

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

S.B., Appellant)	
)	
and)	Docket No. 18-1113
)	Issued: February 21, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Oklahoma City, OK, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 10, 2018 appellant filed a timely appeal from an April 24, 2018 merit 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 over the merits of this 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 June 15, 2015 appellant, then a 63-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that, on April 20, 2015, she first became aware that her stress, depression, and anxiety were related to continued harassment from her supervisors regarding work restrictions. She alleged that the work stress caused additional conditions including irritable bowel

¹ 5 U.S.C. § 8101 *et seq.*

syndrome, hypertension and breathing problems for which she had been hospitalized from April 5 to 20, 2015. The employing establishment indicated that appellant returned to work following a prior injury under medical restrictions, but worked four hours a day even though eight hours of work was available.²

In support of her claim, appellant submitted work excuse notes dated April 10, 2015 from Dr. Gregory Blair, a Board-certified internist. Dr. Blair indicated that appellant was hospitalized from April 5 to 10, 2015. He released her to light-duty work “due to medical reasons.”

By development letter dated July 2, 2015, OWCP notified appellant that additional evidence was necessary to establish her emotional condition claim. This included factual evidence corroborating any workplace incidents and a report from her attending psychiatrist or clinical psychologist diagnosing a condition attributable to those incidents. OWCP afforded appellant 30 days to submit the necessary evidence.

In a July 13, 2015 supplemental statement, appellant indicated that, on April 5, 2015, she was admitted to the hospital for breathing problems associated with stress and anxiety. She denied stress outside the workplace. Appellant noted that her accepted physical conditions had not improved and that her supervisor harassed her because her medical restrictions had increased.³

In a July 3, 2015 Equal Employment Opportunity (EEO) complaint, appellant identified supervisor L.W., manager R.D., and Injury Compensation Specialist, T.W., as individuals who discriminated against her based on sex and her disability due to back and neck problems which resulted from her letter carrier duties for 24 years. She alleged that she was abused and discriminated against and ordered to violate her work restrictions. Appellant further alleged that she was told she was “too slow” and had been threatened with discipline for not meeting projected times. She also alleged that she was notified that she could not claim her lost time with OWCP.

In an undated statement, appellant indicated that her supervisor had refused her July 6, 2015 request for extra time to complete her assigned route. She also noted that OWCP had denied authorization for further physical therapy for her accepted back and neck conditions, which made her movement more restrictive and affected her assigned duties. A copy of OWCP’s April 16, 2015 denial of authorization for further physical therapy under OWCP File No. xxxxxx474 was submitted.

In a July 8, 2015 request for reasonable accommodation form, appellant requested accommodation for neck sprain, sprain of lumbosacral joint, displacement of cervical intervertebral disc without myelopathy, thoracic or lumbosacral neuritis and mental anguish, stress

² The record reflects that appellant had several prior OWCP claims. Under OWCP File No. xxxxxx474, OWCP accepted an October 2, 2007 injury for neck sprain, sprain of lumbosacral (joint) (ligament), displacement of cervical intervertebral disc without myelopathy, and thoracic or lumbosacral neuritis or radiculitis. Under OWCP File No. xxxxxx561, it accepted a December 31, 2013 injury for sprain of back, lumbar region and sprain of back, thoracic region. OWCP File No. xxxxxx561 has been combined with OWCP File No. xxxxxx474 serving as the master file.

³ Evidence submitted from OWCP File No. xxxxxx561 indicates that appellant has permanent work restrictions due to a lumbar strain. In a May 8, 2015 letter, OWCP noted that appellant refused or failed to report to a city carrier position that it found suitable in accordance with her January 28, 2015 medical limitations.

and depression from harassment. She alleged difficulty with performing her position because she was constantly told to work faster and to work beyond her restrictions.

In other statements, requests for reasonable accommodation, and grievance forms, appellant alleged that she could not perform her job without accommodation because she needed to compose herself to relieve the stress caused by her supervisors. She also indicated that she should not be driving due to her back injury. Appellant concluded that she and her coworkers were subjected to disparaging treatment by management because of their medical limitations.

A statement signed by appellant and several coworkers indicated that the workplace environment was strained under the current management. They attested that “carriers with medical limitations” were targeted and subjected to a higher level of scrutiny than the other carriers.

The employing establishment submitted a July 20, 2015 statement denying appellant’s allegations. A human resources specialist noted that this claim arose after appellant was offered an eight-hour modified position and that OWCP had denied additional physical therapy under File No. xxxxxx561. The specialist concluded that appellant had breathing problems prior to the April 5, 2015 hospitalization, which was for exacerbation of chronic obstructive pulmonary disorder (COPD).

