

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

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**E.K., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL  
CENTER, Dallas, TX, Employer**

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**Docket No. 17-0246  
Issued: April 23, 2018**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On November 14, 2016 appellant filed a timely appeal from an August 18, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 has met her burden of proof to establish an emotional condition in the performance of duty.

**FACTUAL HISTORY**

On July 11, 2016 appellant, then a 56-year-old office automation assistant, filed a traumatic injury claim (Form CA-1) alleging that, on July 8, 2016, she experienced anxiety and stress as a

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

result of being assaulted by her coworker T.R. She contended that T.R. threw a folder that hit her face and threatened her with further physical harm. T.R. told appellant that if she complained, nothing would happen to her (T.R.), but that the employing establishment would get rid of appellant.

On the reverse-side of the claim form, the employing establishment controverted the claim. It noted that an investigation failed to confirm appellant's contentions regarding the alleged July 8, 2016 incident. The employing establishment further noted that there were no witnesses to the incident. A staff registered nurse who heard appellant and the coworker arguing could not verify appellant's allegations.

By letter dated July 14, 2016, OWCP informed appellant of the deficiencies in her claim and afforded her 30 days to submit additional evidence and respond to its inquiries.

In a statement dated August 4, 2016, appellant contended that the claimed July 8, 2016 incident occurred while she was assisting a staff member renew her personal identity verification (PIV) card as instructed by M.K., chief of critical services. Appellant reiterated that T.R. threw a folder, which struck her in the face, and that T.R. was also verbally abusive, using offensive language and threatening further bodily harm. Appellant immediately contacted the employing establishment police as well as her supervisor, union, and the human resources office before the situation escalated.

In a July 22, 2016 medical report, Dr. R. Anthony Moore, a Board-certified psychiatrist and neurologist, conducted an examination and diagnosed post-traumatic stress disorder (PTSD) and major depressive episode on Axis I, an on-the-job injury on Axis IV, and a global assessment functioning score of 30 on Axis V. He noted that a diagnosis was not applicable on Axis II and Axis III. Appellant explained to him that on July 8, 2016 T.R. threw a folder that hit her face and threatened her with further physical harm. Dr. Moore advised that this very verbally confrontational and physically violent situation led appellant to feel very vulnerable, frightened, and scared. Appellant was unable to return to work. She was also hypervigilant and flooded with anxiety, fear of returning to work, and isolation because she feared being outside.

An employing establishment investigative report dated July 26, 2016 indicated that on July 8, 2016, it was alleged that a coworker threw papers at appellant's face and made threats towards her. The coworker denied making threats and contended that the papers never touched appellant. The report noted that witnesses were being sought and a follow-up investigation would be conducted.

In a July 8, 2016 e-mail, T.R. noted that on July 7, 2016 she asked appellant to assist H.M., an employee-customer, obtain a PIV card application for another staff member. Appellant refused to assist him and referred him to another employee. T.R. again asked appellant to help H.M. and she yelled at both of them. On July 8, 2016 she asked appellant to give M.A., a registered nurse, an application to renew her PIV card. Appellant placed a folder on the edge of T.R.'s desk and told nurse M.A. to fill out the PIV card application and then walked away. T.R. asked appellant if she was just going to leave the folder on her desk. In response, appellant yelled at T.R. T.R. refused to deal with appellant's behavior and walked away. T.R. returned and threw the folder towards appellant's work area. T.R. maintained that the folder hit a wall. She again left the work

area and returned to assist nurse M.A. with her application. M.A. informed T.R. that appellant had refused to help her and walked out of the office. T.R. noted that she was embarrassed that both incidents occurred in front of staff. She was tired of being bullied, yelled at, and embarrassed by appellant.

An e-mail dated July 12, 2016 from M.A. indicated that on July 8, 2016 she sought assistance with renewing her PIV card. She was greeted by T.R., who directed her to appellant for assistance. M.A. related that the second woman retrieved a folder and placed it on top of a ledge next to a computer where T.R. sat at her desk. Appellant handed M.A. the application from the folder and provided instructions for completion. M.A. noted that while she was seated in a chair and completing her application, she noticed something going on between the two women. The women exchanged words, but M.A. indicated that the conversation was not clear to her. She thought it sounded like they were fighting. M.A. related that when she asked appellant a question about the application, she responded as if she were mad. She completed the application and asked T.R. what she should do with it. T.R. did not respond and left the room.

