

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

K.C., Appellant	)	
	)	
and	)	<b>Docket No. 18-0018</b>
	)	<b>Issued: April 3, 2018</b>
U.S. POSTAL SERVICE, NEW YORK	)	
INTERNATIONAL SERVICE CENTER,	)	
Jamaica, NY, Employer	)	
	)	

*Appearances:*  
Larry Cahill, for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 2, 2017 appellant, through her representative, filed a timely appeal from an August 9, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has established an emotional condition on December 5, 2016 in the performance of duty.

## FACTUAL HISTORY

On December 28, 2016 appellant, then a 61-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that she sustained chest pain, back pain, headaches, dizziness, and mental and physical stress on December 5, 2016 due to a verbal assault at work. She stopped work on that day. K.C., a coworker, provided a witness statement on the Form CA-1 asserting that she saw appellant lying on the floor a few minutes after an argument with a supervisor.

By letter dated January 17, 2017, OWCP requested that appellant submit additional factual and medical information in support of her claim, including a detailed description of the work incident that she believed responsible for her condition.

Appellant, in a January 31, 2017 response, related that on December 5, 2016 E.L., her supervisor, asked her why she worked overtime on December 3, 2016. She responded that another supervisor told her she could work overtime. E.L. continued to question her about her overtime work and yelled that she needed his permission to work overtime. The group supervisor told appellant to go to the second floor to work, and she asked if she could confirm this instruction with E.L. She went to E.L.'s office and he shouted that she was not following orders. When appellant got to the second floor her heart began to race, her head hurt, and her legs and hands shook. Appellant fainted and a supervisor called for an ambulance. She maintained that she fainted and fell, landing on her back. Appellant advised that she was performing twice her usual amount of work on December 5, 2016 and had performed the work of two individuals since November 2016. She asserted that she had experienced a panic attack on December 5, 2016.

E.L., in a February 5, 2017 e-mail, related that on December 5, 2016 he told appellant that she was not authorized to work on December 3, 2016 and that she should not do it again, noting that she had performed unauthorized work on two prior occasions. In the afternoon, he heard that there was a medical problem with a custodial employee and found appellant lying on the floor with a pillow under her head. A supervisor stated that appellant "looked [like] she was fainting and that two other employees help[ed] her and placed her onto the floor flat and gave her a mail envelope that was soft..." E.L. noted that on her claim form her sister provided a witness statement asserting that he argued with her before she fainted. He maintained that he was on a coffee break and not near her area.

In a statement received February 7, 2017, E.L. advised that on December 5, 2017 he spoke with appellant about working unauthorized overtime. Later, he received notice that she had a medical problem and saw her lying on the floor with a head on a pillow. M.W., a supervisor, informed E.L. that appellant told a coworker that she "was not feeling well and started to lose her balance and the mail handler helped her to rest on the workroom floor." He denied arguing with her immediately prior to the incident.

By decision dated February 23, 2017, OWCP denied appellant's claim for compensation after finding that she had not factually established her allegations. It determined that she had not established the occurrence of the incident alleged to have caused her emotional condition.

Appellant, on March 17, 2017, requested a review of the written record by an OWCP hearing representative.<sup>3</sup> She submitted multiple witness statements from coworkers who saw her lying on the floor on December 5, 2016. M.P., a coworker, indicated that he witnessed appellant "fall down while holding a garbage [can] with wheels on December 5, 2016." The remaining witnesses did not witness the fall, merely saw appellant after the fall or were told that she had fallen.

By decision dated August 9, 2017, an OWCP hearing representative affirmed the February 23, 2017 decision as modified to show that appellant had not established an injury in the performance of duty. He found that she had not established any compensable employment factors.

### **LEGAL PRECEDENT**

A claimant has the burden of proof to establish 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>4</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 her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>5</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>6</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 his or her frustration from not being permitted to work in a particular environment, or to hold a particular position.<sup>7</sup>

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

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<sup>3</sup> On February 28, 2017 appellant received treatment from a licensed clinical social worker for panic disorder.

