

experienced headaches, dizziness, and chest pains as a result of a meeting with her immediate supervisor, T.B., regarding her performance standards and a placement follow-up form. She asserted that T.B. provided contradictory information and advised that she did not agree with T.B.'s response to her request for clarification. Appellant claimed that the meeting increased her level of anxiety above that caused by a preexisting anxiety condition. She intermittently stopped work commencing July 10, 2018.

In an August 14, 2018 development letter, OWCP requested that appellant submit evidence in support of her claim, including a physician's opinion supported by a medical explanation regarding the cause of her claimed emotional condition. It provided a questionnaire for her completion regarding the implicated employment factors. On August 14, 2018 OWCP also requested that the employing establishment provide additional information regarding appellant's allegations. It afforded both parties 30 days to respond.

In response to OWCP's factual development questionnaire, appellant submitted a September 11, 2018 statement in which she indicated that on June 18, 2018 she unsuccessfully attempted to obtain clarification from T.B. regarding her performance standards and a placement follow-up form. She advised that T.B. became upset when the contradictory nature of the documents was brought to her attention and maintained that T.B. then began to treat her unfairly. Appellant indicated that she requested a transfer in an attempt to escape T.B.'s mistreatment and was given an assignment which she felt did not meet policy standards. She asserted that, despite making a request for reassignment, she was forced to complete the assignment, and she generally claimed that management mishandled leave and disciplinary matters. Appellant advised that her symptoms included chest pains, heart palpitations, elevated blood pressure/heart rate, anxiety, and racing thoughts. She noted that she had preexisting conditions in the form of post-traumatic stress disorder and moderate anxiety and that her nonwork-related stress factors included the loss of a loved one within the prior year.

In response, T.B. submitted an undated statement in which she advised that she was disputing appellant's emotional condition claim and asserted that her condition was self-induced. She indicated that appellant was frustrated because she recently had received a written counseling letter, faced disciplinary action regarding performance issues, falsified reasons for requesting absences from work, and exhausted her sick and personal time leave. T.B. explained that an appropriate meeting was held with appellant on June 18, 2018 to discuss performance issues and policies regarding lunch and break times, review her performance standards, and advise her regarding expectations for successful job performance. She asserted that during the meeting appellant expressed full agreement and understanding of the information discussed and she signed a placement follow-up form in which she indicated that no additional information was needed. T.B. noted that, on June 20, 2018, appellant was absent from her workstation for 45 minutes beyond her allotted lunch period and was issued a letter of written counseling for the incident, but she refused to sign it. She advised that, on July 10, 2018, she instructed appellant to assist in rescheduling veterans in a clinic, but she failed to complete the task, later reporting that she felt badgered and harassed. T.B. asserted that appellant took time off on July 10, 12, and 13, 2018 without proper authorization. She maintained that, on July 16, 2018, appellant did not follow leave procedures by calling and requesting the day off, and she took sick leave on July 26 and 27, 2018 without leave being available.

T.B. further noted that appellant's job since April 16, 2018 required advanced customer service and scheduling skills normally performed by all medical support assistants and that staff was permitted brief time-out breaks during high-volume situations in addition to lunch and breaks. She reported that appellant was under investigation for accessing a fellow employee's health record without a valid reason, and was properly issued a letter of counseling for spending unauthorized time away from her duty station on June 20, 2018. Appellant was also counseled for failing to get approval to meet with union officials before leaving her duty station, omitting valuable information when reporting clinical issues to management, and illegally cutting and pasting clinical provider signatures. T.B. asserted that management continued to work with appellant to empower her to perform her tasks to the best of her ability.

Several administrative documents were submitted into the case record, including a performance appraisal dated June 18, 2018 which noted appellant's job performance was considered to have been fully successful or better.² In a placement follow-up form, T.B. indicated that appellant's punctuality, interest in work, and attendance were satisfactory, but that she needed to improve in several areas, including time management, attitude/cooperation, work quality, work quantity, and knowledge of personnel policies. This document was signed by appellant and T.B. on June 18, 2018. In a memorandum dated June 20, 2018, T.B. provided appellant with written counseling regarding her unauthorized absence from her duty station for 45 minutes on that date.

Appellant submitted e-mails, dated from June 11 through September 11, 2018, sent to and received from employing establishment officials. These e-mails concerned appellant's use of leave, a request to be removed from T.B.'s supervision, and the assignment, scheduling, and completion of work duties. In some of the e-mails, appellant expressed her belief that the employing establishment had committed wrongdoing. For example, in a July 9, 2018 e-mail, she advised that she would be taking leave due to stress from retaliation by management. In a July 11, 2018 e-mail, appellant asserted that she was asked to complete a job task which was against agency policy. She also submitted a summary of her leave requests for the period July 25 through August 8, 2018.

Appellant submitted July 9 and 16, 2018 reports from Dr. Leah P. Madsen, a Board-certified family practitioner, who reported examination findings and diagnosed anxiety and hypertension.³ In a report of employee's emergency treatment dated July 12, 2018, a healthcare provider with an illegible signature advised that appellant had been evaluated and should remain at home the remainder of that day. On July 23, 2018 a physician with an illegible signature diagnosed single episode of major depressive disorder (moderate) and post-traumatic stress disorder.

By decision dated September 14, 2018, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish an emotional condition in the performance of duty, as alleged. It found that she had not met her burden of proof because she had not established a

² The case record also includes a functional statement for the position of lead medical support assistant which had been signed by appellant on June 18, 2018 and a consultation management rotation schedule, effective August 13, 2018, which listed appellant's name among the rotating employees.

