

performance of duty. M.O., her supervisor, indicated on the claim form that she was not in the performance of duty at the time of the alleged injury as she “suffered an anxiety attack by overhearing a conversation about her.” Appellant stopped work on March 24, 2016.

In a March 30, 2016 narrative statement, appellant related that she experienced an anxiety attack on the evening of March 23, 2016 while dumping mail. She had almost completed her work duties when she heard coworker “A.M. screaming and swearing because he thought that I was dumping [mail] too slowly. [A.M.’s] swearing and accusation were so severe that [M.K.], my husband and coworker, considered calling the police.” Appellant indicated that a few moments earlier M.K. had informed a supervisor that A.M. was verbally harassing her, including using the F-word and MF-word. The supervisor spoke with A.M. but his “screaming and swearing were further escalated.” Management arrived and appellant asked if she had done anything wrong. One responded that something had happened outside the work location that “probably set him off.” Appellant related that A.M.’s actions triggered her anxiety and post-traumatic stress disorder (PTSD) such that she almost lost consciousness. She related, “As a result of being wrongly accused of working slowly and for receiving a torrent of unspeakable insults and profanity that no person should withstand at a workplace, I was taken to the emergency room that night and had to follow up with a primary physician thereafter.”

In an April 1, 2016 incident report, A.M. related that he noticed that mail was coming down slowly and so “the preppers and I were standing around waiting for mail to come down.” He told a coworker that the “dumper is dumping too slow.” M.K., appellant’s husband, got too close to him and told him he should return to driving. A.M. told him that she was dumping too slowly. M.K. began yelling for the police. He denied interacting with M.K. or appellant, noting that she was in front of the belt.

Appellant, in an April 11, 2016 statement, related that she experienced anxiety and PTSD after a coworker “yelled a series of profanities” at her. Her blood pressure rose, she fell onto the ground, and could not move or speak. Appellant maintained that she was transported to the hospital nearly unconscious.

On April 22, 2016 the employing establishment controverted the claim, asserting that appellant “underwent a self-generated reaction (anxiety attack) to a conversation she may have overheard taking place between employees (including her husband who is also a coworker). This incident remains under investigation by [the employing establishment].”

Appellant’s supervisor, M.O., in an undated statement received by OWCP on April 25, 2016, related that another supervisor informed her on March 23, 2016 that M.K. was “threatening to call the police on [A.M.]” M.K. asserted that A.M. used profanity in a raised voice. M.O. noted that A.M. denied speaking to appellant or M.K. and instead maintained that he had spoken with another coworker about appellant not keeping the belt full. M.O. related that appellant did not seem upset until she began to leave, at which point she began crying and fell. Her husband telephoned their house for medication because he thought she was having an anxiety attack. A coworker got appellant a wheelchair and she and her husband left work.

By letter dated April 26, 2016, OWCP requested that appellant provide additional information in support of her claim, including a detailed description of the work factors to which

she attributed her condition.² It asked whether A.M. directed his comments to her and whether she heard him speaking about her specifically.

In a May 16, 2016 response, appellant again described the events of March 23, 2016. She advised that she heard A.M. “begin screaming and swearing profusely.” Appellant indicated that she “did not completely understand the content of his rampage,” and so asked her husband, who told her that it was aimed at her because she did not dump fast enough. She listed the names of the coworkers who witnessed the incident. Appellant related, “In the past [A.M.] has displayed a pattern of aggression toward me, and each time he used me as a victim to his anger, I experienced a shortness of breath, and on those nights after work, I had a difficult time falling asleep. These instances led me to develop anxiety whenever I was around [A.M.], and the incident on March 23, 2016 was the tipping point that led to an anxiety attack and loss of consciousness.”

Appellant asserted that A.M.’s comments were directed at her, and that she heard him say the MF-word in reference to the dumper. She was the only dumper working, so she knew she was the target of his words. Appellant advised that she and her coworkers worked in close proximity and could hear everything, noting that the “hostility and aggression he displayed were [so] severe that it called for the attention of four managers who were in the building.” She advised that she took anxiety medication as needed and had a diagnosis of PTSD from harassment by a supervisor in 2012.

By decision dated June 8, 2016, OWCP denied appellant’s emotional condition claim as she had not established the March 23, 2016 incident occurred in the performance of duty as alleged. It further found that she had not established a compensable factor of employment.

