

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**L.F., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Kearny, NJ, Employer**

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**Docket No. 11-1703  
Issued: April 11, 2012**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 18, 2011 appellant filed a timely appeal from a June 13, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her emotional condition claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish that she sustained a recurrence of an emotional condition in the performance of duty on or after January 5, 2010.

**FACTUAL HISTORY**

On June 15, 2010 appellant, then a 34-year-old clerk, filed a claim for recurrence of a previously accepted emotional stress claim. OWCP treated the claim as a new occupational

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

disease claim, as appellant alleged new incidents of harassment after she returned to work following the earlier injury.

In a supplemental statement received on June 21, 2010, appellant alleged that between January 5 and May 28, 2010 two of her coworkers intimidated her with gestures and looks, made inappropriate comments to her and bumped into her on purpose. She claimed that beginning January 8, 2010 her supervisor treated her differently than her coworkers. Appellant stated that she reported the matter to the manager of delivery operations, Arvester Henry, who subsequently held a meeting with appellant and the two coworkers on May 29, 2010, in an attempt to resolve the conflict. In a statement, appellant indicated that during the meeting Mr. Henry acted as if she had been responsible for instigating the conflict, which made her very upset. She stated that her coworkers, not she, should be assigned to different positions because “they are the ones threatening and harassing me.” Appellant also alleged that her supervisor Teresa McCloud “singled her out,” “kept looking at her,” and “giving her the mean looks.” Reference was made to two instances during which appellant’s supervisor yelled at her in the presence of her coworkers, that appellant alleged made her look incompetent.

In statements accompanying appellant’s claim, the employing establishment noted that meetings were held separately with the three employees involved in the incident and then, along with a union official, jointly as well. It also claimed that she “became very uncooperative and unwilling to resolve differences” in the final meeting. The employing establishment also stated that the coworkers reported “no problem” with appellant and the gestures were made to another coworker “in a playful manner.”

OWCP advised appellant by letter dated June 30, 2010, that additional evidence was necessary to establish her claim. Appellant was advised to submit witness statements substantiating that the alleged incidents occurred as alleged.

Appellant submitted a June 15, 2010 report from Dr. Paul Hriso, a Board-certified psychiatrist, who diagnosed appellant with post-traumatic stress disorder (PTSD).

In a statement dated June 18, 2010, appellant alleged that she was not allowed to leave a supervisor’s office, on the day that she filed her current claim. The supervisor continued to read her claim, when she wanted to leave the office, and he questioned her as to why she was in his office.

On July 30, 2010 OWCP again advised appellant to submit additional evidence to support her claim that the alleged harassment had occurred.

OWCP thereafter received an August 13, 2010 letter from Equal Employment Opportunity (EEO) Counselor, Rick Feuerstein, who stated that appellant had filed an EEO claim for harassment, in which she alleged that she was held hostage in her office by her manager and her supervisor. Mr. Feuerstein also noted that the claim was settled and the employing establishment agreed to place her on a different tour for 90 days.

In a letter dated August 17, 2010, appellant stated that her witnesses were scared to talk, and that she was removed from her tour.

By decision dated December 10, 2010, OWCP denied appellant's claim, finding that she had not established that the alleged incidents occurred.

Appellant disagreed with the decision and requested a hearing before the Branch of Hearings and Review, which was held on April 27, 2011. She testified at the hearing that she had a prior accepted claim related to an incident where she was bumped by one of the coworkers in the incident in October 2009. Appellant also testified that, after she returned to work, working with the coworkers who were involved in her previous case made her feel paranoid. She testified that the coworkers were friendly with management, which led to further mistreatment.

On June 13, 2011 OWCP's hearing representative affirmed the December 10, 2010 decision on the grounds that appellant had not established that the alleged incidents of harassment 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 her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>2</sup> 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>3</sup>

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.<sup>4</sup> However, the Board has 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.<sup>5</sup> 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.<sup>6</sup>

To establish that an emotional condition arose in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that she has an emotional or

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<sup>2</sup> 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>4</sup> See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>5</sup> See *William H. Fortner*, 49 ECAB 324 (1998).

<sup>6</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.<sup>7</sup>

For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.<sup>8</sup> A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and equal employment opportunity complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.<sup>9</sup> The issue is whether the claimant has submitted sufficient evidence under FECA to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>10</sup> The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by OWCP and the Board.<sup>11</sup>

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.<sup>12</sup> 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, OWCP must base its decision on an analysis of the medical evidence.<sup>13</sup>

### ANALYSIS

Appellant has not alleged that performance of her regular or specially assigned duties caused her alleged emotional condition. Rather, she alleged an emotional condition as a result of harassment from her coworkers and managers. Appellant has also alleged abuse by her supervisor in administrative matters. OWCP denied her emotional condition claim on the

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<sup>7</sup> *D.L.*, 58 ECAB 217 (2006); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>8</sup> See *Michael Ewanichak*, 48 ECAB 364 (1997).

<sup>9</sup> See *Charles D. Edwards*, 55 ECAB 258 (2004); *Parley A. Clement*, 48 ECAB 302 (1997).

<sup>10</sup> See *James E. Norris*, 52 ECAB 93 (2000).

<sup>11</sup> *Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>12</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>13</sup> *Id.*

grounds that she did not factually substantiate her claim and did not establish any compensable employment factor.

Appellant alleged that her coworkers bumped into her on purpose, and that they made inappropriate comments and threatening gestures to her, which caused her to become paranoid. However, she did not submit any evidence to establish that these incidents in fact occurred as she described. OWCP notified appellant of this deficiency in her claim, but she failed to submit any evidence corroborating her claim. As noted above, unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. The claimant must establish a factual basis for his or her allegations with probative and reliable evidence. As such, appellant's allegation of the incidents with her coworkers cannot constitute a sufficient basis for her emotional condition claim.

Appellant also claimed that her supervisor threatened her with mean looks and treated her unfairly by yelling at her in front of her coworkers. To the extent she is alleging that she was verbally abused, the Board has generally held that being spoken to in a raised or harsh voice does not of itself constitute verbal abuse or harassment.<sup>14</sup> Furthermore, the Board has held that perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.<sup>15</sup> The Board finds that appellant has not submitted the necessary supportive factual statements from witnesses or other sources to establish her alleged employment factors of harassment and abuse.

Regarding appellant's allegations that her supervisor erred and acted abusively by changing her tour of duty, rather than reassigning her coworkers, the evidence of record does not establish error or abuse in this administrative matter. The EEO Counselor's August 13, 2010 letter explained that in settlement of her EEO claim, appellant agreed to be placed on a different tour for 90 days. This evidence does not establish error or abuse by the employer. Regarding appellant's allegation that she was held against her will by a manager on the day that she filed her claim for compensation, the evidence establishes that she sought out the manager and he questioned why she had come to his office. While she would have preferred to leave the office immediately, the manager continued to read the claim while she was in the office, until she left by a secondary exit. Appellant's discomfort while waiting for the manager to read her claim does not establish error or abuse.

For these reasons, the Board finds that appellant has failed to meet her burden of proof in establishing an emotional condition arising in the performance of her federal duties.

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.

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<sup>14</sup> *Peter D. Butt, Jr.*, 56 ECAB 117 (2004).

<sup>15</sup> *Kathleen D. Walker*, 42 ECAB 603 (1991).

**CONCLUSION**

Appellant failed to establish that she sustained an emotional condition in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 13, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 11, 2012  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board