By decision dated August 18, 2016, OWCP denied appellant's emotional condition claim, finding that the weight of the evidence had not established that the July 8, 2016 incident occurred as alleged. It further found that appellant had not submitted any rationalized medical evidence to establish a medical diagnosis in connection with the incident.

### **LEGAL PRECEDENT**

A claimant has the burden of establishing 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>2</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>3</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 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.<sup>4</sup> 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

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<sup>2</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>3</sup> *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>4</sup> *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

his or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup>

### ANALYSIS

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

Appellant has not attributed her emotional condition to the performance of her regular or specially assigned duties as an office automation assistant under *Cutler*.<sup>11</sup> Rather, appellant has attributed her emotional condition to being physically assaulted, verbally abused, and threatened with further physical assault by T.R., a coworker, on July 8, 2016. Appellant contended that T.R. threw a folder that hit her face, yelled at her, and threatened her with additional physical harm. Harassment and discrimination by supervisors and coworkers, if established as occurring and

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<sup>5</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>6</sup> See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>7</sup> See *William H. Fortner*, 49 ECAB 324 (1998).

<sup>8</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>9</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>10</sup> *Id.*

<sup>11</sup> *Supra* note 4.

arising from the performance of work duties, can constitute a compensable work factor.<sup>12</sup> A claimant, however, must substantiate allegations of harassment and discrimination with probative and reliable evidence.<sup>13</sup> Additionally, the Board has recognized the compensability of physical threats or verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.<sup>14</sup>

The Board finds that the factual evidence of record fails to support appellant's allegations of physical assault, verbal abuse, and physical threat. Appellant submitted a witness statement from M.A. who observed a conversation between appellant and T.R. on July 8, 2016. However, she did not provide any detailed description of actions that could be considered verbal abuse or a threat of physical assault by T.R. While M.A. indicated that it sounded like the women were fighting, she did not have enough information to determine whether the women were engaged in an argument or identify the nature of their argument.

In a July 8, 2016 e-mail, T.R. denied hitting appellant in the face with a folder and instead contended that appellant yelled at her on that day after she had asked appellant to give nurse M.A. a PIV card application and questioned why appellant did not directly give the application to her. She noted that she refused to deal with appellant's behavior and walked away. T.R. indicated that when she returned she threw the folder towards appellant's work area, but denied that the folder was thrown at or struck appellant. She again left the work area and when she returned to assist nurse M.A. with her application, nurse M.A. told her that appellant had refused to help her and walked out of the office. T.R. noted that appellant also yelled at her and H.M., a coworker, on July 7, 2016 after she had asked appellant to give H.M. a PIV card application. Appellant refused to help him. T.R. related that she was tired of being bullied, yelled at, and embarrassed by appellant in front of her coworkers. The employing establishment's July 26, 2016 investigative report also noted that T.R. had denied that she threatened or physically assaulted appellant on July 8, 2016. Based on the evidence of record, the Board finds that appellant has not established a factual basis for her allegations of physical assault, verbal abuse, and threat of physical assault by T.R. The evidence submitted does not establish that the folder struck appellant as she alleged. While the evidence supports that there was a verbal dispute between appellant and T.R., the Board finds insufficient evidence of record to establish that this rose to the level of a compensable factor of employment.<sup>15</sup> Appellant did not provide probative evidence that such actions occurred as alleged.<sup>16</sup> The Board finds, therefore, that she has not met her burden of proof to establish a compensable employment factor with respect to physical assault, verbal abuse, or physical threat by her coworker.

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<sup>12</sup> *T.G.*, 58 ECAB 189 (2006); *Doretha M. Belnavis*, 57 ECAB 311 (2006).

<sup>13</sup> *C.W.*, 58 ECAB 137 (2006); *Robert Breeden*, 57 ECAB 622 (2006).

<sup>14</sup> *See Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>15</sup> *See id.*; *C.T.*, Docket No. 08-2160 (issued May 7, 2009) (a raised voice in the course of a conversation does not, in and of itself, warrant a finding of verbal abuse).

<sup>16</sup> *James E. Norris*, 52 ECAB 93 (2000).

As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record.<sup>17</sup>

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 failed to meet her burden of proof to establish an emotional condition while in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 18, 2016 decision of the Office of Workers' Compensation Programs is affirmed.<sup>18</sup>

Issued: April 23, 2018  
Washington, DC

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

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

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<sup>17</sup> *Karen K. Levene*, 54 ECAB 671 (2003).

<sup>18</sup> Colleen Duffy Kiko, Judge, participated in this decision, but was no longer a member of the Board, effective December 11, 2017.