United States Department of Labor
Employees' Compensation Appeals Board

E.B., Appellant	)	
and	)	**Docket No. 17-1917**
	)	**Issued: June 26, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Roanoke, VA, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 11, 2017 appellant filed a timely appeal from a March 17, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

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 January 26, 2014 appellant, then a 55-year-old mail processor, filed an occupational disease claim (Form CA-2) alleging that she developed an emotional condition as a result of working in a stressful environment. She first became aware of her condition and first realized it

[1] 5 U.S.C. § 8101 *et seq.*

was causally related to her employment on November 15, 2013. Appellant stopped work on November 16, 2013 and retired on November 30, 2013.

In an undated statement, appellant alleged that after having a heart attack in March 2013 she returned to work in a light-duty position in the manual letters section. She indicated that in this area she was required to move cases of mail which was stressful. Appellant noted that coworkers who were once friendly were now critical, sarcastic, hostile, and angry. She noted instances where a group of coworkers would look at her, laugh, and give her dirty looks. Appellant alleged that her coworkers would routinely help pull each other's cases down, but would refuse to help her pull her mail from the case. She asserted that the same coworkers would allow their friends to work "loop mail," but would tell her that she could not because she was untrained. Appellant alleged that because she was "deaf" she was unable to hear what her coworkers said, but it was clear that she was mocked by them. She alleged that, on November 14, 2013, she pulled mail from her case and when she returned to her workstation someone had placed a tray of junk and mail on her ledge. Appellant indicated that she was confused by this and advised that her coworkers did not explain why the mail was at her workstation, but just laughed. On this day, she received a text from S.B., a supervisor, about the vacation roster and she reported to her supervisor that her work environment was stressful.

In an undated statement, S.B. indicated that appellant never informed her of the November 14, 2013 claimed incident, rather she found out through another employee in the manual case section. She noted that the medical records indicated that the etiology of appellant's chest pain was uncertain.

Appellant was treated in the emergency room on November 15, 2013 by Dr. John Stadnyk, Board-certified in emergency medicine, who diagnosed chest pain, uncertain etiology.

On February 5, 2014 OWCP requested that appellant submit additional evidence that included a detailed description of the employment incidents that contributed to her claimed illness. It also requested the employing establishment provide comments from a knowledgeable supervisor on the accuracy of all statements.

The employing establishment submitted a November 15, 2013 note from, W.B., a coworker, who informed appellant that she brought over her last round of trays and she did not want to overload the all-purpose container (APC) so she placed the trays in appellant's area because her tray was empty. W.B. apologized if it caused appellant to be upset.

In an e-mail dated November 15, 2013, J.L., employing establishment labor relations personnel, informed S.B. that she spoke to appellant through the relay system as appellant was hearing impaired. Appellant reported experiencing stress at work that had been going on for a while. She indicated that the night before appellant's coworkers were talking about her, laughing, and whispering. Appellant reported having a heart condition, leaving work, and going to an emergency room. J.L. informed appellant of the proper procedure for reporting a work incident and instructed her to prepare a statement and give it to S.B. who would forward it to the manager of human resources.

In an undated statement, S.B. indicated that appellant held a bid job on Tour 1 Automation. On March 24, 2013 appellant had a heart attack and on May 14, 2013 was approved to return to work light duty in the manual letter case section. She reported to S.B. that her coworkers would not permit her to work loop mail because she was not trained. S.B. spoke to A.Y., manager of operations, who informed appellant that she could work loop mail anytime she was out of mail to be worked. She advised that on November 14, 2013 at 10:37 p.m. she sent appellant a text message, as she was deaf, asking her about the vacation roster and appellant replied that she was very upset, her chest hurt, and she was crying in the bathroom. S.B. contacted appellant's immediate supervisor, S.C., who was unaware of an incident, but instructed appellant to go home because she had left her work area. She reported that a mail handler brought over appellant's mail and added her trays to the APC, but the last tray would not fit so she placed this tray on appellant's ledge to be worked. Appellant reportedly returned to her workstation and saw the tray and became very upset. S.B. indicated that she was unaware of appellant's stress until November 15, 2013 when appellant texted her and told her that her husband took her to the emergency room. On November 17, 2013 appellant reported to work and provided an incident statement and retired the next week. S.B. noted that appellant was working light duty. Appellant's duties included sitting in a chair in front of "pigeonhole cases" and manually sorting letters, when the holes filled up, she would stand up, pull a handful of letters out and place them into a dispatch tray. S.B. indicated that there was no heavy lifting, no overtime, no quotas, no deadlines, no extra workload or extra demands. Appellant was able to perform the duties.

