

postmaster told [her] that [she] would not be returning back there.” She alleged that she developed anxiety, panic attacks, and depression.²

On September 16, 2016 the employing establishment provided appellant with an authorization for examination and/or treatment (Form CA-16) regarding her alleged emotional condition. Appellant’s attending physician, Dr. Michael A. Hinz, a clinical psychologist, completed this form on September 16, 2016 and diagnosed anxiety and panic disorder. He checked a box marked “yes” indicating that appellant’s diagnosed conditions were caused or aggravated by her history of being returned to a hostile and abusive work environment. Dr. Hinz found that appellant was totally disabled.

In development letters dated October 4, 2016, OWCP requested additional factual and medical evidence from appellant. It also requested additional factual evidence from the employing establishment. OWCP requested that a knowledgeable supervisor respond regarding the accuracy of the statements provided by appellant, provide a position description for appellant noting any stressful activities in the position, a listing of the accommodations made for appellant due to her stress, along with various information regarding staffing at the postal establishments. It afforded 30 days for responses.

The employing establishment responded on October 7, 2016 and submitted a one paragraph e-mail from appellant’s supervisor, P.N., who noted that appellant received electronic mail (e-mail) directing her to return to the Gaffney Post Office. Appellant asserted that the postmaster had informed her that she would not be returning to the Gaffney Post Office. She became very upset, crying hysterically. P.N., reported, “All I know is she was not supposed to return to Gaffney where this all started with [C.G.] the manager.” She further noted that an initial management inquiry process (IMIP) was conducted, but that she was not aware of what was reported.

On October 15, 2016 appellant responded to OWCP’s request for factual information. She noted that she had previously been prescribed medication for an emotional condition, but was not currently taking medication. Appellant noted that she had been seeing a psychologist weekly for depression concerning pain and recovering from mistreatment from previous managers. She alleged that there was an ongoing issue with the manager of the post office where she was directed to return. Appellant noted that she left Gaffney Post Office in mid-February 2016 because of a hostile situation in which the manager threatened her job on a daily basis. She asserted that the postmaster assured her that she would not be returning to Gaffney Post Office. On September 15, 2016 appellant received a schedule from the manager of Gaffney Post Office directing her to report back on September 17, 2016. Upon receipt of this schedule appellant became nervous, panicky, fearful, nauseated, and began crying uncontrollably.

In a note dated October 26, 2016, Dr. Hinz reported that he had treated appellant since August 6, 2007 due to a previously accepted claim for major depression. He attributed her current condition of panic disorder to a work injury on September 15, 2016 when she was informed that

² The record indicates that appellant previously filed two emotional condition claims, OWCP File No. xxxxxx802 and OWCP File No. xxxxxx658, both of which were denied by OWCP. In OWCP File No. xxxxxx535, OWCP accepted her occupational disease claim for a single episode of major depression on April 13, 2001. Appellant’s other claims are currently before the Board.

she would be reassigned back to her previous workstation where the manager had harassed, emotionally abused, and demeaned her creating a hostile work environment.

Dr. Hinz completed a form report on October 26, 2016 and diagnosed anxiety and panic attack symptoms. He attributed these conditions to a fear reaction and feelings of vulnerability and helplessness as she was faced with having to return to a hostile work environment to work under a manager who had engaged in harassment and emotionally abusive behaviors toward appellant in the past. Dr. Hinz opined that appellant's anxiety and panic worsened her depressive symptoms and increased her chronic pain levels.

By decision dated January 24, 2017, OWCP denied appellant's traumatic injury claim for an emotional condition, finding that her emotional reaction to being directed to return to the Gaffney Post Office was not compensable. It further noted that as appellant did not report to the Gaffney Post Office as directed, she had not implicated a compensable work factor. OWCP also found that appellant had not submitted any evidence corroborating her allegation that hostile conditions existed at the Gaffney Post Office.

