United States Department of Labor
Employees' Compensation Appeals Board

W.F., Appellant	)	
	)	**Docket No. 18-1526**
and	)	**Issued: November 26, 2019**
	)	
U.S. POSTAL SERVICE, NORTH TEXAS PROCESSING & DISTRIBUTION CENTER, Coppell, TX, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 6, 2018 appellant filed a timely appeal from a February 7, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 while in the performance of duty, as alleged.

FACTUAL HISTORY

On April 9, 2015 appellant, then a 55-year-old supervisor of distribution operations, filed an occupational disease claim (Form CA-2) for an acute reaction to stress resulting from a hostile

[1] 5 U.S.C. § 8101 *et seq.*

work environment that included harassment, bullying, and intimidation, and working conditions hazardous to her health. She alleged that she first became aware of her claimed condition on April 1, 2015 and its relationship to her federal employment on July 1, 2012. On the reverse side of the claim form, A.C., an acting manager of distribution operations, controverted the claim, contending that appellant failed to establish fact of injury and causal relationship. He noted that medical documents received from her did not support the claimed condition. A.C. further noted that appellant stopped work on April 7, 2015 and has not returned.

OWCP subsequently received medical evidence.

In a letter dated April 18, 2014, A.C. further challenged appellant's claim. He noted that appellant had been a supervisor since 2000 and that she had transferred from California to North Texas. A.C. further noted that during her tenure in North Texas appellant had filed claims for five work accidents and had no sick or annual leave. Appellant had poor work performance and l7 unscheduled absences since December 1, 2014 under the Family and Medical Leave Act (FMLA). She filed a claim for an injury or an Equal Employment Opportunity (EEO) complaint against upper management when facing discipline. A.C. claimed that appellant filed the April 9, 2015 Form CA-2 claim after being off work for several weeks under FMLA status. He denied that she was subjected to a hostile work environment in which she was bullied and intimidated by S.H., a supervisory manager of distribution operations (SMDO), and as a result developed stress and anxiety. Appellant's physician placed her off work for one month and advised that she may return to work with no restrictions on May 5, 2015. A.C. noted that appellant contended that she experienced stress on March 9, 2015 after SMDO S.H. slammed a door as she walked away from appellant. SMDO S.H. had asked her what obstacles she was experiencing and what solutions she had in mind to address those obstacles. A.C. controverted appellant's claim based on the fact that she did not have any restrictions from her physician, she received training on how to deal with stressful situations, and she should have requested additional FMLA leave based on her condition. He concluded that she was using every possible avenue to be in a paid status since she had no available leave. A.C. further concluded that appellant was a difficult individual.

OWCP, by development letter dated May 20, 2015, informed appellant of the deficiencies of her claim and requested that she submit additional factual and medical evidence, including a detailed description of the implicated work factors and a well-rationalized report from her physician regarding the cause of her emotional condition. On even date, a development letter was sent to the employing establishment requesting a response to appellant's allegations. Both parties were afforded 30 days to respond.

OWCP received additional medical evidence.