Appellant on July 12, 2016 requested reconsideration. By decision dated February 28, 2017, OWCP denied modification of its June 8, 2016 decision. It found that she failed to corroborate her account of the events on March 23, 2016 and thus had not established verbal abuse or harassment. OWCP also noted that an emotional reaction to gossip was not a compensable work factor.

On appeal appellant contends that she submitted sufficient evidence to show that harassment occurred and noted that the actions of her coworker happened while she was in the workplace.

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 her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.³ On the other hand, the

² Appellant submitted numerous medical reports in support of her claim.

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

disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁴

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 employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.⁵ A claimant must establish a factual basis for 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.⁶ 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.⁷ 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.⁸

OWCP's procedures provide:

“An employee who claims to have had an emotional reaction to conditions of employment must identify those conditions. The [claims examiner] must carefully develop and analyze the identified employment incidents to determine whether or not they in fact occurred and if they occurred whether they constitute factors of the employment. When an incident or incidents are the alleged cause of disability, the [claims examiner] must obtain from the claimant, agency personnel and others, such as witnesses to the incident, a statement relating in detail exactly what was [stated] and done. If any of the statements are vague or lacking detail, the responsible person should be requested to submit a supplemental statement clarifying the meaning or correcting the omission.⁹

⁴ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁵ *See Michael Ewanichak*, 48 ECAB 364 (1997).

⁶ *See Charles D. Edwards*, 55 ECAB 258 (2004); *Parley A. Clement*, 48 ECAB 302 (1997).

⁷ *See James E. Norris*, 52 ECAB 93 (2000).

⁸ *Beverly R. Jones*, 55 ECAB 411 (2004).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.17(j) (July 1997); *see also A.K.*, Docket No. 13-0079 (issued April 15, 2013).

OWCP's regulations provide that an employer who has reason to disagree with an aspect of the claimant's allegation should submit a statement that specifically describes the factual argument with which it disagrees and provide evidence or argument to support that position.¹⁰

ANALYSIS

Appellant has not attributed her emotional conditions to the performance of her work duties under *Cutler* or to error and abuse by management in administrative matters. Instead, she contended that on March 23, 2016, a coworker, A.M., began yelling that she was dumping mail too slowly and using profanity. Appellant's husband had told a supervisor a few minutes earlier that he was verbally harassing appellant, using both the F-word and MF-word. The supervisor talked with A.M., who escalated his screaming and swearing. Other managers arrived and spoke to A.M., and appellant asked if she had done anything wrong. She asserted that she sustained an aggravation of anxiety and PTSD from A.M. accusing her of working too slowly and his use of insults and profanity. OWCP denied appellant's claim after finding that she had not submitted sufficient evidence to corroborate the alleged events of March 23, 2016.

The Board finds that this case is not in posture for decision. In a letter dated April 22, 2016, the employing establishment's representative controverted the claim, and indicated that "[t]his incident remains under investigation." OWCP did not request further information from the employing establishment to determine the existence of any investigative findings. Although it is a claimant's burden of proof to establish 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. It shares responsibility to see that justice is done.¹¹ In a case where it "proceeds to develop the evidence and to procure evidence, it must do so in a fair and impartial manner."¹²

In the absence of detailed information regarding the employing establishment's investigation surrounding appellant's allegations, the case will be remanded to OWCP to further develop the factual evidence and, thereafter, to make appropriate findings regarding appellant's allegations. OWCP shall request that the employing establishment provide any relevant evidence to which it has access, including the results of its investigation of the March 23, 2016 incident.¹³ The type of information being sought is normally within the custody of the employing establishment and not readily available to appellant.¹⁴

¹⁰ 20 C.F.R. § 10.117(a); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7(a)(2) (June 2011) (in certain types of claims, such as a stress claim, a statement from the employer is imperative to properly develop and adjudicate the claim).

¹¹ See *R.E.*, 59 ECAB 323 (2008).

¹² *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985).

¹³ See *M.B.*, Docket No. 17-0536 (issued June 22, 2017).

¹⁴ See *Order Remanding Case, R.M.*, Docket No. 15-1753 (issued April 3, 2017); *F.V.*, Docket No. 16-0786 (issued August 2, 2016).

Following this and such further development as deemed necessary, it should issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the February 28, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: March 14, 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