

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 November 8, 2018 appellant, then a 55-year-old nurse, filed an occupational disease claim (Form CA-2) alleging that she developed insomnia and mental stress due to being harassed by management. She indicated that she first became aware of her disease, and its relationship to factors of her federal employment, on July 13, 2018. On the reverse side of the claim form the employing establishment noted that appellant stopped work on July 16, 2018 and had not returned.

In a development letter dated November 29, 2018, OWCP informed appellant of the deficiencies of her claim and advised her of the type of factual and medical evidence needed to establish her claim. It provided a questionnaire for her completion, and afforded her 30 days to submit the necessary evidence. Appellant did not respond.

By decision dated January 9, 2019, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish fact of injury as appellant had not established that injury and/or events occurred as alleged.

LEGAL PRECEDENT

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.³ 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.⁴

A claimant has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by factors of her federal employment.⁵

To establish an emotional condition in the performance of duty, the claimant must submit the following: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) medical evidence establishing an emotional condition;

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *L.S.*, Docket No. 16-0769 (issued July 11, 2016).

⁵ *B.Y.*, Docket No. 17-1822 (issued January 18, 2019).

and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.⁶ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.⁷

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.⁸

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁹ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.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.

Appellant's burden of proof includes the submission of a detailed description of the employment factors or conditions which she believed caused or adversely affected a condition for which compensation is claimed.¹² 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.¹³ Appellant generally alleged stress from harassment, but did not provide specific details, such as when, where, or how the alleged harassment occurred, the individuals involved, and the statements or actions that took place during the harassment incidents. The only evidence appellant submitted was the

⁶ A.C., Docket No. 18-0507 (issued November 26, 2018).

⁷ P.B., Docket No. 17-1912 (issued December 28, 2018); *Effie O. Morris*, 44 ECAB 470 (1993).

⁸ T.G., Docket No. 19-0071 (issued May 28, 2019).

⁹ B.S., Docket No. 19-0378 (issued July 10, 2019).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Supra* note 6.

¹³ *Supra* note 8.

information provided on her completed Form CA-2 where she stated that she developed insomnia and mental stress as a result of being harassed by management. Such explanation alleging harassment during her federal employment was generalized and vague. Appellant has not provided any factual evidence in support of her generalized assertion. OWCP advised her of the deficiencies of her claim and afforded her an opportunity to provide additional factual information, but she failed to do so.

For the foregoing reasons, appellant has not established a compensable employment factor under FECA and, therefore, has not met her burden of proof to establish an emotional condition in the performance of duty.¹⁴

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.

¹⁴ *Supra* note 4.

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 9, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board