

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

_____)	
T.H., Appellant)	
)	
and)	Docket Nos. 17-1578 &17-1651
)	Issued: April 26, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Titusville, FL, Employer)	
_____)	

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 13, 2017 appellant filed a timely appeal from a May 12, 2017 merit decision and a June 19, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish an emotional condition in the performance of duty on March 17, 2017; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

² The record provided to the Board includes additional evidence received after OWCP issued its June 19, 2017 decision. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board lacks jurisdiction to review this new evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On March 20, 2017 appellant, then a 53-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 17, 2017 she sustained a panic attack at work.³ She claimed that she had a hostile interaction with a supervisor, G.T., regarding a work estimate, and noted that this interaction triggered a panic attack. Appellant advised that G.T. disregarded her March 17, 2017 request for assistance with her work, which placed her in an impossible situation. While attempting to calmly discuss the situation, G.T. allegedly spoke to appellant in a harsh and demeaning manner. The discussion occurred in the presence of coworkers and district route examiners. Appellant also claimed that G.T. gave her an order that would only result in her failing, and he refused to listen to her reason for requesting assistance.

Appellant noted that on March 17, 2017 she was required to work an eight-hour day and asserted that, when she told G.T. that she needed an extra hour to finish her mail delivery, he indicated 45 minutes was all the help he was going to give her. G.T. then ordered appellant to leave the first part of her mail (which would require 45 minutes to deliver) for another carrier to deliver. Appellant asserted that doing so would have required her to unload mail from her truck and then load other mail into it, requiring an extra 75 minutes of work. She indicated that she then requested that G.T. provide her with an extra 75 minutes to complete her work and asserted that G.T. blamed her for the situation by making statements like “It is n[o]t my fault you did n[o]t get eight hours yesterday,” “It is n[o]t my fault you did n[o]t see your flats,” and “stop creating a hostile work environment.” Appellant indicated that G.T.’s actions and statements on March 17, 2017 directly caused her to suffer a panic attack, which resulted in her leaving the workplace for the day.

On the Form CA-1, B.T., appellant’s immediate supervisor, indicated that the employing establishment would be submitting a challenge to appellant’s claim. She advised that appellant stopped work on March 17, 2017, and had not yet returned.

In a March 31, 2017 development letter, OWCP requested that appellant submit additional evidence in support of her claim. It requested that she complete and return a questionnaire which posed various questions regarding the circumstances of the events of March 17, 2017. OWCP also requested that appellant submit a physician’s opinion supported by a medical explanation as to how the reported events of March 17, 2017 caused or aggravated a medical condition. On March 31, 2017 it also requested that the employing establishment respond to appellant’s claims.

In an April 25, 2017 statement, appellant noted that she claimed March 17, 2017 incident was what “spurred her [Form] CA-1.”⁴ She indicated that she had been unable to get management to fill out a duty status report (Form CA-17) in connection with the present claim. Appellant noted that, as soon as G.T. told her on March 17, 2017 that she would only get 45 extra minutes, rather than the 60 minutes requested, her hands began to tremble and the room started spinning. She

³ Appellant indicated that this panic attack included and/or resulted in trembling, difficulty catching her breath, dizziness, uncontrolled crying, confusion, fear, and depression.

⁴ Appellant asserted that this incident was the apex of years of attacks by G.T. and asserted that she started the process to file a claim in 2012, but did not file a claim then.

asserted that a coworker gave the same time call she gave, *i.e.*, the estimated time that mail delivery would be completed, but that he received the requested help without being questioned by management. Appellant asserted that requesting an extra hour on March 17, 2017 was appropriate given her mail volume and claimed that her mail delivery route took an hour more time to deliver than had been officially acknowledged. She noted that she initially overlooked about 20 or so flats that she would have to deliver that day. Appellant indicated that G.T.'s request for her to unload a portion of her mail for another carrier to deliver (mail that would take 45 minutes to deliver) was an example of him wasting her time and "flexing" his authority. She indicated that she intended to file an Equal Employment Opportunity (EEO) claim against G.T. for discrimination. Appellant noted that that she was sad when her father passed way in November 2016 and that she had some stress outside of work due to her financial situation.⁵

Appellant submitted a number of documents dated between 2012 and 2016, *i.e.*, a period prior to the claimed March 17, 2017 incident, including copies of disciplinary actions, grievances and EEO complaints, personal journals of events at work, and requests for leave usage. She submitted an April 11, 2017 document, signed by her immediate supervisor, B.T., and a union official, noting that leave without pay would be converted to continuation of pay in resolution of a grievance. In a March 21, 2017 e-mail, a Florida workers' compensation official advised appellant that any complaint about the March 17, 2017 incident should be filed with some federal body, rather than with the Florida workers' compensation program.