By decision dated June 24, 2015, OWCP denied appellant's claim for an employment-related emotional condition, finding that she failed to establish the factual component of fact of injury. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On July 27, 2015 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In a detailed undated narrative statement, appellant alleged various incidents during the period February 26, 2005 to June 4, 2015 by her supervisors. They included: being denied requested reasonable accommodations to include reassignment from appellant's tour 1 evening shift to the tour 2 morning shift due to her job-related stress, sleep disorder, depression, and other medical issues; being terminated from employment on December 15, 2007 while she was off work receiving care for her job-related stress; being physically assaulted on July 10, 2008 when T.G., assistant manager of distribution operations (AMDO), pushed a door injuring her right hand; being required to work eight days straight and subsequently six days straight despite being restricted to working five days in a row; being assigned to continue to work under T.G. despite fearing what she may do; injuring her back and right thigh as a result of tripping over a platform at work on July 11, 2008;[2] being without pay after continuation of pay (COP) payments had ceased; being involved in mediation with plant manager M.T. and a union representative regarding the alleged physical assault by T.G.; receiving a July 10, 2010 letter of warning; being told, in a rude, abrupt, and hostile manner by T.J., an employee, that the documents appellant had submitted in support of her claims for wage-loss compensation (Form CA-7) were incomplete as T.J. hung up the telephone; being requested to submit medical documentation regarding her work restrictions; being instructed to go home on September 16, 2009 by AMDO E.J because MDO B.D. was mad that she went to the supervisors' room for a short break; being instructed to start arriving at work at 2:00 a.m. by MDO B.D. and AMDO E.J. on September 25, 2009; the falsification of her time records as appellant submitted leave requests forms (PS Form 3971) daily from September 5, 2009 to January 14, 2010 for four hours a day due to her start time of 2:00 a.m. and her time records were changed to reflect that she worked three eight-hour days one week and two eight-hour days the next week; being denied Saturdays and Sundays off work despite appellant's seniority and instead being scheduled off work on Sundays and Mondays by MDO B.D.; a January 14, 2010 settlement agreement in which the employing establishment agreed to allow her to work on the primary operation and to be off work on Saturdays and Sundays; the unavailability of overtime work for clerks in the primary operation after appellant became their supervisor; receiving a March 16, 2011 letter from Department of Labor indicating that the employing establishment had not agreed to allow her to buy back leave; a dispute regarding the amount of the leave buy back appellant owed the employing establishment which resulted in a May 30, 2012 settlement agreement; the firing of her daughter from the employing establishment; a deduction of an incorrect amount from appellant's paycheck in repayment of her leave buy back which violated the May 30, 2012 settlement agreement; being falsely accused of talking to S.S., a clerk, using derogatory and profane language which resulted in being reassigned to tour 1 with Wednesdays and Thursdays off work by SMDO S.H.; being harassed by SMDO S.H. who used a harsh tone of voice and intimidated and bullied appellant because she had written a letter to the "VP" regarding S.S.'s allegation; being placed on absence without leave (AWOL) status despite submitting medical documentation concerning her absence from work; being denied requested release to customer service by SMDO S.H.; receiving additional letters of warning for unsatisfactory attendance and failing to follow instructions and letter of suspension for seven days for failing to follow instructions while other supervisors did not receive such letters for failing to correct errors

[2] Appellant indicated that she filed a traumatic injury claim (Form CA-1) for her July 11, 2008 injuries and later filed a notice of recurrence (Form CA-2a) alleging that she sustained a recurrence of disability on August 28, 2009 due to her July 11, 2008 employment injuries. She stated that the employing establishment converted the Form CA-2a to a new claim. P. 3

regarding pay locations of clock rings; being required to perform additional work duties by SMDO S.H. which included submitting hourly clock ring reports while no other supervisor was required to do so; filing complaints with the Equal Employment Opportunity Commission (EEOC) alleging hostile work environment which included retaliation for filing prior EEOC complaints and being disabled, subjection to investigative interviews for corrective action, issuance of four letters of warning, assignment of additional responsibilities; being instructed to cease all communication with R.F., an employee, and threatened with corrective action if appellant failed to do so by plant manager L.W. due to her response to R.F.'s use of an inappropriate quote in an e-mail; being told by plant manager L.W. to watch how she spoke to him during their discussion of the incident involving R.F.; being denied computer access due to insubordination and failure to follow instructions; a change in work hours by acting manager of distribution operations (AMDO) R.Y. in retaliation for a civil lawsuit filed by appellant's daughter for wrongful termination; being physically assaulted on March 12, 2013 by SMDO S.H. who slammed her office door on appellant after asking what obstacles she had and how she planned to resolve them; being removed from a position by SMDO S.H. who then gave the position to a 204B employee; being micromanaged by MDO A.C. who rushed appellant to complete her work duties, and changed his attitude towards her, stopped speaking to her, and when he did speak to her he did so in a rude and hostile manner; being instructed by SMDO S.H. to leave her name off any e-mails despite previously instructing appellant to e-mail hourly clock rings errors and productivity; and having AWOL status changed to annual leave by MDO A.C.

