

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

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**C.B., Appellant**

**and**

**DEPARTMENT OF THE ARMY, FORT  
RUCKER, Fort Rucker, AL, Employer**

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**Docket No. 11-1457  
Issued: February 10, 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  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On June 3, 2011 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) decision dated April 12, 2011 which denied her claim for an emotional condition. 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 in establishing that she developed an emotional condition in the performance of duty.

**FACTUAL HISTORY**

On January 13, 2011 appellant, then a 61-year-old registered nurse, filed a injury claim alleging that on January 4, 2011 she experienced acute stress reaction after being given a letter of warning which stated that she would be disciplined if she did not perform her job duties which

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

she believed were outside of her scope of practice as a registered nurse. She stopped work on January 4, 2011.

Appellant submitted a January 21, 2011 attending physician's report from Dr. Rodney K. Beauchamp, an internist, who diagnosed cardiac chest pain and stress and anxiety and noted with a checkmark "yes" that her condition was caused or aggravated by employment activity. On January 24, 2011 Dr. Beauchamp noted that she would be on medical leave until February 7, 2011. Also submitted was a January 31, 2011 note from Dr. Charles VanValkenburg, a psychiatrist, who noted that appellant was unable to work for three months.

On February 18, 2011 OWCP asked appellant and the employing establishment to provide additional evidence.

Appellant submitted a February 18, 2011 statement and alleged that on January 4, 2011 Major Laura Ricardo, chief of preventative medicine and radiology, issued appellant a letter of warning advising her that she would be considered insubordinate and could be disciplined for refusing to prescribe medication refills and laboratory studies in her status as a registered nurse. She asserted that she was not trained to prescribe medication or laboratory studies and believed this was outside her scope of practice. Appellant indicated that after reading the letter she became short of breath, light headed with chest pains and left the office. She asserted that Army regulations state that she was not a privileged provider to order medication and laboratory studies in her own name. Appellant also alleged that she did not receive proper training for new nurse employees.

Appellant submitted a vacancy announcement for a community health nurse dated June 11, 2009. She submitted an October 5, 2010 memorandum of counseling from Major Ricardo, which outlined her expectation with regards to directive training of new nurse personnel. Major Ricardo expected appellant to be trained by Wendy Downing, a trainer, with training completed by October 13, 2010. In an October 11, 2010 memorandum to Major Ricardo, appellant indicated that Ms. Downing was responsible for training her but Ms. Downing had not always been available and failed to provide appellant with accurate information. She indicated that she has been flexible and available to learn her position; however, Ms. Downing was providing curt answers to her questions and providing incorrect information which created a hostile work environment. Appellant submitted an e-mail to Wendy Campbell, deputy commander for nursing, dated December 28, 2010, and advised that she would not order laboratory studies or medications in her own name as this was not within her scope of practice as a registered nurse; however, she would continue to order labs and medications under Dr. Richard Gilbert's name, a preventative medicine physician.

Appellant submitted e-mails dated January 4 to February 9, 2011 to Major Ricardo requesting a status on her claim for compensation and requesting leave due to her illness. Also submitted was a January 4, 2011 memorandum of warning from Major Ricardo, for failure to observe written standard operating of procedures, specifically a Lyster Army Health Clinic "LAHC" regulation. It was noted that on December 23, 2010 appellant expressed concern about the scope of practice for ordering labs or medications without a prior examination from a physician, physician's assistant or nurse practitioner. It was noted that she verbally expressed that under no circumstance would she comply with the standard operating procedures. Based on

appellant's concern, Major Ricardo took the regulation to the Deputy Commander for Nursing for guidance and it was made clear that the regulations had been approved without discretionary guidelines and it was within federal guidelines for safe medical practice. She noted that on December 28, 2010 appellant sent an e-mail to her superiors indicating that she refused to comply with the regulations for ordering lab tests or refill medications for patients who had not been examined by a physician or equivalent. Major Ricardo noted investigating the employing establishment regulations and researching the guidelines for the Board of Registered Nurses, both of which confirmed that nurses may order laboratory procedures and manage medication regimens. She noted that the current standard operating procedures for nursing functions were in compliance with all policies and procedures. Major Ricardo advised that the purpose of the warning was to assist appellant in correcting her behavior and inform her that continued conduct would result in formal discipline which may include removal from federal service.