Appellant submitted a number of documents concerning the treatment for her psychiatric conditions, including reports of Dr. Rex A. Birkmire, an attending Board-certified psychiatrist and neurologist.⁶ She also submitted reports of a mental health counselor who saw her regarding her emotional problems.

On April 18, 2017 OWCP received an undated statement from B.T., appellant's immediate supervisor, who indicated that the employing establishment was controverting appellant's claim. B.T. noted that on the morning of March 17, 2017 appellant came to her crying and repeating the phrase, "I cannot do this anymore." She asked appellant what was wrong and she explained that a supervisor, G.T., had challenged her call time. Appellant advised that she had told G.T. that she would be an hour over her allotted time to finish her mail delivery and that G.T. told her he could only approve 45 minutes. B.T. indicated that appellant then reported that G.T. wanted to pull off the mail from the first part of her delivery route and give it to someone else to deliver. Appellant told G.T. that, because she had already loaded the first part of the mail in her truck, pulling the mail would mean that she would be 75 minutes over the time limit for delivering her mail route. B.T. indicated that she explained to appellant that G.T. was doing his job and that it was part of

⁵ With respect to her prior treatment for emotional problems, appellant indicated that in 2012 she was forced to seek treatment for depression and general anxiety due to harassment by a supervisor at a different employing establishment workplace in Altamonte, Florida.

⁶ The reports of Dr. Birkmire are dated between 2012 and 2017. Some of the reports Dr. Birkmire produced prior to March 17, 2017 contained diagnoses such as depression and anxiety disorder and, a number of the reports he produced after March 17, 2017 contained diagnoses such as depression, anxiety disorder, and post-traumatic stress disorder.

her job to make an accurate call time. Appellant started repeating, “I cannot do this job anymore, I cannot be put under the pressure to make a daily call.”

In a March 17, 2017 statement, G.T. noted that on March 17, 2017 appellant was assigned to an eight-hour day on her mail delivery route (number 9618). He asked what her call time would be for the day and she responded 5:45 p.m. G.T. indicated that, when he asked appellant the reason for her call time, she responded that if she was to have an eight-hour day she would need additional help. Based on appellant’s mail volume and the fact that all mail was available a half hour before his conversation with appellant, G.T. denied her request for an extra hour, but he approved an extra 45 minutes. He asked appellant to leave part of her mail on the workroom floor for another carrier to deliver. Appellant insisted on having a carrier help her later in the day because she was not sure that the extra time allotted to her would be enough to allow her to finish her mail delivery on time. G.T. indicated that he instructed appellant to comply with his original instructions and told her that, if the original amount of help provided was not enough, she should contact him no later than 2:30 p.m. to arrange for additional help. He advised that appellant continued to challenge his instructions and demanded a 3996 form for a request of overtime. Appellant repeatedly demanded that her conditions for assistance be granted and, when G.T. declined yet again, she stated “Here, I will do one better for you!” and threw her keys at G.T.’s desk. G.T. indicated that appellant proceeded to fill out a 3971 form requesting sick leave for the day per the Family and Medical Leave Act. Appellant advised him that she objected to being tracked, monitored, and provided with timeframes to perform her duties.

By decision dated May 12, 2017, OWCP denied appellant’s claim that she sustained an emotional condition due to factors of her federal employment on March 17, 2017. It found that she failed to establish any compensable employment factors noting that she did not show wrongdoing by management on March 17, 2017 in the administrative functions of managing work assignments and monitoring work performance. OWCP also found that appellant had not shown that she was subjected to harassment on March 17, 2017.

On June 12, 2017 appellant requested reconsideration. She submitted the appeal request form that accompanied OWCP’s May 12, 2017 decision. In a separate handwritten note dated June 7, 2017, appellant asked that OWCP reconsider her claim. She indicated that she had enclosed the doctor’s narrative report that he failed to do in a timely manner.

