

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

F.C., Appellant)	
)	
and)	Docket No. 18-0625
)	Issued: November 15, 2018
U.S. POSTAL SERVICE, WESTSIDE STATION,)	
Little Rock, AR, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 30, 2018 appellant filed a timely appeal from a September 29, 2017 merit decision and a November 24, 2017 nonmerit 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 to consider the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish an emotional condition in the performance of duty; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 24, 2017 appellant, then a 53-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained stress due to harassment and discrimination in the performance of her federal employment. She did not stop work.

A March 11, 2017 form report from The Family Clinic noted appellant's diagnoses as depression and post-traumatic stress disorder (PTSD).² The report related that appellant was first seen on February 3, 2017 and was advised to stay off work until April 7, 2017.

OWCP, by development letter dated May 4, 2017, notified appellant that additional factual and medical evidence was necessary to establish her claim. It also provided a questionnaire for her completion regarding the factual circumstances of her injury. OWCP afforded appellant 30 days to submit the necessary evidence.

In a January 15, 2017 precomplaint form, appellant alleged discrimination based on race and physical disability, she also alleged retaliation. She claimed that her supervisor bullied and harassed her. Appellant specifically asserted that her supervisor, J.S., tampered with her mail, interfered with her arrival and departures, changed her work hours, threatened to controvert a work injury claim, and did not acknowledge her physician's work restrictions.

On January 25, 2017 appellant received a notice of a seven-day suspension for failing to follow instructions and unacceptable conduct. Appellant's supervisor, J.S., charged her with refusing to follow her instructions to complete delivery of her assigned route. According to her supervisor, appellant alleged that completing the delivery was outside her work restrictions due to limitations on her duty hours. During the investigative interview on January 9, 2017 appellant denied disobeying instructions and alleged supervisory harassment, bullying, and intimidation.

Appellant alleged retaliation as the notice of suspension was given after she filed an Equal Employment Opportunity (EEO) complaint. She also alleged that her supervisor refused to meet and discuss the situation with her and a union steward.

On March 24, 2017 appellant requested to see a union steward to inquire about filing a grievance regarding her supervisor's failure to provide her with forms to file a claim for work-related stress.

In form reports from The Family Clinic dated March 31, April 7, and May 5, 2017, appellant was diagnosed with depression and PTSD.³

OWCP received a copy of an April 26, 2017 EEO complaint wherein appellant alleged race, age, sex, and disability discrimination. Appellant alleged that her supervisor violated her work restrictions by not allowing her to perform office work, but following work restrictions for white female employees. She alleged that her supervisor assigned appellant's work to other

² The physician's signature is illegible.

³ The physician's signature is illegible.

employees under the age of 40 while either sending her home or making her sit in the breakroom. Appellant asserted that her supervisor asked her to leave her office and told appellant to leave the employing establishment.

In a May 12, 2017 statement, appellant again alleged that her supervisor treated her in a degrading manner as well as harassed, bullied, threatened, discriminated, and intimidated her. She described an incident which allegedly occurred on December 12, 2016 when her supervisor commented that, since she was attacked by a dog on February 4, 2016, she could not move as quickly as other carriers, therefore, her supervisor indicated that appellant should no longer work at the employing establishment. Appellant alleged that her supervisor would yell, scream, and talk about her injury when she was on the work floor. She also alleged that her supervisor went into a rage when appellant requested a union steward. Appellant alleged that on November 25, 2017 she fell when she missed a step and her supervisor told her she was going to controvert the claim. She alleged that, after receiving authorization to receive medical treatment, her supervisor told her that she wanted to fire her. In addition, appellant alleged that her supervisor made her stay in the breakroom and bullied her by telling her not to come back to work if she did not obey her instructions.

In a May 25, 2017 report, Shannon Greenfield, Ph.D. a clinical psychologist, diagnosed anxiety, PTSD, and significant work-related stressors. She detailed a history of psychological stressors, which included an attack by two dogs in February 2016 while delivering mail, as well as harassment and bullying by her supervisor. OWCP continued to receive reports from Dr. Greenfield.