Appellant submitted reports from Dr. Beauchamp, dated January 12 and February 15, 2011, who treated her for chest pain and shortness of breath caused by work-related anxiety. In a February 15, 2011 report, Dr. VanValkenburg diagnosed depression with panic and noted that she believed her anxiety was caused by a letter of warning from her employer. Appellant submitted a position description for a clinical nurse, an application for certification as a public health nurse in California, a resume and orientation and training materials.

The employing establishment submitted a December 28, 2010 e-mail from appellant to her superiors in which she asserted that ordering lab studies without a physician, nurse practitioner or physician's assistant examining the patient constituted practicing medicine without a license and was prosecutable. Appellant indicated that she consulted with a nurse practitioner and a registered nurse at LAHC, who concurred that she should not be listed as a provider when ordering lab studies as this was not within her scope of practice. She further noted that in the computer system she was erroneously listed as a provider. Also submitted was a January 4, 2011 memorandum of record from Dr. Gilbert who was present at the meeting with Major Ricardo and appellant and noted that Major Ricardo provided guidance and authorization for appellant to perform the functions discussed in the letter of warning. Also submitted was a February 1, 2011 memorandum from Major Ricardo who noted that on December 23, 2010 appellant advised her superiors that ordering labs for patients without a physician's order was out of her scope of practice as a nurse. Major Ricardo verbally discussed these issues instructing appellant that ordering labs for patients was not out of her scope of practice as a registered nurse and were within federal protocols. She indicated that appellant further refused to refill medication and Major Ricardo advised her that these duties were part of the protocols of the employer. Major Ricardo noted that as appellant's advocate and supervisor she contacted the California Board of Nursing, where appellant had her nursing license and received direct confirmation that her license would not be in jeopardy if she followed the protocols. She noted that on January 4, 2011 she counseled appellant in writing as verbal discussions had not resolved her noncompliance in performing her duties according to employer protocols. Major Ricardo indicated that appellant refused to sign receipt of the counseling documents and left the office stating "you will hear from my lawyers" and left the workplace. She attached the standard operating procedures for the tuberculosis program.

In a decision dated April 12, 2011, OWCP denied appellant's claim finding that the claimed emotional condition did not occur in the performance of duty. It found that no compensable employment factors were established.

### **LEGAL PRECEDENT**

To establish an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he or she has an emotional or 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 identified compensable employment factors are causally related to the emotional condition.<sup>2</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,<sup>3</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.<sup>4</sup> 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.<sup>5</sup> Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.<sup>6</sup> Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.<sup>7</sup> Personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>8</sup> Disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>9</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

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<sup>2</sup> *George H. Clark*, 56 ECAB 162 (2004).

<sup>3</sup> 28 ECAB 125 (1976).

<sup>4</sup> See *Robert W. Johns*, 51 ECAB 137 (1999).

<sup>5</sup> *Lillian Cutler*, *supra* note 3.

<sup>6</sup> *J.F.*, 59 ECAB 331 (2008).

<sup>7</sup> *M.D.*, 59 ECAB 211 (2007).

<sup>8</sup> *Roger Williams*, 52 ECAB 468 (2001).

<sup>9</sup> See *Lillian Cutler*, *supra* note 3.

deemed compensable factors of employment and are to be considered by the physician when providing an opinion on causal relationship and, which working conditions are not deemed factors of employment and may not be considered.<sup>10</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 the matter establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.<sup>11</sup>

### ANALYSIS

Appellant alleged an emotional condition as a result of improperly being given a letter of warning on January 4, 2011 which provided that she would be disciplined if she did not perform duties which she believed to be outside of her scope of her practice as a registered nurse. She further alleged that she was not given proper training and that her trainer created a hostile work environment. The Board must thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA. Appellant has not attributed her emotional condition to a regular or specially assigned duty of her position as a registered nurse. Therefore, she has not alleged a compensable factor under *Cutler*.<sup>12</sup>

Appellant made several allegations related to administrative and personnel actions. In *Thomas D. McEuen*,<sup>13</sup> the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under FECA would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>14</sup>

Appellant alleged an emotional condition as a result of being given a letter of warning on January 4, 2011 noting that she would be disciplined if she did not perform her job duties including ordering laboratory studies and medication refills which she believed were outside of her scope of practice as a registered nurse. Her allegations with regards to the employing establishment's disciplinary actions relate to administrative or personnel matters, unrelated to her

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<sup>10</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>11</sup> *Id.*

<sup>12</sup> See *supra* note 3.