³ In a July 16, 2018 note, Dr. Madsen advised that appellant could return to work on July 18, 2018.

compensable employment factor. OWCP concluded that the requirements had not been met for establishing an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

To establish an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or contributed to his or her claimed emotional condition; (2) medical evidence establishing that he or she has a diagnosed emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.⁷

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.⁸ 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.⁹

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

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ 20 C.F.R. § 10.115(e); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *see T.O.*, Docket No. 18-1012 (issued October 29, 2018); *see Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *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).

⁸ *Lillian Cutler*, 28 ECAB 125 (1976).

⁹ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

adversely affected by employment factors.¹⁰ This burden includes the submission of a detailed description of the employment factors or conditions which he or she 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.¹¹

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.¹² If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, it must base its decision on an analysis of the medical evidence.¹³

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 several employment factors. The Board must initially review whether these alleged incidents and conditions of employment are compensable 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*.¹⁴ Rather, appellant has alleged error and abuse in administrative matters and harassment/discrimination primarily on the part of T.B., her immediate supervisor.

Appellant has asserted that management officials, including T.B., issued improper performance evaluations and disciplinary/counseling actions, wrongly assigned work, and improperly denied requests for leave usage and transfer to another job. In particular, she emphasized her belief that T.B. mishandled a meeting held on June 18, 2018, which concerned her job performance, by making contradictory statements and not adequately addressing her concerns. Appellant asserted that her request for transfer to a supervisor other than T.B. was improperly denied, and that she was forced to complete a work task, assigned in July 2018, which was not in accordance with agency policy.

¹⁰ *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹¹ *P.B.*, Docket No. 17-1912 (issued December 28, 2018); *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹² *See O.G.*, Docket No. 18-0359 (issued August 7, 2019); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹³ *Id.*

¹⁴ *See supra* note 8.

The Board has long held that appraisals,¹⁵ assignment of work,¹⁶ disciplinary/counseling matters,¹⁷ transfer requests,¹⁸ and leave requests¹⁹ are administrative or personnel matters which, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.²⁰ However, the Board has also held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative/personnel matter, coverage will be afforded.²¹ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.²²

The Board finds that appellant did not submit sufficient evidence to establish error or abuse with respect to administrative/personnel matters. Appellant submitted e-mails and personnel records which concerned some of these matters, but the documents did not demonstrate that T.B. or other employing establishment officials committed error or abuse. She did not demonstrate error or abuse by submitting the final findings of any complaint or grievance she might have filed with respect to these matters.²³ Although appellant expressed dissatisfaction with the supervisory actions of T.B., the Board has held that mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor.²⁴ A number of appellant's allegations were vague in nature. For example, she did not detail specific comments of T.B. on June 18, 2018 which she felt were contradictory or explain why the July 2018 work assignment was not in accordance with agency policy. The Board further notes that T.B. provided an extensive explanation of why the administrative/personnel actions she carried out with respect to appellant were proper. T.B. explained that an appropriate meeting was held with appellant on June 18, 2018 to discuss performance issues and policies, that appellant's leave requests were

¹⁵ See *R.B.*, Docket No. 19-0343 (issued February 14, 2020); *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

¹⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *Beverly R. Jones*, 55 ECAB 411, 416 (2004).

¹⁷ *G.R.*, Docket No. 18-0893 (issued November 21, 2018).

¹⁸ *D.J.*, Docket No. 16-1540 (issued August 21, 2018); *Donald W. Bottles*, 40 ECAB 349, 353 (1988) (an employee's dissatisfaction with being transferred constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable).

¹⁹ *C.T.*, Docket No. 08-2160 (issued May 7, 2009).

²⁰ *T.L.*, Docket No. 18-0100 (issued June 20, 2019); *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

²¹ *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *William H. Fortner*, 49 ECAB 324 (1998).

²² *J.W.*, Docket No. 17-0999 (issued September 4, 2018); *Ruth S. Johnson*, 46 ECAB 237 (1994).

²³ See *M.R.*, Docket No. 18-0304 (issued November 13, 2018).

²⁴ *T.C.*, Docket No. 16-0755 (issued December 13, 2016).

correctly addressed, and that counseling/disciplinary actions were proper, including the issuance of a counseling letter for appellant's unauthorized absence from her duty station on June 20, 2018.

Appellant also generally claimed that T.B. subjected her to harassment and discrimination by treating her unfairly and retaliating against her. To the extent that disputes and incidents alleged as constituting harassment are established as occurring and arising from an employee's performance of his or her regular duties, these could constitute employment factors.²⁵ 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.²⁶ The Board finds that appellant submitted no evidence corroborating her allegations of harassment and discrimination.²⁷ Appellant did not submit witness statements or other documentary evidence demonstrating that the alleged harassment and discrimination occurred as alleged.²⁸ There is no indication that appellant obtained a final determination from an administrative body establishing harassment or discrimination.²⁹ As she has not substantiated her allegations with probative evidence, appellant has not established a compensable employment factor under FECA with respect to the claimed harassment and discrimination.

As appellant has not established a compensable employment factor, the Board need not address the medical evidence of record.³⁰

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, as alleged.

²⁵ *D.B.*, Docket No. 18-1025 (issued January 23, 2019); *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

²⁶ *See id.*

²⁷ *See F.K.*, Docket No. 17-0179 (issued July 11, 2017).

²⁸ *See B.S.*, *supra* note 10.

²⁹ *See supra* note 20.

³⁰ *See B.O.*, Docket No. 17-1986 (issued January 18, 2019) (finding that it is not necessary to consider the medical evidence of record if a claimant has not established any compensable employment factors). *See also Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the September 14, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 10, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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