

sexually-oriented personal advertisement appellant had placed on social media to her coworkers. She stopped work on May 22, 2017. On the reverse side of the claim form, S.C., appellant's supervisor, asserted in a statement dated June 6, 2017 that appellant had not been injured in the performance of duty and was not being truthful.²

Appellant provided a statement to the employing establishment on May 18, 2017 asserting that she had been advised on May 17, 2017 "that there was a Craigslist advertisement posted about" appellant and her husband. She alleged that Coworker T.H. sent a screen capture of the advertisement to other employees who in turn shared it with additional coworkers.

In a memorandum dated May 22, 2017, C.B., an employing establishment inspector, noted that appellant acknowledged that "she posted the advertisement," which included a photograph of herself and her husband.

In a memorandum dated May 23, 2017, C.B. noted that appellant admitted that she falsely claimed that an unknown party posted the personal advertisement and photograph, but later acknowledged that she and her husband had posted the advertisement. Appellant asserted that a coworker informed her that she was the "joke of the union meeting" and was referred to as "Facebook girl." She alleged that the circulation of the advertisement by Coworker D.R. and unnamed supervisors constituted harassment.

In a sworn affidavit dated May 23, 2017, appellant asserted that she did not wish the employing establishment's inspection service to pursue additional investigation of the Craigslist advertisement.

In a statement dated June 12, 2017, appellant's supervisor S.C. contended that appellant had recently expressed dissatisfaction with the amount of a settlement from an automobile accident and stated that there was "another way to get \$100,000.00" that she needed. S.C. alleged that, on May 18, 2017, appellant asked S.C. if others were speaking about a "fake post" by an "ex-friend of [hers] who was on vacation" with appellant and her husband. S.C. related that appellant told her a "supervisor at another office told her that it was being spread around." S.C. informed appellant of who she received it from, and who that person received it from. The latter would not say who told them.

In an investigative memorandum dated June 12, 2017, C.B. noted that on May 18, 2017, appellant had contended that the Craigslist advertisement was "false," but on May 22, 2017 acknowledged that "she and her husband posted a personal advertisement on Craigslist.

In a statement dated June 13, 2017, D.K., an employing establishment manager, noted that on May 17, 2017, appellant came into his office and alleged that someone had posted a false personal advertisement on the Internet with sexual content about appellant and her husband. Appellant wished to file "a complaint because some of the employees (Carriers) had seen the

² In letters dated June 13, 2017, L.R., an employing establishment human resources specialist, noted that the employing establishment "cannot concur with [appellant's] claim" as there were serious inconsistencies in the factual evidence and appellant had provided no medical evidence. In a letter dated June 20, 2017, L.R. contended that because appellant had posted the personal ad any reaction to it was self-generated.

advertisement and had shared it with each other. She really didn't know who." Appellant stopped work on May 20, 2017 and has not returned.

In a work excuse slip dated June 29, 2017, Dr. Yellamraju R. Kumar, an attending Board-certified internist, held appellant off from work from May 22 to July 25, 2017.

By development letter dated July 11, 2017, OWCP notified appellant of the deficiencies of her claim and requested that she submit additional medical and factual evidence. It noted that the factual evidence of record did not indicate that she sustained the claimed emotional condition in the performance of her regularly or specially assigned duties. OWCP emphasized that appellant's physician's detailed, well-rationalized opinion on causal relationship was crucial to her claim. It afforded her 30 days to submit the necessary evidence.

In response, appellant provided an undated statement alleging that, on May 20, 2017, while at work, she became physically ill when Coworker S.P. told her that she "was the joke of the Carriers Union Meeting" held on May 17, 2017. Appellant contended that "two male carriers had also made snide, harassing comments" directly to her, but she could not recall their names or the words spoken. She also alleged that coworkers and supervisors harassed her about the personal advertisement from May 17 to 22, 2017. Appellant characterized her false statement that an unknown person had posted the advertisement as a "coping strategy" to salvage her reputation and protect her career. She noted a history of panic attacks, including a hospitalization on August 28, 2015.

Appellant provided an undated witness statement from Coworker J.K. who asserted that, on May 20, 2017, she informed appellant that there was a "picture of her being circulated around." A supervisor had already told appellant that she had received the photo from station manager J.P.

In an undated statement, appellant's coworker M.L. asserted that on May 20, 2017 appellant was distressed when she learned that others at the employing establishment had seen the personal advertisement. He "had also heard many of these slanderous remarks throughout the workroom floor prior to this date."

Appellant also provided a statement dated July 28, 2017 from acquaintance P.W., and undated statements from two relatives, who attested to appellant's anxiety after she became aware that her coworkers had seen the sexually-oriented personal advertisement and photo she had posted online.

Appellant also submitted medical evidence. In reports dated September 1 and October 12, 2015, Dr. Kumar diagnosed generalized anxiety disorder, chronic post-traumatic stress disorder (PTSD) and hypothyroidism. In a report dated June 20, 2017, he related that appellant experienced stress and anxiety when coworkers circulated "an advertisement on Craigslist that advertised her and her husband looking for a woman," which resulted in her demotion from supervisor to carrier. Dr. Kumar noted that appellant had continued neck and back pain related to a motor vehicle accident on an unspecified date. He prescribed anxiolytic medication. Dr. Kumar held appellant off work through August 27, 2017.