<sup>13</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>14</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

regular or specially assigned work duties.<sup>15</sup> Although the handling of disciplinary actions and evaluations are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>16</sup> The record, as noted, reveals that appellant was given counseling and a letter of warning because she stated that she would not perform certain assigned work duties. Appellant's supervisor, Major Ricardo, noted that on December 28, 2010 appellant refused to comply with the regulations for ordering lab tests or order refill medications for patients who had not been examined by a physician or equivalent. She indicated in a January 4, 2011 memorandum, that, based on appellant's concern, she took the regulations to the Deputy Commander for Nursing for guidance, and it was made clear the regulations had been properly approved and implemented. Major Ricardo noted further investigating the guidelines with the nursing board of California, where appellant was licensed, which conformed that registered nurses may order laboratory procedures and manage medication regimens. She noted that the purpose of the warning was to assist appellant in correcting her behavior and informed her that continued conduct would result in the initiation of formal discipline. Similarly, in a February 1, 2011 memorandum, Major Ricardo verbally discussed these issues instructing appellant that ordering labs for patients was not out of her scope of practice as a registered nurse and were within federal protocols. She reiterated that she had contacted the California Board of Nursing to confirm that appellant's nursing license would not be in jeopardy if she complied with the employer's regulations for ordering laboratory studies and medication refills. Major Ricardo noted that on January 4, 2011 she counseled appellant with a written document as verbal discussions had failed to resolve her noncompliance in performing her duties according to employing establishment protocols. The evidence does not support that the employing establishment acted unreasonably in response to appellant's refusal to perform her assigned work duties and she presented no corroborating evidence that the employer acted unreasonably in this administrative matter. Thus appellant has not error or abuse by the employer in this matter.

To the extent that appellant desired to work in another position or on another assignment, the Board notes that the assignment of work by a supervisor is an administrative function that is not compensable absent error or abuse.<sup>17</sup> As noted, disability is not covered where it results from such factors as an employee's frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>18</sup> Appellant presented no corroborating evidence to support that the employing establishment erred or acted abusively with regards to the assignment of work. There is no evidence substantiating that the employer acted unreasonably in these matters. Appellant has not established administrative establishes error or abuse in the performance of these actions and therefore they are not compensable under FECA.

Appellant further alleged that she was not given proper training. She asserted that Ms. Downing was responsible for training her but Ms. Downing was sometimes not available, provided curt answers to her questions and provided incorrect information. The Board has held

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<sup>15</sup> See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

<sup>16</sup> *Id.*

<sup>17</sup> *D.L.*, 58 ECAB 217 (2006).

<sup>18</sup> See *supra* note 3.

that matters related to training by the employing establishment are an administrative matter, which is not covered under FECA absent error or abuse by the employer in such a matter.<sup>19</sup> The record does not support appellant's contention that she was not provided with adequate training; rather, the evidence supports that she was offered a specific training plan. Appellant provided no evidence supporting that the employing establishment unreasonably refused to provide appropriate training. She has not established a compensable factor of employment in this regard. Appellant has presented no corroborating evidence to support that the employing establishment acted unreasonably.

Appellant alleged that Ms. Downing, created a hostile work environment by providing curt responses to her questions and inaccurate information. To the extent that incidents alleged as constituting harassment or a hostile environment by a supervisor are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.<sup>20</sup> However, for harassment to give rise to a compensable disability under FECA, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under FECA.<sup>21</sup> The factual evidence fails to support appellant's claim for harassment. The record does not support her allegation that she was harassed or worked in a hostile work environment. Appellant submitted no corroborating evidence of specific instances of harassment or hostile treatment occurring at a particular time and place; rather she made general allegations about perceived inappropriate actions. The evidence is insufficient to show that she was singled out or treated disparately with regards to her claim of a hostile environment.

Consequently, appellant has not established her claim for an emotional condition as she has not established any compensable employment factors.<sup>22</sup>

On appeal, appellant generally asserts that she was improperly issued a letter of warning and was proper in declining to perform the job duties which were outside her scope as a registered nurse. As explained, there is insufficient evidence supporting her assertions. OWCP properly considered the evidence and found that appellant did not establish her claim for an emotional condition as she did not attribute her claimed condition to any established compensable employment factors. Appellant further argues that the decision of OWCP dated April 12, 2011 was "so illogical it makes no sense." While confusing to the reader, the Board affirms the ultimate finding that she had established no compensable factors.

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>19</sup> See *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

<sup>20</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>21</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991). See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

<sup>22</sup> As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496 (1992).

**CONCLUSION**

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 12, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 10, 2012  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board