In a September 19, 2017 letter, J.S., appellant's supervisor, denied appellant's assertions that she harassed appellant or made her work outside of her restrictions. She related that she assigned work to other employees, rather than appellant, as the work was outside her work restrictions. J.S. also denied any knowledge of an EEO complaint filed against her as complaints were kept confidential until either trial or mediation.

By decision dated September 29, 2017, OWCP denied appellant's claim finding that she failed to establish a compensable factor of employment. Therefore, appellant did not establish "an injury as defined by FECA."

Subsequent to the denial of her claim, OWCP received a revised September 26, 2017 duty status report (Form CA-17) from Dr. Greenfield which noted PTSD due to injury. The form also noted that appellant was restricted to office work or driving to prevent her from encountering dogs.

On October 20, 2017 OWCP received appellant's request for reconsideration and a handwritten statement dated October 7, 2017 in which she reiterated her prior allegations.

By decision dated November 24, 2017, OWCP denied appellant's request for reconsideration. It found that the evidence she submitted in support of her reconsideration request was irrelevant to the main issue of the present case, because her emotional condition claim had been denied on a factual basis, *i.e.*, her failure to submit factual evidence establishing a compensable employment factor.

LEGAL PRECEDENT -- ISSUE 1

To establish a claim for an emotional condition in the performance of duty, an employee must submit: (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 his or her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.⁴

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.⁵ 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.⁶ 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 the FECA.⁷ 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.⁸

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.⁹ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.¹⁰

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.¹¹ Mere perceptions of harassment or discrimination are not compensable under FECA.¹² A claimant must substantiate allegations of harassment or discrimination with probative and reliable

⁴ *V.W.*, 58 ECAB 428 (2007); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁵ *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

⁶ *A.K.*, 58 ECAB 119 (2006); *David Apgar*, 57 ECAB 137 (2005).

⁷ *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁸ *J.F.*, 59 ECAB 331 (2008); *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁹ *D.L.*, 58 ECAB 217 (2006); *Jerald R. Gray*, 57 ECAB 611 (2006).

¹⁰ *K.W.*, 59 ECAB 271 (2007); *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

¹¹ *K.W.*, *id.*; *Robert Breeden*, *supra* note 5.

¹² *M.D.*, 59 ECAB 211 (2007).

evidence.¹³ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹⁴ A claimant must establish a factual basis for his or her allegations of harassment or discrimination with probative and reliable evidence.¹⁵

Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his or her allegations with probative and reliable evidence.¹⁶ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter, OWCP must base its decision on an analysis of the medical evidence.¹⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish an emotional condition in the performance of duty.

The Board notes that appellant did not attribute her emotional condition to the performance of her regular or specially assigned duties as a supervisor of customer services under *Lillian Cutler*.¹⁸ Rather, appellant has alleged in general and broad terms that her supervisor, J.S., threatened her removal, controverted an injury claim, and discriminated against her with work assignments.

As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of FECA.¹⁹ The Board has long held that disputes regarding the assignment of work,²⁰ handling of compensation claims,²¹ and disciplinary matters,²² are administrative functions of the employing establishment and, absent error or abuse, are not compensable.²³ Absent evidence

¹³ *J.F.*, *supra* note 8; *Robert Breeden*, *supra* note 5.

¹⁴ *G.S.*, Docket No. 09-764 (issued December 18, 2009); *Ronald K. Jablanski*, 56 ECAB 616 (2005); *Penelope C. Owens*, 54 ECAB 684 (2003).

¹⁵ *Robert Breeden*; *supra* note 5; *Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁶ *See Kathleen D. Walker*, 42 ECAB 603 (1991).

¹⁷ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *A.K.*, *supra* note 6; *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

¹⁸ *Supra* note 7.

¹⁹ *Carolyn S. Philpott*, 51 ECAB 175 (1999).

²⁰ *Robert W. Johns*, 51 ECAB 137 (1999).