Appellant submitted additional medical records from her emergency room visit on November 15, 2013 where she was treated for chest pain. She also submitted an audiogram dated February 21, 2014.

By decision dated June 24, 2014, OWCP denied appellant's claim.

On August 25, 2014 appellant requested reconsideration. In an undated statement, she noted that she had worked light duty with manual letters and she was unhappy with this environment. Appellant indicated that her physician recommended that she work daylight hours to reduce the stress from working nights, but she was unable to bid for another job. She reported that her stress increased because her coworkers would not let her work loop mail. Appellant asserted that her coworkers laughed and talked about her because she was deaf and refused to assist her in pulling letters when her case was full but assisted each other. She asserted that S.B. was aware of her stressful work environment and she informed her that she did not like to work in the manual case section. Appellant stated that she had a communication barrier with her coworkers and management. She also submitted additional medical records from November 15, 2013, noting her treatment for chest pain and a headache. Appellant reported an onset the night before when she became angry at work.

Appellant submitted a statement from K.L., a coworker, dated September 22, 2014, who was also deaf. K.L. reported witnessing appellant's stressful environment and stressed-related events at work. He indicated that he and appellant communicated by American Sign Language and he witnessed her exhibit chest pain and stress from work.

By decision dated January 8, 2015, OWCP denied the claim, but with modification. It determined that appellant had not established a compensable factor of employment such that her

claimed condition was not sustained in the performance of duty. Therefore, OWCP did not analyze medical evidence for a finding on causal relationship.

On December 9, 2015 appellant requested reconsideration and submitted additional evidence. In a December 9, 2015 statement, she reiterated that on March 24, 2013 she had chest pain while at work. Appellant reported retiring due to her stressful work environment. She was frustrated because she could not bid for jobs due to her lifting restrictions. Appellant further noted that management assigned her to the less preferred limited-duty position at night and placed other employees in a preferred limited-duty position during the day. She reported bidding for day jobs, but was denied because of communication issues and her deafness. Appellant noted that the plant manager A.B. forced her to change her days off and deprived her of Sunday premium pay. She also submitted emergency room records from March 26, 2013 and April 16 and May 21, 2015. Appellant submitted a March 29, 2013 eligibility packet for the Family and Medical Leave Act (FMLA). Also submitted were limited-duty job offers for a clerk position dated May 13 and June 13, 2013 which were accepted.

In a May 13, 2013 statement, regarding her request that the employing establishment restore her leave, appellant indicated that on March 26, 2013 she thought she had a heart attack and stopped work. On April 26, 2013 appellant's physician released her to light-duty work. Appellant noted submitting her paperwork to S.B. on April 27, 2013. When she did not hear back from her she called the employing establishment nurse on May 8, 2013 and was advised that her paperwork required clarification. Appellant asserted that the employing establishment did not promptly notify her that her paperwork required clarification which resulted in the unnecessary use of leave. Appellant's physician released her to work on May 8, 2013 and she requested credit for annual leave used from May 8 to 13, 2013 when management allowed her to return to work.

In a June 30, 2013 request for information relative to processing a grievance, A.L., the plant manager, indicated that appellant's days off changed because her assignment changed to reflect the needs of the new light-duty position. She indicated that appellant's reporting time also changed because she requested light duty. A.L. advised that appellant's start time and days off changed for the needs of the agency.