Subsequent to its May 12, 2017 decision, OWCP received several duty status (Form CA-17) reports dated April 12, May 2, 5, 25, and 30, 2017.

By decision dated June 19, 2017, OWCP denied appellant’s request for reconsideration. It found that the evidence she submitted in support of her reconsideration request was not relevant to the main issue of the present case because her emotional condition claim was denied on a factual basis, *i.e.*, her failure to submit factual evidence establishing a compensable employment factor.

LEGAL PRECEDENT -- ISSUE 1

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.⁷

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.⁸ 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.⁹

An employee's emotional reaction to administrative or personnel matters generally falls outside FECA's scope.¹⁰ Although related to the employment, administrative and personnel matters are functions of the employer rather than the regular or specially assigned duties of the employee.¹¹ However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹²

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.¹³ 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.¹⁴

ANALYSIS -- ISSUE 1

Appellant alleged that she sustained an emotional condition due to a March 17, 2017 incident involving a supervisor, G.T. The Board must initially review whether this incident is a covered employment factor under the terms of FECA. The Board notes that appellant's claim does

⁷ See *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁸ *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁹ *Lillian Cutler*, *id.*

¹⁰ *Andrew J. Sheppard*, 53 ECAB 170, 171 (2001); *Matilda R. Wyatt*, 52 ECAB 421, 423 (2001).

¹¹ *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005).

¹² *Id.*

¹³ *Supra* note 7.

¹⁴ 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).

not directly relate to her regular or specially assigned duties under *Lillian Cutler*.¹⁵ Rather, appellant primarily claimed that on March 17, 2017 management committed error and abuse with respect to the administrative functions of managing work assignments and monitoring work performance. She also claimed that she was subjected to harassment on March 17, 2017.

Appellant alleged that a supervisor, G.T., committed wrongdoing with respect to her March 17, 2017 work assignment. She claimed that G.T. did not provide her with enough extra time and carrier support to complete her mail delivery route on time, despite her repeated requests for such help. Appellant asserted that G.T. would not listen to her reasons for requesting and that his instructions made it inevitable that she would not be able to successfully complete her March 17, 2017 work tasks.

The Board notes that assigning work tasks and monitoring work performance are administrative functions of a supervisor.¹⁶ Administrative and personnel matters, although generally related to the employment, are functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.¹⁷ 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.¹⁸ 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.¹⁹

The Board notes that appellant has not provided any probative evidence to support her claim that G.T. committed any error or abuse with respect to assigning work or monitoring her work performance on March 17, 2017. Appellant did not submit supporting evidence, such as the final finding of a formal grievance or complaint, showing that G.T. or other management officials committed wrongdoing in connection with the events of March 17, 2017.²⁰ The Board has held that mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor.²¹ The record contains statements from G.T. and

¹⁵ See *Lillian Cutler*, *supra* note 8.

¹⁶ *Beverly R. Jones*, 55 ECAB 411, 416 (2004).

¹⁷ *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹⁸ *William H. Fortner*, 49 ECAB 324 (1998).

¹⁹ *Ruth S. Johnson*, 46 ECAB 237 (1994).

²⁰ Appellant submitted a number of documents dated between 2012 and 2016, *i.e.*, a period prior to the March 17, 2017 incident, including copies of disciplinary actions, grievances and EEO complaints, personal journals of events at work, and requests for leave usage. However, these documents would not be relevant to her claim of error and abuse by G.T. on March 17, 2017. Appellant submitted an April 11, 2017 document signed by her immediate supervisor, B.T., and a union official noting that leave without pay would be converted to continuation of pay in resolution of a grievance. The one-page document does not indicate the individual it pertains to or otherwise provide any context about the grievance.

²¹ *T.C.*, Docket No. 16-0755 (issued December 13, 2016).

appellant's immediate supervisor, B.T., explaining why management's actions on March 17, 2017 were reasonable and in the service of the work mission. Appellant has not substantiated any error or abuse committed by the employing establishment, and therefore, has not established a compensable employment factor with respect to administrative or personnel matters.