On February 3, 2017 appellant requested reconsideration of the January 24, 2017 OWCP decision. In support of this request, she contended that she was at work, during work hours when her anxiety attack occurred, that her manager confirmed the change of assignment and provided appellant with the Form CA-16, and that she was directed to report to the Gaffney Post Office on September 16, 2016.

By decision dated May 4, 2017, OWCP reviewed the merits of appellant's claim, but denied modification of the January 24, 2017 decision. It found that she failed to provide evidence corroborating her allegations that she was inappropriately reassigned to the Gaffney Post Office, that she experienced a hostile work environment at the Gaffney Post Office, or that the postmaster provided her with assurances that she would not return to the Gaffney Post Office.

On June 20, 2017 appellant requested reconsideration of the May 4, 2017 merit decision. She provided a letter from her supervisor, P.N., that appellant worked at the employing establishment during the month of September 2016. P.N. noted that when appellant received confirmation that she was to report back to the Gaffney Post Office, she became upset.

By decision dated September 11, 2017, OWCP denied modification of its May 4, 2017 decision finding that appellant had not implicated a compensable factor of employment on September 15, 2016 to which she attributed her emotional condition. It noted that she had not provided any corroborating evidence that Gaffney Post Office was a hostile work environment, that she was inappropriately assigned there, or that she had assurances she would not be returned to Gaffney Post Office.

LEGAL PRECEDENT

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*,³ the Board explained

³ 28 ECAB 125 (1976).

that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.⁴ There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under FECA.⁵ 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 his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁶ In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is insufficient to constitute a personal injury sustained in the performance of duty within the meaning of FECA. Thus disability is not covered when it results from an employee's fear of a reduction-in-force, nor is disability covered when it results from such factors as an employee's frustration in not being permitted to work in a particular environment, or to hold a particular position.⁷

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.⁸ Where 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.⁹ A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹⁰

ANALYSIS

The Board finds that this case is not in posture for a decision.

Appellant has attributed her emotional condition to several factors. The Board must initially review whether these alleged incidents of employment are covered employment factors under the terms of FECA. The Board notes that appellant's allegations do not pertain to her regular

⁴ *Supra* note 1.

⁵ *See Robert W. Johns*, 51 ECAB 136 (1999).

⁶ *Cutler*, *supra* note 3.

⁷ *Id.*

⁸ *Charles D. Edwards*, 55 ECAB 258 (2004).

⁹ *Kim Nguyen*, 53 ECAB 127 (2001). *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹⁰ *Roger Williams*, 52 ECAB 468 (2001).

or specially assigned duties under *Cutler*.¹¹ Rather, appellant has alleged error and abuse in administrative matters.

In *Thomas D. McEuen*,¹² 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 relationship to the work required of the employee. The Board noted, however, that coverage under FECA would attach if the facts surrounding the administrative or personnel action established error or abuse by employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated, and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹³

Appellant has attributed her emotional condition to actions of the employing establishment including: notification on September 15, 2016 of her transfer back to the Gaffney Post Office on September 16 or 17, 2016; that she was inappropriately reassigned to the Gaffney Post Office on September 15, 2016 after the postmaster provided her with assurances that she would not return to the Gaffney Post Office; and that she experienced a hostile work environment at the Gaffney Post Office. The Board has long held that disputes regarding transfers¹⁴ and work assignments¹⁵ are administrative or personnel matters and can only be considered compensable work factors if there is probative evidence of error or abuse. In support of her claim for error or abuse, appellant provided the October 7, 2016 statement of her supervisor, P.N., which offered her confirmation that she knew that appellant was not supposed to return to the Gaffney Post Office.

Appellant further attributed her emotional condition to a hostile work environment at the Gaffney Post Office. In support of this allegation, P.N., confirmed that an IMIP was conducted at Gaffney Post Office due to problems between appellant and her supervisor there, C.G.