²¹ *Willis E. Tomlin*, Docket No. 05-0923 (issued August 11, 2005).

²² *C.T.*, Docket No. 08-2160 (issued May 7, 2009).

²³ *Charles D. Edwards*, 55 ECAB 258 (2004).

establishing error or abuse, a claimant's disagreement or dislike of such a managerial action is not a compensable factor of employment.²⁴

Appellant has submitted insufficient evidence to substantiate her allegations. She alleged that her supervisor did not follow physician's work restrictions, would not allow her to perform office work, and assigned work she could have done to other employees. Mere disagreement or dislike of a supervisory or of a managerial action will not be compensable, absent evidence of error or abuse.²⁵ Appellant has not provided evidence establishing that J.S. erred in the assignment of work, made appellant work outside her restrictions, or improperly disciplined her for failing to follow instructions regarding her assigned route. J.S. denied appellant's allegations and explained that she did not assign some work to appellant as it was outside her work restrictions. The Board finds that appellant has not submitted evidence supporting her claim and J.S. provided a reasonable explanation for her actions such that appellant has not established a compensable factor of employment in this regard.

Appellant alleged that she was harassed, yelled at, and bullied by her supervisor, J.S. To the extent that incidents alleged as constituting harassment or a hostile environment by a manager are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.²⁶ 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.²⁷ Appellant has not submitted any evidence such as witness statements supporting her allegations. General allegations of harassment are insufficient²⁸ and in this case she has not submitted sufficient evidence to establish disparate treatment by her supervisor.²⁹ Although appellant alleged that her supervisor harassed her and engaged in actions which she believed constituted harassment, she provided no corroborating evidence to establish her allegations.³⁰ In a September 19, 2017 letter, J.S. denied appellant's assertions of harassment. Appellant has not established a compensable employment factor with regard to her allegations of harassment.

²⁴ *Donney T. Drennon-Gala*, 56 EAB 460 (2006).

²⁵ *C.S.*, 58 ECAB 137 (2006).

²⁶ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *supra* note 16.

²⁷ *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). *See also M.G.*, Docket No. 16-1453 (issued May 12, 2017) (vague or general allegations of perceived harassment, abuse, or difficulty arising in the employment are insufficient to give rise to compensability under FECA).

²⁸ *See Paul Trotman-Hall*, 45 ECAB 229 (1993) (Alternate Member Groom, concurring).

²⁹ *Jack Hopkins, Jr.*, *supra* note 27.

³⁰ *See William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

The Board, therefore, finds that appellant has not established an emotional condition in the performance of duty as she has not attributed her claimed condition to a compensable employment factors.³¹

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.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.³²

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.³³

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.³⁴ If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.³⁵ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.³⁶

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

Appellant's October 7, 2017 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, the Board finds that, although she submitted a written statement, she did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further

³¹ As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).

³² 5 U.S.C. § 8128(a); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

³³ 20 C.F.R. § 10.606(b)(3); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

³⁴ *Id.* at § 10.607(a).

³⁵ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

³⁶ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).

In support of her October 7, 2017 reconsideration request, appellant submitted a September 26, 2017 Form CA-17 from her psychologist. Although new, this evidence is insufficient to warrant reopening the record for further merit review. The September 26, 2017 Form CA-17 is neither relevant nor pertinent to the issue on reconsideration. As noted above, the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.³⁷ OWCP denied appellant's emotional condition claim on a factual basis, *i.e.*, her failure to submit factual evidence establishing a compensable employment factor. Therefore, the submitted medical evidence is not relevant or pertinent to the basis of the denial of her emotional condition claim. A claimant may be entitled to a merit review by submitting relevant and pertinent new evidence, but appellant did not submit any such evidence, and thus, she failed to satisfy the third requirement under section 10.606(b)(3).

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Therefore, pursuant to 20 C.F.R. § 10.608, OWCP properly denied further merit review.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an emotional condition in the performance of duty. The Board further finds that OWCP properly denied her request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

³⁷ *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 24 and September 29, 2017 are affirmed.

Issued: November 15, 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