

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

_____)
D.F., Appellant)

and)

SOCIAL SECURITY ADMINISTRATION,)
GREAT LAKES PROGRAM SERVICE)
CENTER, Chicago, IL, Employer)
_____)

Docket No. 17-0970
Issued: February 26, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 3, 2017 appellant filed a timely appeal from a February 7, 2017 merit 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 the claim.

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 22, 2014 appellant, then a 55-year-old social insurance specialist and claims authorizer, filed an occupational disease claim (Form CA-2) alleging that on or before March 1,

¹ 5 U.S.C. § 8101 *et seq.*

2011, managers had denied her training, had falsely accused her of disrespect, had issued unfair performance evaluations from 2011 through 2014, had failed to provide a job transfer as a reasonable accommodation for a psychiatric disability, and had retained her in trainee status for five years and two months to deny her privileges accorded to other employees, causing severe depression and anxiety. She continued working at the employing establishment and remained exposed to the identified work factors until she stopped work on July 8, 2014.

In an October 24, 2012 letter, appellant's supervisor, D.G., informed appellant that he would discuss her request to transfer to a different facility when she returned from leave. Appellant again requested a transfer on November 12, 2012 as a reasonable accommodation for stress due to alleged disparate treatment, unfair performance appraisals, and denial of training in retaliation for filing an Equal Employment Opportunity (EEO) complaint. In a September 10, 2013 letter, the employing establishment found that she had established that she was a person with a disability "due to ongoing treatment for psychological disorders." On February 3, 2014 the employing establishment denied appellant's request for a transfer as a reasonable accommodation for her psychological disorders.

In an undated letter, the employing establishment generally refuted appellant's allegations of harassment, discrimination, disparate treatment, and denial of training. It noted that, under a union contract, it was contractually obligated to rate her as successful in 2012 and 2013 although she was "performing below this level in Demonstrates Job Knowledge and Achieves Business Results."

Appellant also submitted medical evidence. Dr. Syed R. Akhter, an attending Board-certified family practitioner, provided reports dated from August 21, 2012 to March 22, 2013 holding her off work due to major depression and anxiety.²

By development letter dated September 26, 2014, OWCP notified appellant of the additional evidence needed to establish her emotional condition claim, including factual evidence in corroboration of her allegations against the employing establishment. It afforded her 30 days to submit such evidence.

In response, appellant submitted July 25, 2014 statements, received by OWCP on October 30, 2014. She alleged a pattern of supervisory harassment, discrimination, and disparate treatment from 2011 through 2014, based on her gender, race, and disability. Appellant contended that her mentor denied her requests for a new mentor on February 15 and 28, and March 1, 2011 on the basis of race. She further argued that managers made negative comments about her interpersonal skills in March and April 2011 performance ratings without any substantiation, and assessed case processing errors against her without adequate explanation. Appellant also alleged that the employing establishment denied her requests for "refresher training" in March, April, and May 2011, and forbade her to ask work-related questions to anyone other than her mentor, while other employees could seek assistance freely. Additionally, she argued that management issued her poor performance ratings in retaliation for her EEO

² Appellant also submitted reports from a nurse practitioner.

complaints,³ instructed her to complete her timesheets differently than other employees, and denied her full credit for completed work from February 2011 onward. Appellant also contended that her training program commencing in 2011 was of insufficient quality and consistency to meet various regulations and union criteria.

Appellant also provided medical evidence. On October 17, 2014 Dr. Theodore Handrup, an attending Board-certified psychiatrist, opined that she had severe depression and anxiety due to work stress. On October 23, 2014 Dr. Akhter noted that appellant's "psychiatric issues began since about March 2011 due to possible stressful environment."

