

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

_____)	
L.H., Appellant)	
)	
and)	Docket No. 18-1217
)	Issued: May 3, 2019
DEPARTMENT OF VETERANS AFFAIRS,)	
HONOLULU VETERANS MEDICAL CENTER,)	
Honolulu, HI, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 29, 2018 appellant filed a timely appeal from a December 21, 2017 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. 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 additional 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 in the performance of duty.

FACTUAL HISTORY

On June 20, 2017 appellant, then a 53-year-old health system specialist, filed an occupational disease claim (Form CA-2) alleging that she sustained an emotional condition due to working in a hostile environment. She alleged: that her coworkers harassed, tormented, and bullied her; that she had to go through mediation sessions; and that management did not care. Appellant first became aware of her claimed condition and its relationship to her federal employment on August 24, 2016. She did not stop work. No evidence was received with the claim.

In a development letter dated August 18, 2017, OWCP informed appellant that the medical and factual evidence submitted was insufficient to support her claim and advised her of the type of evidence needed. It asked her to provide a medical opinion from an attending psychiatrist or clinical psychologist with a detailed description of findings and symptoms, results of all psychological testing, diagnosis and clinical course of treatment followed, and a physician's opinion supported by a medical explanation regarding the cause of her emotional condition. OWCP afforded appellant 30 days to submit the necessary evidence.

By separate letter dated August 18, 2017, OWCP requested that the employing establishment provide additional information concerning appellant's claim.

In a September 9, 2017 statement, appellant alleged that she had been forced to work in a hostile work environment for the past two years. She noted that management was aware that she sought mental health services in March 2016 and was aware of the hostile work environment later in August 2016. Appellant alleged that management did not care that her vertigo episodes were triggered by work stress or that she worked in a hostile environment as she did an outstanding job on her joint commission inspections. She noted that she had filed a grievance in August 2016 due to the hostile work environment.

With regard to the hostile work environment, appellant indicated that "A," the team leader, often gossiped about her.³ In April 2015, the team leader started to have a grudge against her, when she was going through a situation with her husband which overflowed into the work environment. Appellant alleged that the team leader told both her and Coworker "B" that they should be careful as her husband thought that they were introducing her to men. She alleged that her office was moved for safety reasons concerning the team leader's husband.

Appellant alleged that she suffered stress and hostility from her coworkers. She explained that she had notified leadership in August 2016 that her coworkers had formed an alliance against her and were behaving unprofessionally towards her. Appellant alleged that her coworkers demeaned her work and assignments at mediation sessions, isolated her from work conversations,

³ Appellant only included the first names of individuals in her statement.

were unprofessional, lied to her face and attacked her with harsh words, sabotaged her work, demeaned her work ethic, and made big deals about her old mistakes. She also alleged that, during this time, her work processes had changed and she was given a lot of extra work with short deadlines.

Appellant alleged that the team leader tried to sabotage her work in June 2017 when she gave her a file to work on one day before a presentation and had purposely left a nurse practitioner's name off the monthly renewal listing, the "go to" list for providers. She alleged that the team leader had deleted the nurse practitioner's name on the monthly renewal listing to try and cover for "I," a coworker, not realizing that it could be traced. Appellant alleged that management downplayed the incident because it was the team leader.

Appellant indicated that the employing establishment held approximately six mediation sessions, which started in September 2016, to address interpersonal conflicts affecting work. She alleged that the mediation sessions made matters worse with her coworkers.

Appellant made several allegations related to an increase in workload. She alleged that her workload changed and was heavier from August 8, 2017 when the team leader went on a two-month leave. Appellant noted that she had intentionally left work unfinished which she had to complete because of the "time sensitiveness" nature of the tasks. She indicated that this stress, along with the hostility, affected her mental and physical health. Appellant indicated that she taught herself some of the GS-11 tasks, which were out of scope of her duties and on other GS-11 tasks she received assistance from Human Resources and other medical staff coordinators from other states. She alleged that the team leader would not teach her some medical staff coordinator tasks. During this time frame, appellant indicated that an inspection occurred and that she was also training a new employee, B.R. She indicated that she taught B.R. several tasks, such as confirm and scan in peer references, employment histories, verify information for the provider, etc. Appellant alleged that she came to work before and stayed after her normal work hours to keep the department flowing smoothly.

Appellant alleged that, while she received the highest monetary award with her December 2015 performance evaluation, she did not receive the team leader's pay although she had done much of her work. She also felt that her December 2015 performance evaluation should have been rated higher as she had run the office (a GS-11) position while the team leader was out. Appellant indicated that she had filed a grievance from the December 2015 performance evaluation.

Appellant submitted numerous progress notes from registered nurses and licensed practical nurses from the employing establishment for the period April to June 2017 and March 28, 2017 reports from the Women Health Clinic.

In an April 18, 2017 progress note, Amy Winebarger, a licensed clinical social worker, diagnosed anxiety disorder.

