United States Department of Labor
Employees' Compensation Appeals Board

M.E., Appellant	)	
and	)	**Docket No. 21-1340**
	)	**Issued: February 1, 2023**
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, SOUTH CENTRAL REGIONAL OFFICE, Grand Prairie, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On September 8, 2021 appellant filed a timely appeal from an August 26, 2021 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.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the August 26, 2021 decision, appellant submitted additional evidence to OWCP. 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, as alleged.

FACTUAL HISTORY

On July 9, 2021 appellant, then a 31-year-old safety and occupational health manager, filed a traumatic injury claim (Form CA-1) alleging that on the same date she was engaged in approved telework at home while in the performance of duty when she received a telephone call informing her that her request for reasonable accommodation had been denied.[3] She claimed that the discriminatory and harassing actions of R.N., her immediate supervisor, and R.V., a human resources manager, induced a panic attack, depressive neurosis, inability to breathe, chest tightness, severe headache, and inability to concentrate. Appellant stopped work on July 9, 2021.[4]

In an undated statement received by OWCP on July 14, 2021, appellant indicated that presently she was a 100 percent disabled veteran who was hired by the employing establishment in 2012 when she was a 60 percent disabled veteran.[5] She asserted that her anxiety had worsened during the prior two years due to the employing establishment's inadequate response to the COVID-19 pandemic. Appellant noted that, after she started her new position in December 2020, she began to receive medical care from the Department of Veterans Affairs (DVA) in Dallas, Texas, and that she currently was on a six-month treatment plan for psychotherapy with medications for depression and anxiety. She indicated that, on approximately May 25, 2021, the employing establishment ended all telework by administrators. Appellant asserted that she immediately e-mailed the employing establishment to ask to continue telework as the relevant policy allowed her to telework for up to three days a week given her protected service-connected disability of anxiety with panic attacks. The employing establishment declined the request and, therefore, she submitted a reasonable accommodation request on approximately June 7, 2021. Appellant indicated that on July 9, 2021 she received a telephone call from R.N., while R.V. was in her office, and R.N. advised that the reasonable accommodation request was denied due to inadequate medical documentation. She asserted that, when she asked why the medical documentation was inadequate, she was told it was denied because she did not submit evidence clarifying the "medical questions." Appellant indicated that she reiterated to the employing establishment that it was not allowed to ask about her physical impairment given she had a mental disability, that she did not ask for benefits under the Family and Medical Leave Act (FMLA), and

[3] Appellant maintained that she made the request due to her 100 percent service-connected disability, which was protected by the Americans with Disabilities Act (ADA). She asserted the telephone caller was unable to explain why the medical evidence she submitted in support of the request was inadequate.

[4] Appellant filed another Form CA-1 on July 13, 2021 in which she asserted that on July 9, 2021 she was working at her approved telework location in her home when she sustained a panic attack due to unwarranted stress caused by R.N. and R.V. She further alleged that on July 12, 2021 her Employees' Compensation Operations and Management Portal (ECOMP) account was improperly deleted.

[5] Appellant indicated that, effective January 11, 2021, 70 percent of her service-connected disability rating was related to her depression and anxiety.

that her attending physician had provided a diagnosis, treatment plan, and assessment of how her condition affected her ability to work.

Appellant asserted that on June 9, 2021 she again asked R.V. why nobody could answer her questions about her protected disability status and R.V. responded, "I don't know, central office sent this." On the same date R.N. sent appellant an e-mail stating that her current telework agreement was no longer valid and that she had to return back to the office. Appellant asserted that she informed R.N. in an e-mail that she was filing a Form CA-1 and would provide medical documentation to the employing establishment. She then sent another e-mail stating that she had filed a Form CA-1, and that she would be using continuation of pay (COP) for any further absences due to the undue stress caused by the employing establishment. Appellant indicated that she advised the employing establishment that she was filing an Equal Employment Opportunity (EEO) complaint regarding the discrimination that occurred despite her having a protected disability and regarding the fact that the employing establishment did not adhere to the relevant memoranda and COVID-19 safety plans. She further indicated that on July 9, 2021 M.K., another superior, answered a number of her questions regarding the processing of reasonable accommodation requests. Appellant indicated that she sent e-mails to T.L., a superior, and her new claim specialist and her claim specialist responded that it was normal practice for the "offending supervisor," *i.e.*, R.N, in this case, to complete the supervisor portion of the compensation claim forms.