By decision dated March 18, 2015, OWCP denied appellant's claim finding that she failed to establish any compensable factors of employment. It found that she did not submit factual evidence corroborating any harassment, retaliation, discrimination, or disparate treatment. Additionally, OWCP found that appellant's allegations regarding performance appraisals, access to mentoring and training, and desire for a transfer pertained to administrative matters not within the performance of her assigned duties, and that no error or abuse was shown that would bring these incidents under the scope of FECA.

On March 9, 2016 appellant requested reconsideration. In support of her request, she submitted her February 25 and March 7, 2016 letters which she asserted would demonstrate compensable factors of employment. Appellant also provided her e-mails, dated from August 9, 2010 to April 27, 2012, in which she expressed dissatisfaction with the managerial style of her mentors and supervisors, alleged that she had been provided fewer mentoring and training opportunities than her coworkers, and requested to move her workstation to a quieter area. In a September 17, 2013 letter, she requested a change in "work environment" as a reasonable accommodation.

Additionally, appellant provided March, April, and December 2011 e-mails to and from her managers discussing case tracking and timekeeping matters. A May 13, 2011 e-mail from an assistant manager noted that her production report would be amended to include three cases that were inadvertently omitted due to a tracking system irregularity.

Appellant also submitted April 2011 EEO grievance documents reiterating her allegations, and August 2011 witness affidavits from her EEO complaints. Managers A.C., T.G., B.J., B.M., and D.T. refuted her allegations of harassment, discrimination, retaliation, disparate treatment, and denial of training. Each explained that appellant had been given specific feedback on her performance with suggestions for improvement, and had access to mentoring and training needed to perform her job. Appellant asked many more questions than her coworkers, and received additional assistance. Coworker D.G. did not corroborate her account of events. Appellant provided an undated statement in which she contended that the manager witness statements were generally inaccurate and untruthful.

Appellant also provided March 3, 2011 and July 27, 2012 notes from Dr. Akhter, holding her off work from March 2 to 7, 2011 and diagnosing depression and anxiety.

³ Appellant provided EEO documents from May 2011 to December 2012, reiterating her allegations of managerial harassment, discrimination, and disparate treatment. There is no final decision or settlement of record.

In a March 1, 2016 letter, the Office of Personnel Management found appellant disabled from her position as a social insurance specialist “due to anxiety.”

By decision dated February 7, 2017, OWCP affirmed the prior decision as modified. It found that appellant had not established an injury in the performance of duty as the additional evidence submitted on reconsideration failed to establish any compensable factor of employment. Specifically, appellant’s allegations of harassment, discrimination, disparate treatment, retaliation, and inadequate training had not been established as factual. OWCP further found that her allegations regarding work assignments, managerial methods, or her desire for a different position related to administrative matters not within the performance of her regular or specially assigned duties.

LEGAL PRECEDENT

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.⁴ 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.⁵

Appellant 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 employment factors.⁶ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁷

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.⁸ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that

⁴ *Supra* note 1.

⁵ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁷ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁸ See *Charles D. Edwards*, 55 ECAB 258 (2004); *Norma L. Blank*, 43 ECAB 384 (1993).

factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, it must base its decision on an analysis of the medical evidence.⁹

For harassment or discrimination to give rise to a compensable disability under FECA, there must be probative and reliable evidence that harassment or discrimination did in fact occur.¹⁰ Mere perceptions of harassment, retaliation, or discrimination are not compensable under FECA.¹¹

ANALYSIS

Appellant has not attributed her claimed emotional condition to regular or specially assigned duties as a claims authorizer under *Cutler*.¹² Rather, her case is based primarily on her allegations of harassment, discrimination, and disparate treatment by her supervisors. In a September 26, 2014 letter, OWCP advised appellant of the type of evidence needed to establish her claim. Appellant provided additional statements reiterating her allegations, performance reviews, supervisory e-mails regarding case tracking and timekeeping, managerial and coworker affidavits, EEO complaint documents, and medical evidence. OWCP denied the claim by decision dated March 18, 2015 and affirmed on February 7, 2017, finding that appellant failed to establish any compensable factors of employment.