In November 18, 2013 statement, appellant reported filing a grievance for lost Sunday differential. She asserted that on June 13, 2013 plant management changed her bid schedule nights off from Saturday/Sunday to Sunday/Monday due to her light-duty work request. Appellant indicated that on several Sunday's management called in another employee to work a nonschedule day on Sunday and to work overtime. She asserted that she lost 25 percent night differential because of this management action.

By decision dated March 9, 2016, OWCP denied modification of the decision dated January 8, 2015. In an October 14, 2016 appeal request form, appellant requested reconsideration. She submitted a statement and reiterated her allegations.

By decision dated March 17, 2017, OWCP denied modification of the March 9, 2016 decision.

LEGAL PRECEDENT

To establish an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.[2]

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 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.[4] 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.[5] Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[6] Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.[7] Personal perceptions alone are insufficient to establish an employment-related emotional condition.[8] 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 frustration from not being permitted to work in a particular environment or to hold a particular position.[9]

ANALYSIS

Appellant alleged that she sustained an emotional condition due to a number of employment interactions and conditions. OWCP denied her emotional condition claim because she failed to establish any compensable employment factors. The Board must initially review

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[2] *George H. Clark*, 56 ECAB 162 (2004).

[3] 28 ECAB 125 (1976).

[4] *See Robert W. Johns*, 51 ECAB 137 (1999).

[5] *Supra* note 3.

[6] *J.F.*, 59 ECAB 331 (2008).

[7] *M.D.*, 59 ECAB 211 (2007).

[8] *Roger Williams*, 52 ECAB 468 (2001).

[9] *Supra* note 3.

whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.

Appellant has attributed her emotional condition to performing her regular or specially assigned duties of her position. She alleged that after she had a heart attack in March 2013 she returned to a light-duty position in manual letters and was unhappy with this work environment. Appellant alleged that her coworkers would routinely help each other by pulling each other's cases, but would refuse to assist her pull mail from the case. However she provided insufficient corroborating evidence to support this general allegation. As noted, frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable.[10] Appellant did not specify particular duties at specific times to which she attributed her claimed emotional condition. She submitted a statement from K.L., a coworker dated September 22, 2014, who generally indicated that he witnessed appellant's stressful work environment and stressed-related events. This general statement is insufficient to establish appellant's claim for an emotional condition. Appellant's supervisor, S.B. indicated that after appellant's recovery from a heart attack she was approved to return to light duty and on May 14, 2013 she was assigned to the manual letter case section. S.B. noted appellant's duties and indicated that appellant was able to perform the same. No evidence was submitted to substantiate that the limited-duty assignment did not meet appellant's restrictions or that she worked outside her restrictions. The evidence supports that the employing establishment made every effort to comply with appellant's restrictions. Appellant did not otherwise sufficiently attribute her emotional condition to performing a specific regular or specially assigned duty in her job. Therefore, appellant has not established a compensable factor under *Cutler*.[11]

Appellant made several allegations related to administrative and personnel actions. 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 employer and do not bear a direct relation to the work required of the employee. The Board noted, 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-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]

As noted, appellant indicated that, after her heart attack, the employing establishment assigned her to a light-duty job that she did not like. The Board has held that denials by an

[10] *See id*.

[11] *Supra* note 3.

[12] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[13] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

employing establishment of a request for a different job, promotion, or transfer are not compensable factors of employment under FECA, as they do not involve appellant's ability to perform her regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.[14] SB. explained that changes in appellant's light-duty assignment were necessary based on the treating physician's restrictions when she returned to work after her heart attack. She noted that appellant originally held a bid job on Tour 1 Automation and upon her recovery she was approved to return to work light duty in the manual letter case section on May 14, 2013. S.B. noted appellant's duties and advised that she was able to perform the duties. The employing establishment has neither erred in this administrative matter nor has it explained the reasons for its actions. Appellant did not provide any corroborating probative evidence to establish that the employing establishment erred or was abusive in the handling of her work assignments.