Appellant also claimed that G.T.'s actions on March 17, 2017 constituted harassment in that he spoke harshly to her on that date. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.²²

The Board notes, however, that appellant did not submit evidence showing that G.T. harassed her on March 17, 2017. The Board has held that unfounded perceptions of harassment do not constitute a compensable employment factor.²³ Mere perceptions are not compensable under FECA and harassment can constitute a factor of employment if it is shown that the incidents constituting the claimed harassment actually occurred.²⁴ The employing establishment denied that appellant was subjected to harassment on March 17, 2017 and she did not submit probative evidence, such as witness statements of individuals present on March 17, 2017, to establish her claim of harassment. Appellant has not established that G.T.'s statements and actions on March 17, 2017 constituted harassment under FECA, and therefore, she has not established a compensable employment factor with respect to the claimed harassment.²⁵

For these reasons, the Board finds that appellant has not established any compensable employment factors. In light of the Board's finding on the factual aspect of her case, it is not necessary to consider the medical evidence of record.²⁶

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.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.²⁷ OWCP has discretionary authority in this regard and has imposed certain

²² *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

²³ *See F.K.*, Docket No. 17-0179 (issued July 11, 2017).

²⁴ *Id.*

²⁵ *See generally C.T.*, Docket No. 08-2160 (issued May 7, 2009) (finding that some statements may be considered abusive and constitute a compensable factor of employment, but that not every statement uttered in the workplace will be covered by FECA). On appeal appellant argues that she established harassment and error/abuse in administrative matters by management on March 17, 2017. However, the Board has explained why she failed to establish her allegations.

²⁶ *Garry M. Carlo*, *supra* note 14.

²⁷ This section provides in pertinent part: "[t]he Secretary of Labor may review an award for or against payment

limitations in exercising its authority.²⁸ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.²⁹ A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.³⁰ When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.³¹

The submission of evidence or argument that repeats or duplicates evidence or argument already in the case record,³² and the submission of evidence or argument that does not address the particular issue involved does not constitute a basis for reopening a case.³³

ANALYSIS -- ISSUE 2

OWCP issued a decision on May 12, 2017 finding that appellant had not established a compensable employment factor. Appellant timely requested reconsideration on June 12, 2017. The issue on appeal is whether appellant satisfied any of the criteria under 20 C.F.R. § 10.606(b)(3), thereby requiring OWCP to reopen the case for review of the merits of the claim.

Appellant submitted the appeal request form that accompanied OWCP's decision, as well as a handwritten note advising that she had enclosed a narrative report from her physician. Her June 12, 2017 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, the Board finds that appellant did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).

In support of her June 12, 2017 reconsideration request, appellant reportedly submitted a narrative report from her physician. However, OWCP did not receive a new or additional narrative

of compensation at any time on [his] own motion or on application.” 5 U.S.C. § 8128(a).

²⁸ 20 C.F.R. § 10.607.

²⁹ *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be “received” by OWCP within one year of OWCP’s decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the “received date” in the Integrated Federal Employees’ Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

³⁰ 20 C.F.R. § 10.606(b)(3).

³¹ *Id.* at § 10.608(a), (b).

³² *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

³³ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

report from Dr. Birkmire prior to issuing its June 19, 2017 decision.³⁴ It received several duty status reports (Form CA-17), only two of which were newly submitted (May 25 and 30, 2017). Although new, this evidence is insufficient to warrant reopening the record for further merit review. The latest duty status reports are neither relevant nor pertinent to the issue on reconsideration, which was whether appellant established a compensable employment factor. As noted above, the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.³⁵ Appellant's emotional condition claim was denied on a factual basis, *i.e.*, her failure to submit factual evidence establishing a compensable employment factor. Therefore, the submitted medical evidence is not relevant or pertinent to the basis of the denial of her emotional condition claim. A claimant may be entitled to a merit review by submitting relevant and pertinent new evidence, but appellant did not submit any such evidence, and thus, she failed to satisfy the third requirement under section 10.606(b)(3).

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Therefore, pursuant to 20 C.F.R. § 10.608, OWCP properly denied further merit review.

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 on March 17, 2017. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

³⁴ See *supra* note 2.

³⁵ See *supra* note 33.

ORDER

IT IS HEREBY ORDERED THAT the June 19 and May 12, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 26, 2018
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