Appellant made several allegations related to administrative and personnel actions. In *Thomas D. McEuen*,¹³ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA as such matters pertain to procedures and requirements of the employing establishment and do not bear a direct relation to the work required of the employee. The Board notes that these matters are administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of FECA.¹⁴ Although these matters are generally related to the employment, they are administrative functions of the employing establishment, and not duties of the employee.¹⁵ The Board notes, however, that coverage under FECA would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-

⁹ *Lori A. Facey*, 55 ECAB217 (2004); *Norma L. Blank*, *id.*

¹⁰ *Marlon Vera*, 54 ECAB 834 (2003).

¹¹ *Kim Nguyen*, 53 ECAB 127 (2001).

¹² *See Cutler*, *supra* note 5.

¹³ *See Thomas D. McEuen*, *supra* note 5.

¹⁴ *See Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988). *See also Beverly R. Jones*, 55 ECAB 411 (2004) (monitoring work is an administrative function of a supervisor).

¹⁵ *Id.*

generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁶

Regarding appellant's request for a transfer, to be promoted from trainee status, and to move her workstation, the Board has held that denials by an employing establishment of a request for a different job, promotion, or transfer are not compensable factors of employment as they do not involve the employee's ability to perform her regular or specially assigned work duties, but rather constitute her desire to work in a different position or environment.¹⁷ Appellant has not provided evidence that the employing establishment acted unreasonably in these matters. Therefore, she has not established a compensable factor of employment in this regard.

Appellant also alleged that the employing establishment did not provide her adequate training and mentoring to perform her assigned duties. She did not submit any evidence to show that the employing establishment committed error or abuse with respect to training, support, or work assignment matters. Additionally, the supervisors' affidavits, August 25, 2010 e-mail offering tutoring, and August 25, 2010 performance review noting that appellant did not request additional assistance, demonstrated that help had been available to appellant, but that she chose not to utilize it. The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under FECA.¹⁸ As such, appellant has not established a compensable employment factor with respect to these administrative matters.

Insofar as appellant alleged that the employing establishment initially failed to credit her with three cases completed in March 2011 and subsequently amended her production report, the Board finds that the employing establishment's May 13, 2011 e-mail demonstrates that this incident occurred as alleged. However, this is not a compensable employment factor as it does not involve her assigned duties, but rather the administrative function of tracking an employee's work.¹⁹ Also, there is no error or abuse shown that rises to a compensable level. The employing establishment explained that an inconsistency in a tracking system caused the initial omission. This clerical error was quickly remedied when appellant brought it to her supervisor's attention. Under these circumstances, the Board finds that the employing establishment acted reasonably.²⁰ Therefore, appellant has not established a compensable factor with regard to this administrative matter.

Furthermore, appellant did not substantiate any of her allegations of harassment, discrimination, retaliation, or disparate treatment. She did not provide witness statements or other corroborating evidence. Rather, the August 2011 supervisory affidavits refuted appellant's

¹⁶ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁷ *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

¹⁸ *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

¹⁹ *Beverly R. Jones*, *supra* note 14.

²⁰ *Supra* note 16.

allegations of harassment and additional mistreatment. They explained that she had been provided appropriate feedback and instructions to improve her performance. As appellant's allegations were not established as factual, they do not constitute compensable employment factors.²¹

The Board finds that appellant has not established a compensable factor of employment. As such, the medical evidence of record does not need to be addressed.²²

On appeal, appellant contends that OWCP erred by finding that she did not establish any compensable work factors. She also argues that the medical evidence of record is sufficient to establish causal relationship. As noted above, appellant failed to establish any work factors within the performance of her regular or specially assigned duties. Because fact of injury is not established, the medical evidence of record is irrelevant to the claim.

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

²¹ See *supra* notes 10-11.

²² *Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 7, 2017 is affirmed.

Issued: February 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