Appellant alleged that she requested to work "loop mail," but her coworkers would not permit this claiming that she was not trained. However, appellant's coworkers allegedly would permit their untrained friends to work "loop mail." The Board notes that the assignment of work is an administrative function[15] and not a work factor and is not compensable absent a showing of error or abuse. The manner in which a supervisor exercises his or her discretion falls outside the ambit of FECA. Absent evidence of error or abuse, appellant's mere disagreement or dislike of a managerial action is not compensable.[16] The Board finds that appellant has not submitted sufficient evidence to establish error or abuse regarding her work assignments. The evidence does not establish that the employing establishment acted unreasonably. A.Y., manager of operations, informed appellant that she could work "loop mail" anytime she was out of mail. The employing establishment has either denied appellant's allegations or reasonably explained its actions in these administrative matters. Appellant has not provided any probative evidence showing that that the employing establishment erred or was abusive in the handling of her work assignments.

Appellant also alleged that management acted unreasonably in changing her work shift to night time. She noted other employees in limited-duty positions worked during the day, but she was not offered this opportunity. Appellant asserted that this interfered with her sleeping and eating patterns and she became fatigued. However, an employee's frustration over not being permitted to work a particular shift or to hold a particular position is not covered under FECA.[17] Changes in workdays and hours, positions, locations, and changes in an employee's duty shift may constitute a compensable factor of employment arising in the performance of duty. However, a change in a duty shift does not arise as a compensable factor *per se*. The factual circumstances

[14] *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

[15] *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

[16] *See Barbara J. Latham*, 53 ECAB 316 (2002); *see also Peter D. Butt, Jr.*, 56 ECAB 117 (2004) (allegations such as improperly assigned work duties, which relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties do not fall within the coverage of FECA); *L.S.*, 58 ECAB 249 (2006) (the fact that management changed an employee's work schedule does not bring the claim within the scope of workers' compensation; the employee must submit proof that management changed her schedule in error).

[17] *Ruth C. Borden*, 43 ECAB 146 (1991).

surrounding the employee's claim must be carefully examined to discern whether the alleged injury is being attributed to the inability to work his or her regular or specially assigned job duties due to a change in duty shift, *i.e.*, a compensable factor arising out of and in the course of employment or whether it is based on a claim which is premised on the employee's frustration over not being permitted to work a particular shift or to hold a particular position.[18] The assignment of a work schedule or tour of duty is recognized as an administrative function of the employer and, absent any error or abuse, does not constitute a compensable employment factor.[19] In a June 30, 2013 statement, A.L., plant manager, indicated that appellant's reporting time changed because she requested light duty. A.L. advised that appellant's start time and days off changed for the needs of the agency. While appellant asserted that management changed her shift, she did not allege that she was unable to perform the duties of the position and thus she has not identified a compensable employment factor. She also has not submitted sufficient evidence to establish that the administrative change in her tour of duty constituted administrative error or abuse by employing establishment management.[20] The record establishes, and appellant's supervisor explained, that the reason for the change was that appellant requested light-duty work and that the shift change was done for the needs of the employing establishment. Further, to the extent that appellant asserts that the shift change would result in inconvenience to her daily commute to work, this would not be a factor arising in the performance of duty.[21] The Board finds that the evidence does not establish that the change in appellant's tour of duty was unreasonable. Thus, appellant has not established a compensable employment factor under FECA with respect to the time of her work shift.

Appellant asserted that employing establishment management changed her schedule in a manner that resulted in her losing Sunday premium pay, noting that on several Sunday's management called in another employee to work Sunday and to work overtime. As noted, the assignment of work is an administrative function[22] and is not compensable absent a showing of error or abuse. The manner in which a supervisor exercises his or her discretion falls outside the ambit of FECA. Absent evidence of error or abuse, appellant's mere disagreement or dislike of a managerial action is not compensable.[23] The Board finds that appellant has not submitted sufficient evidence to establish error or abuse regarding her work assignments or that the employing establishment acted unreasonably. As noted, A.L. explained that changes in appellant's assignment were necessary because her assignment changed to light duty and the change reflected the needs of the new position. The employing establishment has either denied appellant's allegations or explained the reasons for its actions in these administrative matters. Appellant did

[18] *Helen Allen*, 47 ECAB 141 (1995); *Peggy R. Lee*, 46 ECAB 527 (1995).