Medical reports from Dr. Shawn A. Khavari, a Board-certified psychiatrist, dated April 20, 2015 through August 11, 2015 were submitted. Dr. Khavari diagnosed depression, anxiety disorder, and insomnia associated with anxiety. He noted that appellant reported work was stressful. Dr. Khavari also noted that she was hospitalized in April 2015 for pneumonia, that she had a neck injury in 2007 and back injury in 2013, and other medical conditions. In a January 16, 2016 note, he indicated that appellant’s depression and anxiety symptoms had exacerbated her COPD and irritable bowel symptoms.

In a February 16, 2016 report, Dr. Gregory L. Blair, an internist, noted that appellant had a stressful job, which might be playing a role in her breathing problems and recurrent pneumonia. He indicated that her stressful job played a role in her recurrent problems with chest pain and in controlling her blood pressure.

In an August 3, 2015 statement, appellant indicated that many employees at the workplace had witnessed management’s harassment and hostility. She indicated that the supervisors admitted that there was a violation of the union contract and, as a result, she had received minor compensation associated with that violation. Appellant alleged that the harassment from her supervisors continued, as did the mental anguish and stress related to such harassment.

A September 2, 2015 letter from the employing establishment indicated that it had denied appellant’s reasonable accommodation request due to the severely restrictive nature of her restrictions.

By decision dated December 21, 2015, OWCP denied appellant’s claim for an emotional condition, as the evidence of record was insufficient to establish that there were compensable factors of employment. It noted that the evidence revealed that appellant’s condition arose because of noncompensable factors of employment and/or unsubstantiated allegations.

On January 15, 2016 appellant requested reconsideration. In a January 19, 2016 letter, she argued that since neither the employing establishment nor OWCP had provided any evidence to contradict her claims, her claim should be accepted as factual.

Notes from appellant dated March 7 and 8, 2016 concerned a March 7, 2016 job offer. In the March 7, 2016 note, appellant alleged that manager R.D. informed her that she had to respond to the job offer that day, without the consent of her doctor or attorney. She alleged that she felt coerced due to the required immediate response. The following day, March 8, 2016, appellant met with R.D. She alleged that he would not give her a copy of the job offer unless she signed it. Appellant indicated that, out of frustration and previous encounters with R.D., she refused the job offer as there was no time to review it. A copy of the March 7, 2016 offer of modified assignment under OWCP File No. xxxxxx561, noted that appellant had refused the position on March 8, 2016 with the caveat that she could review the job offer with legal counsel and her doctors.

In a January 19, 2016 report, Dr. Khavari indicated that appellant had been diagnosed with depression and anxiety. He indicated that her depression and anxiety had impaired her function and ability to work. In November 5, 2015 and in March 23, April 12 and 19, 2016 work capacity evaluations for psychiatric/psychological conditions (OWCP-5a forms), Dr. Khavari indicated that appellant could not work due to depression and anxiety.

By decision dated June 20, 2016, OWCP denied modification of the December 21, 2015 denial of appellant's emotional condition claim. It found that appellant had not submitted new factual evidence to substantiate any allegation of wrong doing on the part of the employing establishment, nor had she identified any compensable factors of employment.

Appellant continued to submit additional medical evidence.

On April 28, 2017 appellant requested reconsideration. In an April 4, 2017 letter, she expressed frustration with OWCP over a change in claims examiners. Appellant also requested that OWCP review and investigate findings in OWCP File Nos. xxxxxx474 and xxxxxx561. Medical evidence was submitted.

By decision dated April 24, 2018, OWCP denied modification of its June 20, 2016 decision. It found that appellant had not submitted evidence of a hostile work environment or disparity of treatment. Additionally, there was no evidence of error or abuse on the part of the employing establishment and she had not identified any compensable factors of employment.

LEGAL PRECEDENT

To establish an emotional condition in the performance of duty, appellant 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.⁴

⁴ See *M.R.*, Docket No. 18-0305 (issued October 18, 2018); *George H. Clark*, 56 ECAB 162 (2004).

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*,⁵ 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.⁶ 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.⁷ Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.⁸ Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.⁹ Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹⁰ 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.¹¹

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.¹² However, the Board has held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.¹³ In determining whether the employing establishment erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.¹⁴

⁵ 28 ECAB 125 (1976).

⁶ See *Robert W. Johns*, 51 ECAB 137 (1999).

⁷ *Supra* note 3.

⁸ *J.F.*, 59 ECAB 331 (2008).

⁹ *M.D.*, 59 ECAB 211 (2007).

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

¹¹ See *P.B.*, Docket No. 17-1912 (issued December 28, 2018).

¹² See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹³ See *William H. Fortner*, 49 ECAB 324 (1998).

¹⁴ *Ruth S. Johnson*, 46 ECAB 237 (1994).