In psychotherapy progress notes dated April 27 and May 17, 2017, Una Starr, a licensed mental health counselor, diagnosed appellant with adjustment disorder. Dr. George Rhoades, a

clinical psychologist, cosigned an undated progress notes summary, which did not contain a medical diagnosis.

In an August 30, 2017 letter, Dr. Mary L. Li, a Board-certified internist, noted that appellant had shared with her the last year of her work experiences and that she had increased stress from her working relationships with her coworkers. She also noted that they had discussed her stress affecting her mental health. Dr. Li further noted that appellant was seen on August 22, 2017 for vertigo. She recommended that appellant continue counseling.

By decision dated December 21, 2017, OWCP denied appellant's claim for an emotional condition. It found that she had not established any compensable employment factors.⁴ OWCP also found that the evidence of record did not contain a medical diagnosis in connection with the claimed incidents. Thus, it concluded that appellant had not sustained an injury as defined under FECA.

LEGAL PRECEDENT

To establish an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.⁵ A *prima facie* emotional condition claim cannot be established without first submitting evidence of a diagnosed medical condition.⁶

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.⁷ 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 regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁸ On the other hand, the disability is not covered

⁴ OWCP identified 52 allegations from appellant's September 9, 2017 statement. Allegations were made in relations to appellant's leadership team, stress/hostility in the workplace, retaliation, acts of sabotage, unfair treatment and hostility, incidents pertaining to Coworker "A's" husband, mediation sessions, increase in workload, performance evaluation, and grievance filing/EEO complaint. OWCP found that appellant had not provided a factual basis to support her claim as most of her allegations were vague and general without supporting evidence or specific examples. It further found that many of the statements provided had no probative value as they were general in nature or considered hearsay.

⁵ See *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *M.C.*, Docket No. 14-1456 (issued December 24, 2014); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁶ *S.C.*, Docket No. 16-0293 (issued May 10, 2016); *M.M.*, Docket No. 09-1347 (issued December 18, 2009); *A.C.*, Docket No. 08-1453 (issued November 18, 2008) (finding that as there was no medical evidence diagnosing an emotional condition, appellant failed to establish a *prima facie* claim).

⁷ See *S.K.*, *supra* note 5; *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

⁸ See *S.K.*, *supra* note 5; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

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.⁹

ANALYSIS

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

The Board has explained that without a medical diagnosis, an employee has not presented *prima facie* evidence of an emotional condition.¹⁰

With regards to her emotional condition claim, the Board notes that both Ms. Winebarger, a licensed clinical social worker, and Ms. Starr, a licensed mental health counselor, had diagnosed appellant with adjustment disorder. However, social workers and mental health counselors are not considered physicians as defined under FECA. Therefore, their opinions are of no probative medical value.¹¹

While Dr. Rhoades cosigned a summary of progress notes from Ms. Starr, this summary did not provide any medical diagnoses. A report from a medical professional cosigned by a physician may be considered to be probative medical evidence.¹² However, Dr. Rhoades did not cosign any of the psychotherapy notes from Ms. Starr and the nature and content of his summary report makes it clear that he had not interviewed, examined, evaluated nor tested appellant, but merely cosigned a completed letter after the fact. This fact diminishes the probative value of the report.¹³

Additionally, while Dr. Li mentioned that appellant had reported work-related stress, and vertigo¹⁴ she did not provide a firm diagnosis. The Board accordingly finds that, as appellant has submitted no medical evidence diagnosing an emotional condition, she has failed to establish the first element of her emotional condition claim.¹⁵ Without a medical diagnosis, appellant has not

⁹ See *S.K.*, *supra* note 5; *Gregorio E. Conde*, 52 ECAB 410 (2001).

¹⁰ *Supra* note 6.

¹¹ See *R.W.*, Docket No. 17-1542 (issued February 1, 2018); *S.S.*, Docket No. 13-1919 (issued May 16, 2014); *see also R.E.*, Docket No. 16-0615 (issued October 3, 2016); *L.C.*, Docket No. 08-2271 (issued August 6, 2009); 5 U.S.C. § 8101(2) provides as follows: physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.

¹² See *generally E.S.*, Docket No. 17-1598 (issued November 8, 2018); *Melvin Marie Williams*, Docket No. 01-1868 (issued May 6, 2002).

¹³ See *Richelle J. Drum*, Docket No. 99-2355 (issued December 13, 2000).

¹⁴ *Douglas M. Corbin*, Docket No. 04-0833 (issued June 22, 2004); *Norma M. Tabani*, 98-1822 (issued March 22, 2000) (vertigo noted as a symptom).

¹⁵ *Supra* note 6.

presented *prima facie* evidence of an emotional condition. Due to this deficiency, the Board will affirm the denial of her claim.¹⁶

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 December 21, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 3, 2019
Washington, DC

Christopher J. Godfrey, 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

¹⁶ *Id.*