Appellant submitted various administrative documents and witness statements. In an April 21, 2021 e-mail statement, G.R., a coworker, indicated that he observed appellant having emotional breakdowns at work on an almost daily basis. In several e-mails and memoranda produced in June and July 2021, management officials advised appellant of the need to submit additional medical evidence in support of her reasonable accommodation request. In a July 9, 2021 statement, appellant's husband indicated that appellant reported having a panic attack, which "appeared to be caused by undue stress caused by her workplace." In a July 9, 2021 e-mail, R.N. directed appellant to return to the office on July 12, 2021 after the denial of her reasonable accommodation request. The case record also contains a July 12, 2021 e-mail advising appellant that her ECOMP account had been deleted. In several e-mails, appellant asserted that the deletion of her ECOMP account caused her difficulties in pursuing her workers' compensation claim, including necessitating the filing of a second Form CA-1. In an undated letter to her senator, appellant asserted that her supervisor wrongly ended her telework.

A denial of reasonable accommodation document (Form 100C), signed by R.N. on July 9, 2021, reveals that appellant's reasonable accommodation request had been denied due to inadequate medical documentation. The document indicates that appellant requested the ability to telework a scheduled two days per week with the *ad hoc* ability to telework up to five days per week, as well as the ability to alter her work schedule to attend remote therapy and medical appointments. Appellant also submitted other documents, including her job description and e-mails sent to and from supervisors, which pertained to her reasonable accommodation request and her disability rating from the DVA.[6]

[6] The case record contains a June 2, 2021 rating decision in which the DVA found that appellant had 70 percent disability rating for service-connected dysthymic disorder with generalized anxiety disorder.

Appellant submitted a June 3, 2021 report from Jennifer Akkas, a licensed clinical social worker, who noted that appellant reported anxiety regarding her supervisor's upcoming retirement on June 20, 2021, given that he had been very understanding and supportive with respect to her panic attacks and depression. Ms. Akkas diagnosed major depressive disorder, panic disorder, and rule out generalized anxiety disorder.

Appellant submitted other reports from healthcare providers, including a July 13, 2021 report from Anthony I. Aniakor, a nurse practitioner, who indicated that appellant reported her work was causing her stress because her request for reasonable accommodation was denied. Mr. Aniakor diagnosed major depressive disorder and anxiety.

In a July 20, 2021 development letter, OWCP notified appellant of the deficiencies of her claim. It advised her of the type of evidence needed and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding appellant's allegations. It afforded both parties 30 days to respond.

In response, appellant resubmitted her undated statement, which was initially received by OWCP on July 14, 2021. She also submitted additional administrative documents, which mostly related to her reasonable accommodation request, her service-connected disability, and the processing of her compensation claim. Appellant also submitted additional medical evidence in support of her claim.

In an undated statement received by OWCP on August 16, 2021, R.N. and R.V. provided a response on behalf of the employing establishment. In a portion of the statement, R.N. indicated that on July 9, 2021 she advised appellant that her reasonable accommodation request had been denied due to her failure to provide adequate "medical clarification" and that she properly directed appellant to return to the office, effective July 12, 2021. She noted that appellant asserted that she did not have to provide such medical clarification because she was protected by the ADA and that she then advised appellant that the documentation was in fact necessary. R.N. indicated that, since at least June 2021, she had been involved in an "interactive process" with appellant to provide the proper medical documentation. In another portion of the statement, R.V. provided a similar account of the events of July 9, 2021.

By decision dated August 26, 2021, OWCP denied appellant's emotional condition claim, finding that appellant had not established any compensable employment factors. It found that she failed to establish her claims of wrongdoing by management in administrative matters or of the commission of harassment and discrimination. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[7] 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

[7] 5 U.S.C. § 8101 *et seq.*

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.[8] 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.[9]

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 emotional condition is causally related to the identified compensable employment factors.[10]

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.[11] 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.[12]

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 employment factors.[13] 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.[14]

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

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

[9] 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).

[10] *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).

[11] *Lillian Cutler*, 28 ECAB 125 (1976).

