *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁷ *Lillian Cutler*, *id.*

⁸ *Andrew J. Sheppard*, 53 ECAB 170, 171 (2001); *Matilda R. Wyatt*, 52 ECAB 421, 423 (2001).

⁹ *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005).

establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹⁰

Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.¹¹ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter, OWCP must base its decision on an analysis of the medical evidence.¹²

ANALYSIS

In *Cutler*, the Board noted that when an employee experiences emotional stress in carrying out her employment duties, or has fear and anxiety regarding her ability to carry out her duties, and the medical evidence establishes that the disability resulted from her emotional reaction to such a situation, the disability is generally regarded as due to an injury arising out of and in the course of employment.¹³ This is true when the employee's disability resulted from her emotional reaction to her day-to-day duties, a special assignment or requirement imposed by the employing establishment, and/or by the nature of the work.¹⁴

On reconsideration counsel argued that appellant's emotional reaction to the December 2012 change in the employing establishment's bank deposit process was compensable in accordance with *E.M.* Appellant indicated that she became stressed when her bank deposits were backed up due to the implementation of a new financial system. What had previously taken just one to two days to accomplish turned into more than a one-week process. In a December 10, 2013 statement, the employing establishment acknowledged that the December 2012 nationwide transition to a new financial system was bumpy and payments were processed very slowly, and occasionally even had to be entered manually. Everyone was aware of the problem nationwide and it affected every collection officer in the employing establishment. The employing establishment further stated that many e-mail messages were sent out about the dysfunction, and those affected were advised to be patient until the new system was fixed.

In *E.M.*,¹⁵ the Board found that the employee established a compensable factor of employment under *Cutler* and, therefore, established a *prima facie* claim for compensation. The claimant alleged that she had sustained stress in the performance of her duties as an accountant pertaining to her transition to a new OCONUS computer system, involving the inputting of

¹⁰ *Id.*

¹¹ *Supra* note 5.

¹² *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

¹³ *Lillian Cutler*, *supra* note 6.

¹⁴ *Id.* at 130.

¹⁵ Docket No. 07-1074 (issued March 21, 2008).

nonretail transactions, as well as her monthly and yearly quotas. The claimant's supervisor acknowledged that there were problems with the OCONUS system transition and that the claimant required assistance from him and other employees on several occasions. In a statement supporting her claim, the claimant alleged that inadequate training, job procedures, and oral communication by management over a period of months caused job stress, profound depression, and anxiety. In the middle of January 2004, she transferred into a new division created to perform accounting work transferred from Germany under the OCONUS system. The employee asserted that the instructor providing her training was unable to answer questions regarding the OCONUS side of accounting for interfund transactions. She further asserted that the instructor basically hurried through information provided in the chapter covering interfund transactions. In February 2004, two men from Germany arrived to help with the transition to the new program and to provide additional training. The claimant alleged that the two Germans had not provided her with any individual training on the interfund transactions during the duration of their visit, although she had claimed that these two men had individually assisted other employees who were being trained for the same tasks. She stated that the only training she received occurred during two group meetings; one of these lasted approximately 30 minutes and another lasted for approximately one hour. The Board found under those circumstances that the claimant had established a factor of employment.

The December 2012 financial system change in the present case impacted appellant's ability to discharge her bank deposit duties in a timely fashion. However, the Board finds that this case is distinguishable from *E.M.* because the record established that she received adequate training, job procedures, and communication by the employing establishment regarding the transition to a new financial system. The record establishes that the employing establishment was mindful of the nationwide problem with the new financial system, and it encouraged employees to be patient during the "bumpy" rollout. The difficulty in performing her bank deposit duties in a timely fashion was mitigated by the employing establishment's recognition of the systemic problems and its encouragement to all affected employees to be "patient."

OWCP found that the employing establishment expressed that they would be more lenient during the transition period between one financial system to another, offered assistance to employees in order to resolve any issues during the transition period, and advised employees to be "patient with systems until they were fixed." Under the circumstances, appellant's reported stress in response to the December 2012 financial system transition was self-generated. As she has not otherwise attributed her claimed condition to particular duties performed on particular dates, she has not established an employment factor under *Cutler*.¹⁶ Because appellant has not substantiated a compensable factor of employment as the cause of her emotional condition the Board will not address the medical evidence.¹⁷

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.

¹⁶ *Supra* note 6.

¹⁷ See *Karen K. Levene*, 54 ECAB 671 (2003).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the February 12, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 11, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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