Appellant also provided a report dated August 13, 2017 from Dr. Frank Sturniolo, an attending licensed clinical psychologist, who related appellant's account of harassment by

coworkers who discovered the personal advertisement she had placed on Craigslist. Dr. Sturniolo diagnosed acute PTSD and agoraphobia with panic attacks caused by “verbal harassment” at work.

By decision dated November 9, 2017, OWCP denied the claim as fact of injury had not been established. It found that appellant had provided an inaccurate statement about the origin of the Craigslist photo and advertisement and later admitted that she and her husband had posted the material themselves. OWCP further found that she did not submit probative evidence establishing her allegations of harassment. Additionally, it found that the photo and advertisement were voluntary acts unconnected to and outside her federal employment. Appellant’s reaction to coworkers viewing the advertisement and photo were therefore self-generated.

LEGAL PRECEDENT

To establish an emotional condition causally related to factors of a claimant’s federal employment, he or she must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing the emotional condition is causally related to the identified compensable employment factors.³

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 his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁴ 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.⁵

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant’s performance of her regular duties, these could constitute employment factors.⁶ However, for harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under FECA.⁷

³ *M.R.*, Docket No. 18-0304 (issued November 13, 2018); *A.C.*, Docket No. 18-0484 (issued September 7, 2018); see *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁶ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, *supra* note 3.

⁷ *A.C.*, *supra* note 3; *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

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 her allegations with probative and reliable evidence.⁸ 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.⁹

ANALYSIS

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

Appellant alleged that she sustained an emotional condition due to harassment and discrimination by coworkers and managers who shared a sexually-oriented personal advertisement she had posted on social media and ridiculed her for posting the advertisement. OWCP denied her emotional condition claim because she had failed to establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are compensable employment factors under the terms of FECA.¹⁰ The Board notes that appellant's allegations do not pertain to her regular or specially assigned duties under *Cutler*.¹¹ Rather, appellant has alleged a pattern of harassment and discrimination on the part of managers and coworkers.

Appellant has alleged that managers and coworkers subjected her to harassment and discrimination. Disputes and incidents alleged as constituting harassment and discrimination by managers and coworkers may constitute compensable employment factors if they are established as occurring and arising from appellant's performance of her regular duties.¹² The Board has held that unfounded perceptions of harassment do not constitute an employment factor.¹³ Mere perceptions are not compensable under FECA and harassment can constitute a factor of employment if it is shown that the incidents constituting the claimed harassment actually occurred.¹⁴

⁸ *Kathleen D. Walker*, *supra* note 3.

⁹ *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. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

¹⁰ *A.C.*, *supra* note 3.

¹¹ *Lillian Cutler*, *supra* note 4.

¹² *A.C.*, *supra* note 3; *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

¹³ *A.C.*, *supra* note 3; *see F.K.*, Docket No. 17-0179 (issued July 11, 2017).

¹⁴ *Id.*

The Board finds that appellant has not established compensable employment factors with regard to the claimed harassment and discrimination.¹⁵ Appellant has not submitted probative evidence establishing such harassment or discrimination. She submitted two statements asserting that she had heard secondhand from coworkers that the personal advertisement and photo she placed on Craigslist was being circulated at the employing establishment. Appellant also provided a June 12, 2017 statement from S.C. who informed appellant of who had forwarded the personal advertisement to her, and who that person received it from, and an undated statement from Coworker J.K. alleging that Station Manager J.P. had forwarded the advertisement to unspecified persons on an unspecified date. Given the lack of specific details as to the time and place of transmittal or the recipients, these statements are insufficient to establish harassment or discrimination by management.

Appellant also alleged that coworkers ridiculed her and disseminated the posting.

The Board notes that these statements do not establish harassment or discrimination. Statements of her coworkers did not note specific remarks made against appellant, or identify the person or persons who allegedly made those remarks.¹⁶ Since appellant has admitted that she placed the personal advertisement in question on Craigslist, which is open to a world-wide community, she has not explained how discussion of the ad by coworkers would constitute harassment.

Appellant also attributed her emotional condition to an alleged demotion somehow connected to the personal advertisement. She advised Dr. Kumar, an attending Board-certified internist, on June 20, 2017 that the dissemination of the personal advertisement resulted in her demotion from supervisor to carrier. An emotional reaction to an administrative action, such as a demotion, may be compensable if the evidence of record establishes error or abuse by the employing establishment.¹⁷ The Board finds, however, that the factual evidence of record does not establish that appellant was demoted. There are no personnel documents, supervisory statements, or position descriptions to support this allegation. Thus, appellant has not established error or abuse on the part of the employing establishment.

For these reasons, the Board finds that appellant has not established a compensable employment factor.¹⁸ In light of the Board's finding on the factual aspect of her case, it is unnecessary to consider the medical evidence of record.¹⁹

¹⁵ *A.C.*, *supra* note 3. *See generally C.T.*, Docket No. 08-2160 (issued May 7, 2009) (finding that some statements may be considered abusive and constitute a compensable factor of employment, but that not every statement uttered in the workplace will be covered by FECA).

¹⁶ *A.C.*, *supra* note 3; *see S.B.*, Docket No. 09-1654 (issued July 14, 2010).

¹⁷ *K.W.*, Docket No. 15-1535 (issued September 23, 2016); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹⁸ *M.R.*, *supra* note 3.

¹⁹ *M.R.*, *supra* note 3; *Garry M. Carlo*, *supra* note 9.

On appeal, appellant alleges that she was harassed at work, discriminated against, and demoted. As set forth above, appellant did not submit probative factual evidence establishing her allegations of harassment and discrimination or that she was demoted.

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 November 9, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 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