Appellant listed various emotional conditions she developed, medical treatment she received, and dates she did not work as a result of the above-noted work incidents.

Appellant also continued to submit medical evidence.

By decision dated December 7, 2015, an OWCP hearing representative set aside OWCP's June 24, 2015 decision and remanded the case for further development of the factual evidence as appellant had submitted a detailed statement describing the work factors, which she believed contributed to her emotional condition. She directed OWCP to refer appellant's factual statement to the employing establishment for review and comment.

Following remand, OWCP, by letter dated December 15, 2015, requested that the employing establishment respond to appellant's allegations. It was afforded 30 days to respond. No response was received.

OWCP received additional medical evidence.

By decision dated January 28, 2016, OWCP again denied appellant's claim for an employment-related emotional condition because the evidence was insufficient to establish the factual component of fact of injury. It noted that she failed to provide documenting evidence, such as witness statements, to establish the alleged incidents.

On February 10, 2016 appellant again requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. She submitted additional medical evidence.

By decision dated July 1, 2016, a second OWCP hearing representative affirmed the January 28, 2016 decision, as modified. She found that appellant had established the factual component of fact of injury and a medical condition, but that her claim remained denied because she had not established a compensable employment factor.

OWCP continued to receive medical evidence.

By decision dated July 26, 2016, OWCP denied appellant's claim for an emotional condition, finding that she did not establish the factual component of fact of injury.[3] It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP subsequently received additional medical evidence.

On July 28, 2017 appellant requested reconsideration of the July 26, 2016 decision. In letters and additional statements dated July 22, 2017, she essentially reiterated her prior allegations. Appellant also alleged that she was not given a proper account of her work performance. She denied being a difficult employee.

Appellant submitted correspondence between herself and the employing establishment, and forms and records regarding her work schedule, leave record, requests for overtime work, leave, reasonable accommodation, and transfer, repayment of leave buy back, the January 13, 2010 settlement agreement, disciplinary matters, the alleged assaults, racial discrimination, disparate treatment, and harassment by her supervisors, requests for medical documentation, incident involving R.F., repayment of leave buy back, restoration of computer access, leave matters, EEO complaints, and wage earnings. She also submitted a witness statement dated September 28, 2010 in which A.V., an employee, who claimed that MDO B.D. refused to send G.S., an employee, to assist her as usual since appellant had become a supervisor in her work area and alleged harassment by another employee. In an October 4, 2010 e-mail, C.W., an employee, noted that G.S. was sent to help A.V. He related that when he worked in that area, G.S. did not work there. In a letter dated February 7, 2007, the employing establishment denied appellant's request for accommodation because she did not have a disability as defined under the Americans with Disabilities Act (ADA).

Appellant also submitted additional medical evidence.

By decision dated August 28, 2017, OWCP denied appellant's July 28, 2017 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error in its July 26, 2016 decision.

[3] The Board notes that the record does not clearly indicate the reason why OWCP issued a decision on July 26, 2016 denying appellant's emotional condition claim on the same basis that an OWCP hearing representative found established in her July 1, 2016 decision.

On September 8, 2017 appellant requested reconsideration of the July 26, 2016 merit decision.[4] She continued to submit documents in support of her allegations and medical evidence.

By decision dated February 7, 2018, OWCP denied modification of its July 26, 2016 decision, finding that the additional evidence submitted failed to establish a compensable factor of employment.[5]

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.[6]

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.[7] However, disability is not compensable when it results from factors such as an 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.[8]

To the extent that disputes and incidents alleged as constituting harassment by coworkers are established as occurring and arising from a claimant's performance of his or her regular duties, these could constitute employment factors.[9] However, for harassment to give rise to a compensable disability under FECA there must be evidence that harassment did, in fact, occur.

[4] Appellant indicated in her appeal request form that she was requesting reconsideration of a July 26, 2017 OWCP decision. The Board notes, however, that the record does not contain an adverse final decision issued by OWCP on that date. The record does contain a final adverse decision issued by OWCP on July 26, 2016.

