

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 August 6, 2019 appellant, then a 56-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that she experienced chest pain, presyncope, and tachycardia as a result of harassment from her supervisor. She explained: “supervisor aggravated me to a point(s) where blood pressure/heartburn.” Appellant indicated that she first became aware of her condition and realized its relationship to her federal employment on July 26, 2019. She stopped work on July 26, 2019 and returned on July 29, 2019.

OWCP received an employing establishment accident report form, which noted a date of injury of July 26, 2019.

On July 26, 2019 appellant received medical treatment in the hospital emergency room from Dr. Neil David McCormack, who specializes in emergency medicine. Discharge instruction sheets noted diagnoses of chest pain, unspecified type, presyncope, and tachycardia.

In a July 26, 2019 hospital record, Dr. Cory Cheatham, an internist, related appellant’s complaints of rapid heart rate, chest pain, and presyncope. He recounted that appellant was working when she suddenly felt dizzy and started to have chest pain and palpitation. Appellant had indicated that she was recently stressed at work. Dr. Almajali reviewed appellant’s history and reported that an abnormal electrocardiogram (ECG) was suggestive of atrioventricular nodal reentry tachycardia (AVNRT).

In an August 20, 2019 progress note, Dr. Ahmed A. Hussein, a Board-certified internist who specializes in cardiology, related that appellant was initially treated in the hospital emergency department on July 26, 2019 because of an episode of supraventricular tachycardia, likely AVNRT, associated with dizziness and chest discomfort. Cardiovascular examination was positive for palpitations. Dr. Hussein reported diagnosis of presyncope and recommended an AVNRT ablation procedure. He provided a letter indicating that appellant was seen in cardiology and was being scheduled for an ablation in the upcoming weeks.

In a development letter dated September 11, 2019, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of medical and factual evidence necessary to support her claim and provided a questionnaire for her completion. In a similar letter of even date, OWCP requested additional information from the employing establishment. It afforded both parties 30 days to submit the requested information.

On September 19, 2019 OWCP received an undated and unsigned completed development questionnaire from the employing establishment. It indicated that on July 26, 2019 appellant’s supervisor instructed her to report to the second floor to work on waste mail, which required appellant to sit and finger through trays of mail.

In a September 20, 2019 letter and report, Dr. Carmel Boykin-Wright, a Board-certified internist, related that appellant was seen for follow-up examination and cardiology consultation due to syncope and supraventricular tachycardia. She noted that appellant had an abnormal ECG and reported that appellant suffered from AVNRT.

In a September 20, 2019 response to OWCP's development letter, appellant explained that on July 26, 2019 she was working the 6:00 a.m. to 2:30 p.m. shift throwing mail in manual flats when Supervisor C.H. came to the unit. She reported that C.H. first stared at her and then told her to apply the dates on the cages behind her because they had no dates on them. Appellant asserted that C.H. was supposed to perform that task as she was on limited light duty. She further alleged that C.H. had been bullying and harassing her for over a year and that this incident was just another attempt. Appellant explained that when she went to sit down in the room to start throwing mail the room got dark, and when she got up and walked to the nearby telephone she felt her heart beating fast. She related that she was brought to the second floor where a safety captain took her vitals and put her on a breathing unit and she was eventually taken to the hospital emergency department. Appellant also explained that she did not file the claim on time because she thought that the paperwork was filed by C.H.

OWCP received additional hospital records, including a hospital billing statement dated September 11, 2019.

In a July 26, 2019 emergency department note, Dr. Steven D. Elster, a Board-certified internist who specializes in emergency medicine, recounted that appellant was standing up and working at the employing establishment when she began to experience dizziness, chest pain, and palpitations. Appellant noted that she had some recent stress due to difficulties with her supervisor at work. Dr. Elster reviewed appellant's history and conducted a physical examination. He diagnosed chest pain with palpitations and admitted appellant for additional testing.

In a July 26, 2019 cardiology consultation note, Dr. Michael Peterson, a Board-certified internist who specializes in cardiovascular disease and clinical cardiac electrophysiology, indicated that appellant was evaluated for complaints of chest pain and elevated troponin. Appellant related that she was at work around 8:00 a.m. when she began to experience chest pain that lasted for two to three hours. Dr. Peterson provided examination findings and reviewed appellant's laboratory results and abnormal ECG findings.

