United States Department of Labor
Employees' Compensation Appeals Board

E.S., Appellant	)	
and	)	**Docket No. 18-1493**
	)	**Issued: March 6, 2019**
DEPARTMENT OF THE TREASURY, U.S. MINT, West Point, NY, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 July 31, 2018 appellant, through counsel, filed a timely appeal from a May 23, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that following the May 23, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish an emotional condition while in the performance of duty, as alleged.

FACTUAL HISTORY

On October 25, 2017 appellant, then a 61-year-old coin production supervisor, filed a traumatic injury claim (Form CA-1) alleging that, on October 20, 2017, she became upset during a conversation with her supervisor at work, experienced a headache, lost consciousness, and fell.

On October 30, 2017 the employing establishment executed an authorization for examination and/or treatment (Form CA-16). Dr. Jason Greenberg, a neurologist, completed this form on November 2, 2017 and diagnosed "left hemiparesis presumed due to a stroke." He checked a box marked "yes" indicating that the condition was caused or aggravated by appellant's employment activity. Dr. Greenberg attributed appellant's stroke to a "possible slight increase in blood clotting due to emotional stress."

On November 20, 2017 Dr. Greenberg completed an attending physician's report (Form CA-20) and again diagnosed a stroke. He checked a box marked "yes" indicating that appellant's condition was caused by her employment activities. Dr. Greenberg further reported that psychological stress may contribute to the progression of atherosclerosis.

In a December 12, 2017 development letter, OWCP notified appellant that her claim was initially administratively handled to allow for medical payments, as it appeared to involve a minor injury resulting in minimal or no lost time from work. However, the merits of appellant's claim had not been formally considered and her claim had been reopened for consideration for the merits because the medical expenses had exceeded $1,500.00. OWCP also informed her that the evidence of record was insufficient to establish her traumatic injury claim. It advised appellant of the type of medical and factual evidence necessary to establish the claim and afforded her 30 days to submit additional evidence.

In a November 21, 2017 note, Dr. Greenberg described appellant's employment activity on October 20, 2017 as an altercation with someone at work, a feeling like her head was exploding, and then loss of consciousness.

On January 13, 2018 appellant described the October 20, 2017 employment incident, noting that her supervisor, D.B., had approached and followed her with a complaint, which she felt was untrue and this upset her. She requested time to calm down and D.B. refused. Appellant noted that D.B. routinely confronted her regarding her managerial practices and that she was afraid of being singled out.

In a witness statement dated December 28, 2017, S.L., a coworker, saw appellant talking with D.B. Appellant was noted to have asked not to discuss an issue at that time. She then turned around and collapsed, striking her head on the floor.

In a witness statement dated January 10, 2018, K.P., a coworker, observed appellant wobbling in her walk and fainting. She alleged that appellant hit her head on the floor "pretty badly," but did not strike anything else.

On January 11, 2018 D.B. alleged that appellant may have had issues with some of her employees and coworkers that may have caused stress. He noted that her performance was always at or above satisfaction levels. D.B. asserted that appellant had conduct issues and received verbal counseling. He noted that her conduct was improving and never interfered with her work.

A November 17, 2017 investigative report indicated that appellant had become really upset during a conversation she had with D.B. regarding concerns that were brought to his attention about her interactions with her employees.

By decision dated January 18, 2018, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish an emotional condition arising from a compensable factor of employment.

On February 22, 2018 appellant requested a review of the written record from an OWCP hearing representative.

In a statement dated February 3, 2018, appellant alleged that on May 10, 2017 three employees made allegations against her. She asserted that these three employees constantly attempted to undermine her authority. Due to the May 10, 2017 adverse allegations, appellant had continuous confrontations with D.B. D.B. initially instructed her to write an incident report and to keep her distance from these employees. In August 2017, he required appellant to provide a verbal statement regarding the May 10, 2017 employee allegations. D.B. required her to complete a written statement on August 25, 2017 and on August 30, 2017 he directed appellant to sign and date her statement.

Appellant previously received cash awards annually; however, she did not receive one in 2017. D.B. explained that he did not recommend that she receive a cash award due to the management inquiry regarding the May 10, 2017 allegations. Appellant filed an Equal Employment Opportunity (EEO) complaint regarding the lack of a cash award. She noted that her workplace had become a hostile environment with multiple EEO complaints and class action suits against management.

On June 14, 2017 the employing establishment moved appellant from the third shift, 11:30 p.m. through 8:00 a.m., to the second shift, 3:30 p.m. through 12:00 a.m. It required her to replace another supervisor who had had several complaints against him filed by his employees. Appellant asserted that she became upset and stressed about the shift change and was concerned about working with Supervisor A.G. on the second shift. During a June 19, 2017 meeting, A.G. accused appellant of asserting that she had "slept her way to the top." Appellant denied this allegation. A.G. also expressed concerns about appellant working on the second shift. Appellant's second line supervisor informed her that A.G. would be in full charge and control of the second shift. Appellant was upset and shaking after this meeting. As she began working on the second shift, appellant felt her supervisory duties were limited, that she was not allowed to perform the full scope of her duties, and that she was not included in meetings. The other supervisors received work cellphones, but she did not.

Appellant sought help from A.G. regarding an employee who had laughed at the female die setters and questioned her work. When she was directing her employees, this particular employee would walk away. He did not report to work on October 20, 2017 and D.B. informed

appellant that he and another employee had filed a complaint against her. Appellant became upset, and denied saying or doing anything adverse to these employees. She informed D.B. that she was too upset to talk. D.B. followed appellant from his office into hers and persisted in the conversation. Appellant asked that D.B. leave her alone for a while until she could calm herself and he continued to talk and follow her onto the work floor. She alleged that the conversation with D.B. had garnered a large audience and that he repeatedly directed her not to repeat what he had told her. Appellant could not stop crying or get herself under control. S.B., one of her employees noted that she asked D.B. if he could continue the conversation at another time as she was upset. Appellant, then went to the ladies room to recover. When she returned to the work floor, her vision became blurry, and she felt a pop sensation in her head. When appellant awoke she was on the floor.