[5] Although appellant's September 8, 2017 request for reconsideration was not timely filed as it was not filed within one year of OWCP's July 26, 2016 decision, OWCP conducted a merit review. 20 C.F.R. § 10.607; *see also Alan G. Williams*, 52 ECAB 180 (2000). OWCP is not prohibited from reviewing an untimely application for reconsideration under the less stringent standards set forth at 20 C.F.R. § 10.606(b)(3), but such a review is on OWCP's own motion pursuant to 20 C.F.R. § 10.610. *See S.H.*, Docket No. 06-0455 (issued August 25, 2006); *John W. Graves*, 52 ECAB 160 (2000).

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

[7] *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).

[8] *Cutler*, *id.*

[9] *See B.S.*, Docket No. 19-0378 (issued July 10, 2019); *M.R.*, Docket No. 18-0304 (issued November 13, 2018); *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, *supra* note 6 at 608.

Mere perceptions of harassment are not compensable under FECA.[10] Additionally, verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.[11]

An employee's emotional reaction to administrative or personnel matters generally falls outside of FECA's scope.[12] 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.[13] 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.[14]

ANALYSIS

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

Appellant has attributed her emotional condition in part to *Cutler*[15] factors. She has alleged that she was overworked. Appellant noted that SMDO S.H. required her to perform additional work duties, which included submitting hourly clock ring reports, while no other supervisor was required to do so. She also noted that her staff had to perform additional work while overtime was denied to facilitate the completion of the extra work. The Board has held that overwork is a compensable factor of employment if appellant submits sufficient evidence to substantiate this allegation.[16] While A.V. claimed that MDO B.D. refused to send G.S. to assist her as usual after appellant became her supervisor, C.W. related that G.S. never provided assistance when he worked in that area. Thus, the Board finds that appellant failed to establish overwork as a compensable factor of employment.

Appellant has further alleged that plant manager L.W. threatened her with corrective action if she did not cease all communication with R.F. based on appellant's reaction to an inappropriate quote used by R.F. in an e-mail sent to her. She has also alleged that SMDO S.H. instructed her to leave her name off on any e-mails. Appellant noted, however, that her request was contrary to her previous instruction to e-mail hourly clock ring reports to her. The Board has held that

[10] *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[11] *Y.B.*, Docket No. 16-0193 (issued July 23, 2018); *Marguerite J. Toland*, 52 ECAB 294 (2001).

[12] *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).

[13] *C.M., supra* note 6; *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005); *Thomas D. McEuen, id.*

[14] *Id.*

[15] *Supra* note 7.

[16] *J.E.*, Docket No. 17-1799 (issued March 7, 2018); *Bobbie D. Daly*, 53 ECAB 691 (2002).

reactions to a supervisor's instructions in and of itself would not be compensable under *Cutler*.[17] Appellant did not sufficiently substantiate the work instructions regarding communication with R.F. and SMDO S.H. which must be evaluated under *Thomas D. McEuen*.[18]

Appellant's allegations regarding the denial of her requests for reasonable accommodation,[19] termination of her federal service,[20] and overtime work,[21] the assignment of work and modification of work schedule,[22] the handling of pay matters,[23] leave requests and attendance matters,[24] the filing of grievances and EEOC complaints,[25] disciplinary matters,[26] requests for medical documentation,[27] and being required to work outside of her restrictions,[28] relate to administrative or personnel management actions. Administrative and personnel matters, although generally related to employment, are administrative functions of the employer rather than the regular or specially-assigned work duties of the employee. For an administrative or personnel matter to be considered a compensable factor of employment, the evidence must establish error or abuse on the part of the employer.[29] Appellant did not submit any such evidence.

In a February 7, 2007 letter, the employing establishment informed appellant that her request for reasonable accommodation was denied because she did not have a disability as defined under the ADA. Further, A.C., in an April 18, 2014 letter, noted that appellant had poor work performance and excessive unscheduled absences approved under FMLA. He further noted that she filed grievances whenever she faced disciplinary action. A.C. that appellant had no work restrictions from her physician and that she should have requested additional FMLA leave due to her claimed condition. The Board notes that although there was a January 13, 2010 settlement

[17] *Robert Knoke,* 51 ECAB 319 (2000).