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

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

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

causal relationship, and which working conditions are not deemed factors of employment and may not be considered.[15] 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.[16]

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 due to various incidents and conditions at work. Therefore, the Board must initially review whether these alleged incidents and conditions are covered employment factors under the terms of FECA. The Board notes that appellant's claim does not directly relate to her regular or specially assigned duties under *Lillian Cutler*.[17] Rather, appellant primarily claimed that management committed error and abuse with respect to various administrative/personnel matters and that she was subjected to harassment and discrimination.

Appellant asserted that the employing establishment improperly denied her requests to continue teleworking at home. She also asserted that management officials improperly denied her request for telework as a reasonable accommodation given her service-connected disability and protected status under the ADA. Appellant further alleged that on July 12, 2021 her ECOMP account was improperly deleted. She asserted that the improper deletion of her ECOMP account caused her difficulties in pursuing her workers' compensation claim and that she consequently had to file a second Form CA-1. Appellant generally alleged that the employing establishment inadequately responded to the COVID-19 pandemic.

The Board has held that administrative and personnel matters, 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.[18] 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 matter, coverage will be afforded.[19] In determining whether the employing establishment has erred or acted abusively, the

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

[16] *Id.*

[17] *See Lillian Cutler, supra* note 11.

[18] *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).

[19] *M.S.*, Docket No. 19-1589 (issued October 7, 2020); *William H. Fortner*, 49 ECAB 324 (1998).

Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.[20]

While appellant submitted e-mails and memoranda, which concerned these administrative/ personnel matters, the communications did not show that the employing establishment committed error or abuse with respect to these matters. Management officials repeatedly advised appellant that her reasonable accommodation request had been denied because she failed to submit adequate medical documentation. Appellant indicated that she advised the employing establishment that she was filing an EEO complaint regarding the discrimination that occurred despite her having a protected disability and regarding the fact that the employing establishment did not adhere to the relevant memoranda and COVID-19 safety plans. However, there is no indication that she obtained a final determination from an administrative body showing that the employing establishment committed error or abuse.[21] Appellant also failed to show that management committed error or abuse regarding the deletion of her ECOMP account.[22] Although she expressed dissatisfaction with the actions of several superiors, 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.[23] As appellant has not substantiated error or abuse committed by the employing establishment in the above-noted matters, the Board finds that she has not established a compensable employment factor with respect to administrative or personnel matters.

Appellant also alleged harassment and discrimination by management officials, including R.N. and R.V., with respect to the denial of her request for reasonable accommodation. She claimed that management subjected her to harassment and discrimination by ignoring her protected status under the ADA as an individual with a service-connected disability and by repeatedly failing to explain the rationale for its decisions regarding her work arrangements.

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.[24] However, the Board has held that unfounded perceptions of harassment or discrimination do not constitute an employment factor.[25] Mere perceptions are not compensable under FECA and harassment or discrimination can constitute a factor of employment

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

[21] Appellant indicated that she had filed an EEO complaint, but there is no final decision in the case record showing that error and abuse actually occurred. *See M.R.*, Docket No. 18-0304 (issued November 13, 2018).

[22] The case record contains a July 12, 2021 e-mail advising appellant that her ECOMP account had been deleted. However, the document does not provide any explanation of how or why the account was deleted.

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

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

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

if it is shown that the incidents constituting the claimed harassment or discrimination actually occurred.[26]

Appellant has not submitted corroborative evidence in support of her allegations regarding harassment and discrimination. She has not submitted witness statements or other documentary evidence demonstrating that the alleged harassment and discrimination occurred as alleged.[27] Appellant also has not submitted the final findings of any complaint or grievance she might have filed with respect to her alleged harassment and discrimination, such as an EEO complaint or a grievance filed with the employing establishment.[28] Therefore, the Board finds that she also has not established a compensable employment factor with respect to the claimed harassment and discrimination.

As the Board finds that appellant has not established a compensable employment factor, it is not necessary to consider the medical evidence of record.[29]

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.

[26] *See id.*

[27] *See B.S.*, Docket No. 19-0378 (issued July 10, 2018).

[28] *See generally C.T.*, Docket No. 08-2160 (issued May 7, 2009) (finding that some statements may be considered abusive and constitute a compensable factor of employment, but that not every statement uttered in the workplace will be covered by FECA).

[29] *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 August 26, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 1, 2023
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board