In a development letter dated October 4, 2016, OWCP requested additional factual evidence from the employing establishment. It requested information from a knowledgeable supervisor regarding the accuracy of the statements provided by appellant, a position description for appellant noting any stressful activities in the position, a listing of the accommodations made for appellant due to her stress, along with various information regarding staffing at the postal establishments. The Board notes that OWCP had allotted time for the employing establishment to respond to appellant's allegations. However, the only response received was P.N.'s one paragraph

¹¹ *Cutler*, *supra* note 3.

¹² *McEuen supra* note 9.

¹³ *See R.A.*, Docket No. 17-1030 (issued April 16, 2018); *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁴ *D.F.*, Docket No. 17-0970 (issued February 26, 2018); *Ernest J. Malagrida*, 51 ECAB 287 (2000).

¹⁵ *F.A.*, Docket No. 17-0315 (issued July 11, 2017).

e-mail. Nevertheless, OWCP found that appellant had not established any compensable factors of employment.

OWCP procedures provide:

“If an employing [establishment] fails to respond to a request for comments on the claimant’s allegations, the [claims examiner] may usually accept the claimant’s statements as factual. However, acceptance of the claimant’s statements as factual is not automatic in the absence of a reply from the [employing establishment], especially in instances where performance of duty is questionable. The Board has consistently held that allegations unsupported by probative evidence are not established. *James E. Norris*, 52 ECAB 93 (1999); *Michael Ewanichak*, 48 ECAB 364 (1997). The [claims examiner] should consider the totality of the evidence and evaluate any inconsistencies prior to making a determination.”¹⁶

The Board finds that it is unable to make an informed decision in this case as the employing establishment did not adequately respond to the request for comment made by OWCP in the October 4, 2016 development letter. The only comment from the employing establishment was P.N.’s October 7, 2016 e-mail which mentioned the IMIP at Gaffney Post Office and noted her understanding that appellant was not to return to work at the Gaffney Post Office. This suggests that the employing establishment should have documentation regarding the events at the Gaffney Post Office and should have documentations addressing P.N.’s assertion that appellant was not to return to the Gaffney Post Office.

Although it is a claimant’s burden of proof to establish his or her claim, OWCP is not a disinterested arbiter but, rather, shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.¹⁷ Since appellant’s allegations and P.N. e-mail indicate that the employing establishment would have in its possession evidence relevant to appellant’s allegations of a hostile work environment and error or abuse, (*i.e.*, the IMIP and documents addressing appellant’s removal from Gaffney Post Office and why she was not to return) OWCP should obtain a response from the employing establishment to the allegations of error or abuse and hostile work environment and any relevant evidence or argument.¹⁸

¹⁶ See *R.A.*, Docket No. 17-1030 (issued April 16, 2018); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5(d)(1) (June 2011).

¹⁷ See *R.A.*, *id.*; *K.W.*, Docket No 15-1535 (issued September 23, 2016) (remanding the case for further development by OWCP when the employing establishment did not provide an investigative memorandum in an emotional condition claim based on sexual harassment).

¹⁸ *Id.*; see 20 C.F.R. § 10.117(a), which provides that an employing establishment that has reason to disagree with any aspect of the claimant’s report shall submit a statement to OWCP that specifically describes the factual allegation or argument with which it disagrees and provide evidence or argument to support its position. The employing establishment may include supporting documents such as witness statements, medical reports or records, or any other relevant information.

The Board also notes that the employing establishment issued a Form CA-16 on September 16, 2016. A properly completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003). On return of the case, OWCP shall determine whether the CA-16 form of record in this case properly authorized any medical treatment.

This case will accordingly be remanded to OWCP for further development of the evidence regarding appellant's allegations of improper transfer and hostile work environment. OWCP shall request that the employing establishment provide a detailed statement and relevant evidence and/or argument regarding appellant's allegations. Following this and any necessary further development, it shall issue a *de novo* decision regarding whether appellant has established an emotional condition in the performance of duty.

CONCLUSION

The Board finds that the case is not in posture of a decision as to whether appellant has met her burden of proof to establish an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the September 11, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision of the Board.

Issued: July 27, 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