In a September 19, 2019 letter, Dr. Nabil Ahmad, Board-certified in physical medicine and rehabilitation and pain medicine, recommended that appellant be excused from work for 11 specific dates due to her current medical condition.

In an October 4, 2019 work status note, Dr. Ahmad related that appellant was seen in his office that day and could return to work on October 7, 2019.

OWCP received a statement dated September 22, 2019 from appellant. Appellant reported that she had a pending Equal Employment Opportunity Commission (EEOC) complaint against Supervisor C.H. and that C.H. continued to harass and bully her. She asserted that the development of her claimed condition all contributed to C.H. constantly harassing her. Appellant noted that she

did not have a history of coronary artery disease and that she first experienced cardiac symptoms on July 25, 2019 after dealing with C.H. at work.

Appellant included a copy of an August 16, 2018 letter from the EEOC, which informed appellant of the name of the investigator who was assigned to her claim.

In an October 30, 2019 letter, Dr. Hussein indicated that appellant was in need of a cardiac procedure that was scheduled for November 6, 2019. He noted that she would need at least six days of recovery time after the procedure and could return to work on November 12, 2019.

By decision dated November 25, 2019, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that appellant actually experienced the alleged employment factors. It explained that there was no evidence to corroborate that appellant was bullied or harassed by her supervisor.

LEGAL PRECEDENT

To establish an emotional condition causally related to factors of his or her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his or her condition; (2) rationalized medical evidence establishing that he or she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his or her emotional condition is causally related to the identified compensable employment factors.³

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.⁴ There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the concept or coverage under FECA.⁵ 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.⁶ However, disability is not compensable when it results from factors such as an

³ *G.R.*, Docket No. 18-0893 (issued November 21, 2018); *George H. Clark*, 56 ECAB 162 (2004); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁴ *L.Y.*, Docket No. 18-1619 (issued April 12, 2019); *L.D.*, 58 ECAB 344 (2007).

⁵ *W.F.*, Docket No. 17-0640 (issued December 7, 2018); *David Apgar*, 57 ECAB 137 (2005).

⁶ *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976). In the case of *Lillian Cutler*, the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition under FECA. When an employee experiences emotional stress in carrying out his or her employment duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment, or by the nature of the work.⁶ On the other hand, when an injury or illness results from an employee's feelings of job insecurity *per se*, fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment, unhappiness with doing work, or frustration in not given the work desired, or to hold a particular position, such injury or illness falls outside FECA's coverage because they are found not to have arisen out of employment.

employee's fear of reduction-in-force, or frustration from not being permitted to work in a particular environment or to hold a particular position.⁷

For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.⁸ Mere perceptions of harassment or discrimination are not compensable under FECA.⁹ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.¹⁰ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹¹

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 alleged that on July 26, 2019 she experienced chest pain and palpitations as a result of her supervisor, C.H., harassing and bullying her. As noted above, to establish a claim for harassment under FECA, a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.¹² In support of her claim, appellant submitted a letter indicating that she had filed an EEOC complaint and had been assigned an investigator. The Board notes, however, that the record does not contain a final EEO decision finding that the employing establishment committed error or abuse.¹³ Appellant has not provided corroborating evidence to establish that C.H. bullied and harassed her on July 26, 2019. Furthermore, the employing establishment denied that such bullying and harassment occurred as alleged by appellant. As such, the Board finds that she has not established harassment as a compensable factor of employment.¹⁴

Appellant, therefore, has not established any compensable employment factors under FECA and, therefore, has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty. As such, the Board need not consider the medical evidence of record.¹⁵

⁷ *Lillian Cutler, id.*

⁸ *O.G.*, Docket No. 18-0350 (issued August 7, 2019); *K.W.*, 59 ECAB 271 (2007).

⁹ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *M.D.*, 59 ECAB 211 (2007); *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁰ *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, 57 ECAB 622 (2006).

¹¹ *T.Y.*, Docket No. 19-0654 (issued November 5, 2019); *G.S.*, Docket No. 09-0764 (issued December 18, 2009).

¹² *Supra* note 10.

¹³ *R.B.*, Docket No. 19-1256 (issued July 28, 2020); *J.E.*, Docket No. 17-1799 (issued March 7, 2018).

¹⁴ *See G.M.*, Docket No. 17-1469 (issued April 2, 2018).

¹⁵ *M.A.*, Docket No. 19-1017 (issued December 4, 2019); *A.K.*, 58 ECAB 119 (2006).

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 November 25, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 14, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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