[19] *Id.*

[20] An administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. *See Charles D. Edwards*, 55 ECAB 258 (2004).

[21] *See George H. Clark*, 56 ECAB 162 (2004).

[22] *Donney T. Drennon-Gala*, *supra* note 15.

[23] *See Barbara J. Latham*, *supra* note 16.

not provide any probative evidence to establish that the employing establishment erred or was abusive in the handling of her work assignments.

Appellant alleged that she lost annual and sick leave over the years due to problems in the workplace which caused her to miss work. She noted that on April 26, 2013 her physician released her to light-duty work. On April 27, 2013 appellant submitted the paperwork to S.B. requesting light duty. She reported that her supervisor did not respond and on May 8, 2013 the employing establishment informed her that her paperwork required clarification. Appellant asserted that because the employing establishment did not follow up on her request for light duty she unnecessarily used up her leave. The Board notes that the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[24] Appellant did not provide any corroborating evidence to substantiate that the employing establishment acted unreasonably in this matter.

Appellant alleged that she was harassed by coworkers. To the extent that incidents alleged as constituting harassment or a hostile environment by coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[25] However, for harassment to give rise to a compensable disability under FECA, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under FECA.[26] Appellant alleged that coworkers that were once friendly to her became critical, sarcastic, hostile, and angry. She noted that because she was deaf she was unable to hear what her coworkers said, but it was clear that she was being talked about, laughed at, and mocked. Appellant alleged that her coworkers would routinely help each other pull mail, but refused to help her. She indicated that on November 14, 2013 she pulled mail from her case and when she returned to her workstation someone had placed a tray of junk and mail on her ledge. Appellant indicated that this confused her, but her coworkers did not explain the situation and instead just laughed. The record reveals that in a November 15, 2013 note, W.B. informed appellant that she brought over her last round of trays and she did not want to overload the APC so she placed the trays in appellant's area because her tray was empty. She apologized if it caused appellant to be upset. The evidence fails to support appellant's claim for harassment as a cause for her emotional condition. General allegations of harassment are not sufficient[27] and in this case appellant has not submitted sufficient evidence to establish harassment by her coworkers or disparate treatment by her supervisor.[28] Although she alleged that her coworkers harassed and engaged in actions, which she believed constituted harassment, appellant provided no

[24] *See Judy Kahn*, 53 ECAB 321 (2002)

[25] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[26] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991). *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[27] *See Paul Trotman-Hall*, 45 ECAB 229 (1993).

[28] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

corroborating evidence to establish his allegations.[29] The factual evidence fails to support appellant's claim that he was harassed or discriminated against in these matters.

The record also indicates that appellant filed a grievance alleging discrimination and unfair treatment. However, grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.[30] Appellant has not submitted any final decisions finding error with regard to matters alleged by appellant. None of the evidence from these matters establishes improper action by the employing establishment. Thus, the evidence regarding the EEO grievance matters does not establish compensable harassment by the employing establishment.

Consequently, appellant has not established her claim for an emotional condition as she has not attributed her claimed condition to any compensable employment factors. As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record.[31]

On appeal appellant reiterated her allegations, asserting that she has established her emotional condition claim. As explained, appellant has not established her claim for an emotional condition as she has not established any compensable employment factors.

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

[29] *See William P. George*, 43 ECAB 1159 (1992).

[30] *James E. Norris*, 52 ECAB 93 (2000).

[31] *A.K.*, 58 ECAB 119 (2006).

ORDER

IT IS HEREBY ORDERED THAT the March 17, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 26, 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