

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

M.F., Appellant)	
)	
and)	Docket No. 17-1649
)	Issued: July 20, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Inkster, MI, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 25, 2017 appellant, through counsel, filed a timely appeal from an April 4, 2017 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.

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.*

ISSUE

The issue is whether appellant met her burden of proof to establish an emotional condition in the performance of duty on April 8, 2016, as alleged.

FACTUAL HISTORY

On April 13, 2016 appellant, then a 57-year-old city carrier acting as a supervisor, filed a traumatic injury claim (Form CA-1) alleging that on April 8, 2016 she developed stress and chest pain after a union steward, P.A., whom she was supervising, engaged in a verbal altercation and made a bodily threat towards her. She stopped work on April 13, 2016.

In support of her claim, appellant submitted an April 12, 2016 emergency department treatment note in which Dr. Jason Vieder, a Board-certified osteopath specializing in emergency medicine, noted a history of chest pain and diagnosed chest pain, unspecified. Dr. Vieder advised that appellant could return to work on April 14, 2016. In a brief report dated April 22, 2016, Dr. Saima Khan indicated that appellant was seen that day and should be excused from work for the period April 23 through July 21, 2016.

An employing establishment accident report dated April 14, 2016, signed by J.N., supervisor of customer services and acting postmaster, indicated that at 12:30 p.m. on April 8, 2016 appellant, an acting supervisor, had a verbal altercation with union steward P.A. in the break room and on the workroom floor. The report indicated that a discussion was held with appellant and that the subordinate employee was disciplined.

The employing establishment controverted appellant's request for continuation of pay. J.N. noted that when appellant would act as a supervisor, there were disagreements between she and P.A. He indicated that he placed P.A. off work on April 11, 2016, and that, after he completed an investigation of the incident, he concluded that, although P.A. acted in an insubordinate manner, there was no violence in the workplace. J.N. returned P.A. to duty on April 13, 2016, which displeased appellant.

By development letter dated May 2, 2016, OWCP informed appellant of the type of evidence needed to support her claim. In a responsive statement dated May 18, 2016, appellant indicated that on April 8, 2016 P.A. interfered with a conversation she was having with another carrier, and that he continued walking toward her, yelling at her, saying she could not tell him what to do. She indicated that supervising P.A. had been a challenge and, upon hearing the altercation, T.P., acting director of operations, told P.A. to follow the direct orders of his supervisor, who was appellant. Appellant indicated that, although she continued to work that day, on April 9, 2016, she had chest pain, which she had not had before.

In an April 8, 2016 statement, T.P. indicated that on that day another carrier, N.J., called in after hearing shots fired along her route and that, although he immediately went out to find her, she had called P.A. and returned to the station. After filling out forms, she and P.A. went into the break room and he asked appellant to take a message to N.J. T.P. related that he then heard P.A. on the workroom floor claiming that appellant had disrespected him by asking him to stay out of her conversation with N.J. She indicated that appellant looked distressed.

In a statement dated April 9, 2016, D.T., a coworker, advised that, on April 8, 2016, at about 12:30 p.m., he witnessed his supervisor (appellant) asking a coworker a question and P.A. started yelling at her and being rude and, after appellant told him in a calm voice that she was not talking to him, he came out of the break room yelling and invading her space. When she tried to walk away, he keep coming towards her, telling her what he was going to do or not do.

In an undated statement N.C., a coworker, also described the altercation between P.A. and the supervisor, appellant, indicating that P.A. kept telling appellant that she could not tell him what to do even when appellant told him that she was his supervisor, and told him to go back into the break room and leave the workroom floor. He related that when appellant stepped back, P.A. continued toward her, and when T.P. came out of the office, he told P.A. to follow the instructions of your supervisor and leave the workroom floor. N.C. concluded that appellant was visibly upset.

In a treatment note dated April 22, 2016, Dr. Khan reported that appellant was seen for a complaint of anxiety and panic attack that started several weeks earlier when she was threatened by a coworker. She noted that appellant continued to have panic attack symptoms several times per week. Dr. Khan indicated that stress-testing in the emergency department was completely normal and that appellant had not returned to work because she was fearful of her coworker. She concluded that appellant could remain off work for a couple of weeks due to anxiety and panic attacks that were employment related. In a second April 22, 2016 report, Dr. Khan indicated that appellant could work from home and return to work at another station on July 22, 2016. She diagnosed anxiety and panic attacks due to work-related harassment and advised that appellant could not return to the employing establishment for fear of getting anxiety and panic attacks.