For harassment or discrimination to give rise to a compensable disability under FECA, there must be probative and reliable evidence that harassment or discrimination did in fact occur.¹⁵ Mere perceptions of harassment, retaliation or discrimination are not compensable under FECA.¹⁶

ANALYSIS

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

Appellant has attributed her emotional condition to the inability to perform her regular or specially assigned duties. The record indicates that she has neck and back conditions from previously accepted work-related injuries and that OWCP had denied additional authorization for physical therapy for her accepted conditions under File No. xxxxxx561. Appellant alleged that the denial of authorization for physical therapy affected her job performance as it restricted her physical abilities. The employing establishment indicated that it had offered appellant an eight-hour modified position under OWCP File No. xxxxxx561. The Board finds that appellant did not submit the necessary evidence to establish the duties she was allegedly required to perform, which overwhelmed her, and caused her stress. To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition. Appellant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.¹⁷ She disagreed with her medical restrictions under File No. xxxxxx561 and that management had offered her a modified position consistent with her medical restrictions under that prior claim. Appellant has not, however, established that she was in fact forced to work outside of her restrictions or that she was targeted in any specific way because she had medical restrictions. The Board therefore finds that appellant has not established that her emotional condition arose from her regular or specially assigned duties of her position to constitute a compensable factor of employment under *Cutler*.¹⁸

Appellant also made several allegations related to administrative and personnel actions on the part of her supervisors. The incidents identified by appellant include management's comments and directives of being ordered to violate her work restrictions, being told that she was too slow, threats of discipline, the handling of her requests for extra time and reasonable accommodation, and being pressured to immediately accept the March 7, 2016 job offer.

As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of FECA.¹⁹ Absent evidence establishing error or abuse, a claimant's disagreement or

¹⁵ *Marlon Vera*, 54 ECAB 834 (2003).

¹⁶ *Kim Nguyen*, 53 ECAB 127 (2001).

¹⁷ *See J.Q.*, Docket No. 17-1276 (issued December 27, 2017).

¹⁸ *A.L.*, Docket No. 17-0368 (issued June 20, 2018); *see Y.J.*, Docket No. 15-1137 (issued October 4, 2016) (claimant did not provide the requisite detail regarding specific dates and the duties she performed, which allegedly overwhelmed her, to establish that her assigned work caused her stress).

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

dislike of such a managerial action is not a compensable factor of employment.²⁰ The alleged comments and directives of management, of which there is no corroborating evidence, and the handling of her requests for extra time, reasonable accommodations, and the March 7, 2016 job offer are administrative functions of the employer, and not duties of the employee.²¹ Appellant has not established a compensable factor of employment as she has not submitted corroborating evidence of error or abuse in these administrative and personnel matters.²²

While appellant submitted a signed statement from her coworkers attesting that carriers with medical limitations, including appellant, were targeted and subjected to higher levels of scrutiny than other carriers, this general statement is insufficient to establish that appellant was subjected to a higher level of scrutiny by management. There were no specific dates or times provided which indicated that appellant was in fact scrutinized by management due to her medical restrictions.²³ The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under FECA.²⁴

Appellant has alleged frustration with OWCP with regards to her other claims led to stress. The Board notes that matters related to the processing of compensation claims bear no relation to day-to-day or specially assigned duties and are an administrative function of the employer and not a duty of the employee.²⁵

Appellant has further attributed her emotional condition to discrimination, harassment, and a hostile work environment by management. However, for harassment to give rise to a compensable disability under FECA, there must be evidence that harassment did in fact occur as alleged. Mere perceptions of harassment are not compensable under FECA.²⁶ Appellant alleged in her August 3, 2015 statement that the supervisors admitted that there was a violation of Articles 15, 19, and 21 and, as a result, she had received minor compensation associated with that violation. However, the record is devoid of any evidence pertaining to what the alleged violations were and statements from the supervisors attesting to the fact that such violations happened. Appellant, therefore, has not established, with probative and reliable evidence, that her allegations of harassment or discrimination occurred as alleged.²⁷

²⁰ *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

²¹ See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

²² *Id.*

²³ See *A.L.*, *supra* note 18.

²⁴ *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

²⁵ See *D.P.*, Docket No. 10-1375 (issued March 24, 2011); *David C. Lindsey, Jr.*, 56 ECAB 268 (2005).

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

²⁷ See *S.W.*, Docket No. 17-1016 (issued September 19, 2018); see *G.S.*, Docket No. 09-0764 (issued December 18, 2009).

Consequently, appellant has not established her claim for an emotional condition as she has not attributed her claimed condition to any compensable employment factors. The Board therefore does not need to consider the medical evidence of record.²⁸

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

ORDER

IT IS HEREBY ORDERED THAT the April 24, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 21, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy 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

²⁸ See *S.W., id.*; *A.K.*, 58 ECAB 119 (2006); *Katherine A. Berg*, 54 ECAB 262 (2002).