<sup>4</sup> See *W.M.*, Docket No. 15-1080 (issued May 11, 2017); *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>5</sup> *Id.*, see also *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>6</sup> 5 U.S.C. § 8101 *et seq.*; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>7</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> The primary reason for requiring factual evidence from the claimant in support of 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.<sup>11</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>12</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>13</sup>

### ANALYSIS

Appellant alleged that she sustained chest pain, headaches, dizziness, and mental stress on December 5, 2016 due to a verbal assault by her supervisor. OWCP denied her claim after finding that she had not established a compensable work factor.

Appellant indicated that on December 5, 2016 she performed twice her usual workload. She did not, however, attribute her stress-related condition arising on December 5, 2016 to the performance of her regular or specially assigned work duties under *Cutler*.<sup>14</sup> Instead, appellant alleged that E.L. harassed her and yelled at her causing her heart to race and legs to shake, resulting in her fainting.

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<sup>8</sup> See *Michael Ewanichak*, 48 ECAB 364 (1997).

<sup>9</sup> See *Charles D. Edwards*, 55 ECAB 258 (2004); *Parley A. Clement*, 48 ECAB 302 (1997).

<sup>10</sup> See *James E. Norris*, 52 ECAB 93 (2000).

<sup>11</sup> *Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>12</sup> See *Charles D. Edwards*, *supra* note 9; *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>13</sup> See *R.F.*, Docket No. 17-1143 (issued December 4, 2017); *Lori A. Facey*, 55 ECAB 217 (2004).

<sup>14</sup> See *supra* note 6.

Harassment and discrimination by supervisors and coworkers, if established as occurring and arising from the performance of work duties, can constitute a compensable work factor.<sup>15</sup> A claimant, however, must substantiate allegations of harassment and discrimination with probative and reliable evidence.<sup>16</sup> Additionally, verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.<sup>17</sup>

The Board finds that appellant has not established her allegation that E.L. harassed or verbally abused her on December 5, 2016. Appellant contended that on that date E.L. questioned why she worked overtime on December 3, 2016 even after she told him that another supervisor authorized the overtime. E.L. shouted at appellant, telling her that she needed his permission to work overtime. When another supervisor instructed her to work on the second floor, she went to E.L.'s office to get permission and he yelled that she was not following orders. Appellant went to the second floor, but her heart began to race, she got a headache, and fainted. She maintained that she experienced a panic attack. E.L., in statements received February 2017, related that on December 5, 2016 he told appellant not to perform unauthorized overtime work. He maintained that he was not near her immediately before the incident.

Appellant submitted statements from witnesses who saw her lying on the floor or fall to the floor on December 5, 2016. Additionally, on the claim form K.C. advised that she saw appellant lying on the floor after an argument with a supervisor. None of the statements, however, specifically describe any interaction between E.L. and appellant that would rise to the level of verbal abuse.<sup>18</sup> The Board has held that the raising of a voice during the course of a conversation does not warrant a finding of verbal abuse.<sup>19</sup> The Board accordingly finds that appellant has not substantiated a compensable work factor with regard to harassment or verbal abuse on December 5, 2016.<sup>20</sup> In the absence of a compensable work factor, the Board will not address the medical evidence relevant to her alleged stress-related condition.<sup>21</sup>

On appeal appellant asserts that E.L. verbally abused her on December 5, 2016 even though he had received a warning from the union about his behavior. She contends that she fainted due to his actions. There must be probative evidence factually establishing the allegation of verbal abuse. Appellant has not submitted such evidence and thus has not established a compensable work factor.

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<sup>15</sup> *T.G.*, 58 ECAB 189 (2006); *Doretha M. Belnavis*, 57 ECAB 311 (2006).

<sup>16</sup> *C.W.*, 58 ECAB 137 (2006); *Robert Breeden*, 57 ECAB 622 (2006).

<sup>17</sup> *Marguerite J. Toland*, 52 ECAB 294 (2001).

<sup>18</sup> *See L.N.*, Docket No. 16-1815 (issued May 22, 2017).

<sup>19</sup> *See Carolyn S. Philpott*, 51 ECAB 175 (1999).

<sup>20</sup> *See L.N.*, *supra* note 18.

<sup>21</sup> *See R.F.*, Docket No. 17-1143 (issued December 4, 2017).

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 and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant has not established an emotional condition on December 5, 2016 in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 9, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 3, 2018  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board