[18] *Y.B.*, Docket No. 16-0194 (issued July 24, 2018); *Kim Nguyen,* 53 ECAB 127 (2001). *See McEuen, supra* note 12.

[19] *James P. Guinan,* 51 ECAB 604, 607 (2000); *John Polito,* 50 ECAB 347, 349 (1999).

[20] *P.M.*, Docket No. 14-0188 (issued April 21, 2014); *C.T.*, Docket No. 09-1557 (issued August 12, 2010).

[21] *B.Y.*, Docket No. 17-1822 (issued January 18, 2019).

[22] *V.M.*, Docket No. 15-1080 (issued May 11, 2017); *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

[23] *L.H.*, Docket No. 13-0923 (issued September 22, 2014); *T.M.*, Docket No. 07-2284 (issued May 2, 2008).

[24] *B.O.*, Docket No. 17-1986 (issued January 18, 2019); *Lori A. Facey*, 55 ECAB 217 (2004); *Judy L. Kahn*, 53 ECAB 321 (2002).

[25] *B.O., id.*; *James E. Norris,* 52 ECAB 93 (2000).

[26] *E.M.*, Docket No. 19-0156 (issued May 23, 2019); *B.Y., supra* note 21; *C.T.*, Docket No. 08-2160 (issued May 7, 2009).

[27] *D.W.*, Docket No. 19-0449 (issued September 24, 2019*); W.M.*, Docket No. 15-1080 (issued May 11, 2017); *Guinan, supra* note 19; *Polito, supra* note 19.

[28] *J.W.*, Docket No. 17-0999 (issued September 4, 2018).

[29] *McEuen, supra* note 12.

agreement submitted with regard to appellant's complaint to have Saturdays and Sundays off work, this settlement agreement specifically noted that it was without prejudice. The Board has previously explained that, absent an admission of fault, a settlement agreement does not establish error or abuse on the part of the employing establishment.[30] Appellant did not submit any evidence that A.C. erred or acted abusively in the handling of these administrative matters.[31] Thus, the Board finds that she has failed to establish a compensable employment factor.

Appellant alleged that she was harassed, discriminated against, yelled at, bullied, threatened, and physically assaulted by her supervisors. 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.[32] 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.[33] General allegations of harassment are insufficient[34] and in this case she has not submitted sufficient evidence to establish harassment, discrimination, and verbal and physical abuse by her supervisors. Although appellant alleged that her supervisors engaged in actions which she believed constituted harassment, discrimination, verbal abuse, and physical assault, she provided no corroborating evidence, such as witness statements, to establish her allegations.[35] A.C. denied appellant's assertions of harassment and noted that she had been trained to handle stressful situations. The Board finds, therefore, that appellant has not established a compensable employment factor with regard to her allegations of harassment, discrimination, and verbal abuse, and physical assault. Consequently, appellant has not established an emotional condition in the performance of duty as she has not attributed her claimed condition to compensable employment factors.[36]

On appeal appellant contends that she has submitted sufficient evidence to establish that she sustained an employment-related emotional condition. For the reasons stated above, appellant has not submitted sufficient factual evidence to establish an emotional condition in the performance of duty, as alleged.

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[30] *B.Y., supra* note 21; *Nguyen, supra* note 18; *see also R.G.*, Docket No. 13-0818 (issued August 1, 2014); *G.C.*, Docket No. 13-704 (issued April 4, 2014).

[31] *L.H.*, Docket No. 17-1295 (issued November 22, 2017).

[32] *F.C.*, Docket No. 18-0625 (issued November 15, 2018); *Walker, supra* note 6.

[33] *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).

[34] *See F.C., supra* note 32; *Paul Trotman-Hall*, 45 ECAB 229 (1993) (Alternate Member Groom, concurring).

[35] *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).

[36] 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).

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 while in the performance of duty, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the February 7, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 26, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board