By decision dated June 10, 2016, OWCP denied appellant's claim, finding that the claimed incident did not occur as alleged because, even though words were exchanged between appellant and P.A., there was no bodily threat to her person.

Appellant, through counsel, timely requested a hearing with OWCP's Branch of Hearings and Review. She did not appear at the hearing which was held on February 14, 2017. OWCP's hearing representative informed counsel of the evidence needed to support the claim. The record was held open for 30 days. Nothing further was submitted.

By April 4, 2017 decision, OWCP's hearing representative affirmed the June 10, 2016 decision, finding that the factual component of the claim had not been established.

LEGAL PRECEDENT

To establish a stress-related condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he or she has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the claimed condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the claimed stress-related condition.³ If a claimant does implicate a factor of employment, OWCP should then

³ *Leslie C. Moore*, 52 ECAB 132 (2000).

determine whether the evidence of record substantiates that factor.⁴ 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.⁵

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁶ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under FECA.⁷ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁸ Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.⁹ Where the claimant alleges compensable factors of employment, she must substantiate such allegations with probative and reliable evidence.¹⁰ Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹¹

ANALYSIS

The Board finds that appellant has not established an emotional condition in the performance of duty on April 8, 2016.

Appellant asserted that on Friday, April 8, 2016, she had a verbal altercation with P.A., a union steward, who threatened bodily harm, and this caused her stress and chest pain. The Board finds that this verbal altercation did not rise to the level of a compensable factor of employment.

The Board has held that, while verbal abuse may constitute a compensable factor of employment, not every statement uttered in the workplace will be covered by FECA.¹² In such cases, the Board will review the evidence of record to determine whether the allegations of the

⁴ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁵ *Id.*

⁶ 28 ECAB 125 (1976).

⁷ *See Robert W. Johns*, 51 ECAB 137 (1999).

⁸ *Supra* note 6.

⁹ *J.F.*, 59 ECAB 331 (2008).

¹⁰ *M.D.*, 59 ECAB 211 (2007).

¹¹ *Roger Williams*, 52 ECAB 468 (2001).

¹² *L.K.*, Docket No. 08-0849 (issued June 23, 2009).

claimant are substantiated by reliable and probative evidence.¹³ A mere raised or harsh voice does not of itself constitute verbal abuse or harassment.¹⁴

In the case at hand, while the record supports that appellant and P.A. had a verbal disagreement on April 8, 2016, there is no evidence to support that this included a bodily threat. With regard to appellant's claim that bodily harm was threatened by P.A., the evidence of record must support a finding that such specific threats occurred.¹⁵ Herein, the two witnesses merely indicated that P.A. was being loud and rude. The supervisor of customer services, J.N., noted that he had a discussion with P.A. and appellant, and that, after an investigation, although P.A. acted in an insubordinate way, there was no violence in the workplace. He also noted that P.A. was suspended from April 11 to 13, 2016 when he was allowed to return to work. It was only then that appellant stopped work. While the altercation on April 8, 2016 may have engendered offensive and hurtful feelings, it did not sufficiently affect the conditions of employment to constitute a compensable factor of employment.¹⁶

Thus, the Board finds that appellant has not established a compensable factor of employment. Appellant, therefore, has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty on April 8, 2016.¹⁷

As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record.¹⁸

On appeal counsel asserts that the April 4, 2017 decision is contrary to fact and law. As explained above, the evidence of record is insufficient to establish a compensable employment factor and as such appellant has not met her burden of proof.

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 not established an emotional condition in the performance of duty on April 8, 2016.

¹³ See *J.F.*, *supra* note 9.

¹⁴ *T.G.*, 58 ECAB 189 (2006).

¹⁵ See *M.S.*, Docket No. 06-1633 (issued November 30, 2006).

¹⁶ See *J.C.*, 58 ECAB 594 (2007).

¹⁷ See *supra* note 12.

¹⁸ *Katherine A. Berg*, 54 ECAB 262 (2002).

ORDER

IT IS HEREBY ORDERED THAT the April 4, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 20, 2018
Washington, DC

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

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

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