On December 26, 2017 C.W., a coworker, provided a statement describing the conversation and interaction between appellant and D.B. on October 20, 2017. She asserted that she witnessed the conversation in appellant's office and that both parties were upset. C.W. noted that appellant asked that D.B. not continue with the conversation, and that he replied that they had to talk. Appellant began crying and S.B., a shop steward, entered the conversation. She asked several times if the conversation could continue at a different time and place.

In a statement dated December 28, 2017, S.B., reported that on October 20, 2017 appellant informed D.B. that she could not talk at that time, and would continue the conversation after production was running. He continued to follow her and question her regarding the verbal complaints made by two people on her shift. Appellant became upset and S.B. checked on her. D.B. continued the conversation. S.B. informed D.B. that his actions were unwarranted.

By decision dated May 23, 2018, OWCP's hearing representative affirmed OWCP's January 18, 2018 decision.

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 the condition; (2) rationalized medical evidence establishing an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.[4]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to a claimant's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.[5] However, disability is not compensable when it results from factors such as an

[4] *C.M.*, Docket No. 17-1076 (issued November 14, 2018); *Kathleen D. Walker*, 42 ECAB 603 (1991).

[5] *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

employee's fear of a reduction in force, or frustration from not being permitted to work in a particular environment, or to hold a particular position.[6]

An employee's emotional reaction to administrative or personnel matters generally falls outside of FECA's scope.[7] Although related to the employment, administrative and personnel matters are functions of the employer rather than the regular or specially assigned duties of the employee.[8] However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.[9]

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.[10] When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.[11]

ANALYSIS

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

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. OWCP denied her emotional condition claim finding that she had not established compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA. The Board notes that appellant's allegations do not pertain to her regular or specially assigned duties under *Cutler*.[12] Rather, appellant alleged that verbal altercations, disagreements, and difficult relationships with her supervisors; undergoing investigations due to allegations made by subordinate employees; a change in her assigned work duties; and a change in her assigned work shift resulted in stress which in turn caused her October 20, 2017 stroke.

Appellant has attributed her emotional condition to administrative actions of the employing establishment which she asserted were erroneous. These actions include the assignment of work

[6] *Cutler*, *id.*

[7] *G.R.*, Docket No. 18-0893 (issued November 21, 2018); *Andrew J. Sheppard*, 53 ECAB 170, 171 (2001); *Matilda R. Wyatt*, 52 ECAB 421, 423 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991).

[8] *C.M.*, *supra* note 4; *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005); *McEuen*, *id.*

[9] *Id.*

[10] *G.R.*, *supra* note 7; *Roger Williams*, 52 ECAB 468 (2001).

[11] *See C.M.*, *supra* note 4; *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).

[12] *Cutler*, *supra* note 5.

including limiting her supervisor duties and not including her in meetings, the change of her work shift, the failure to provide her with a cellphone, and the denial of a cash award. Appellant also attributed her emotional condition to the investigation of the allegations of her supervisees on May 10, 2017 and the discussion regarding the additional allegations from other supervisees on October 20, 2017. The Board has held that disputes regarding the assignment of work,[13] investigations,[14] change of work shift,[15] and the assessment of work performance[16] are all administrative functions of the employing establishment and, absent error or abuse, a claimant's disagreement or dislike of such a managerial action is not compensable. The Board finds that, while appellant disagreed with the actions of her supervisors, she has not submitted corroborating evidence which established error or abuse on the part of the employing establishment in regard to these activities.

Regarding appellant's allegation that D.G. behaved inappropriately or erroneously in discussing her actions regarding her employees on the workroom floor on October 20, 2018 and in continuing the discussion after she became upset, the Board has generally held that a loud discussion on the workroom floor does not constitute error or abuse.[17] Furthermore, mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent evidence of error or abuse.[18] While appellant submitted witness statements corroborating that the October 20, 2017 discussion with D.G. took place on the workroom floor, and that she was upset by this discussion, the Board notes that, despite her arguments that her supervisor should have spoken to her in private or ended the conversation when she became upset, there was no evidence that the supervisor's remarks were unwarranted or constituted verbal abuse.[19]

Thus, the Board finds that appellant has not established a compensable employment factor under FECA and, therefore, has not met her burden of proof to establish an emotional or stress-related condition in the performance of duty.[20] As appellant has not established a compensable employment factor, the Board need not consider the medical evidence of record.[21]

[13] *Y.B.*, Docket No. 16-0194 (issued July 24, 2018); *Robert W. Johns*, 51 ECAB 137 (1999).

[14] *A.C.*, Docket No. 18-0484 (issued September 7, 2018).

[15] *S.A.*, Docket No. 15-1355 (issued November 18, 2015).

[16] *Y.B.*, *supra* note 13; *Elizabeth W. Esnil*, 46 ECAB 606 (1995).

[17] *A.C.*, *supra* note 5.

[18] *G.R.*, *supra* note 7.

[19] *A.C.*, *supra* note 5.

[20] *G.R.*, *supra* note 7.

[21] *Id.*

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.[22]

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the May 23, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 6, 2019
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

[22] The Board notes that where an employing establishment properly executes a Form CA-16 authorizing medical treatment related to a claim for a work injury, the form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. *See Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c).