United States Department of Labor
Employees' Compensation Appeals Board

M.H., Appellant	)	
and	)	**Docket No. 13-1585**
	)	**Issued: January 24, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Houston, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 26, 2013 appellant filed a timely appeal from a January 7, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her emotional condition claim. 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]

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Included with appellant's appeal was a timely request for oral argument. By order dated September 20, 2013 the Board denied appellant's request on the grounds that her arguments could be adequately addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument,* Docket No. 13-1585 (issued September 20, 2013).

On appeal, appellant contends that her coworkers threatened her and brought guns to work. She also alleges that a man took drugs and started fighting with her and calling her bad names.

FACTUAL HISTORY

On September 23, 2010 appellant, then a 50-year-old distribution operations supervisor, filed a traumatic injury claim (Form CA-1) alleging that she developed a stress disorder while in the performance of duty on September 6, 2010. In a November 26, 2010 statement, she alleged that on September 6, 2010 a craft employee threatened her at work. A few hours later postal police inquired about the employee, Johnny Jones, Jr., and advised that they needed to speak with him as he had a gun in his car. That same week, appellant stated that her supervisor, Lorna Chung, yelled at her and threatened to write her up because she was not working fast enough. She stated that she was so afraid that she could not think and her head was very heavy. Appellant could not eat and became very weak. She alleged that she developed depression due to the daily events of stress at work.

In a September 16, 2010 report, Dr. Donald E. Hauser, a Board-certified psychiatrist, diagnosed depression due to appellant's federal employment. In an October 10, 2008 report, Dr. Leah Guidry-White, a Board-certified family practitioner, advised that appellant was unable to perform any of her job duties and that her extended absence from work was a result of a combination of hypertension and situational depression.

The employing establishment controverted the claim in a September 28, 2010 letter. It submitted proposed letters of warning for failure to follow instructions dated July 7, 2009 through August 13, 2010.

By letter dated January 12, 2011, OWCP notified appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries.

Appellant filed a notice of recurrence (Form CA-2a) indicating that she was working on the workroom floor from April 6 to 7, 2012 and had a confrontation with another employee which caused her stress. She submitted progress notes from Dr. Hauser dated September 20 through October 11, 2010.

In an e-mail correspondence dated April 7, 2011 Abel Leal, appellant's supervisor, advised that appellant had been moved from different units to reduce her stress. Appellant worked as a supervisor who dealt with employees and mail volumes on a daily basis.

In a June 16, 2011 report, Dr. Robert G. Wilkerson, Jr., a psychiatrist, diagnosed post-traumatic stress disorder, general depressive disorder, anxiety disorder and insomnia. He opined that appellant's stressors were vocational and that her psychiatric illness was causally related to her job duties and functions. Appellant reported constant harassment at work from both her supervisors and her coworkers. She complained that she received continual discipline for infractions that other supervisors had committed and received no discipline. Appellant also reported that one of her employees brought a gun onto the premises which was alarming to her.

By decision dated May 23, 2012, OWCP found that appellant failed to establish a compensable factor of employment. It denied her claim on the basis that the evidence was not sufficient to establish that she was injured in the performance of duty.

On June 6, 2012 appellant requested an oral hearing before an OWCP hearing representative. She submitted an August 29, 2010 memorandum addressed to Mr. Jones confirming that he was placed in an off-duty status for driving a vehicle containing a beer can and a weapon to the east parking lot of the postal premises. Appellant also submitted a November 14, 2010 incident report from Ms. Chung regarding an incident with an employee, Frederick Jackson, which occurred at approximately 2:00 a.m. that same day. Ms. Chung noted that appellant requested assistance multiple times that day while trying to manage Mr. Jackson, who was being uncooperative with her and the postal police and appeared to be under the influence.

On November 14, 2012 an OWCP hearing representative denied appellant's request to postpone the oral hearing previously scheduled for October 29, 2012 and indicated that he would conduct a review of the written record instead.

By decision dated January 7, 2013, the hearing representative affirmed the May 23, 2012 decision.

LEGAL PRECEDENT

In providing for a compensation program for federal employees, Congress did not contemplate an insurance program against any and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with his or her employment. Liability does not attach merely upon the existence of an employee-employer relation. Instead, Congress provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[3] The phrase while in the performance of duty has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers' compensation law of arising out of and in the course of employment.

In *Lillian Cutler*,[4] the Board noted that workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are situations when an injury or illness has some connection with the employment but nonetheless does not come within the coverage of workers' compensation as they are found not to have arisen out of the employment. When an employee experiences emotional stress in carrying out his or her employment duties or has fear and anxiety regarding his or her ability to carry out his or her duties and the medical evidence establishes that, the disability resulted from his or her 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 resulted from his or her emotional reaction to her day-to-day duties. The same result is

[3] *See* 5 U.S.C. § 8102(a).

[4] 28 ECAB 125 (1976).

reached when the emotional disability resulted from the employee's emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of the work.[5]

In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of FECA. Thus, disability is not covered when it results from an employee's fear of a reduction-in-force, unhappiness with doing inside work, desire for a different job, brooding over the failure to be given work she desires or the employee's frustration in not being permitted to work in a particular environment or to hold a particular position.[6] Board case precedent demonstrates that the only requirements of employment which will bring a claim within the scope of coverage under FECA are those that relate to the duties the employee is hired to perform.[7]

To the extent that disputes and incidents alleged as constituting harassment by coworkers are established as occurring and arising from a claimant's performance of his or her regular duties, these could constitute employment factors.[8] 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.[9]

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.[10] 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.[11] 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.[12]

A claimant has the burden of establishing 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

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[5] *Id.* at 130.

[6] *See Lillian Cutler*, *supra* note 4.

[7] *See Anthony A. Zarcone*, 44 ECAB 751 (1993).

[8] *See David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[9] *See Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[10] *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

[11] *See William H. Fortner*, 49 ECAB 324 (1998).

[12] *See Ruth S. Johnson*, 46 ECAB 237 (1994).

[13] *See Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions, which the claimant 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 work 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 compensable factors of employment and may not be considered.[15] If a claimant does implicate a factor of employment, OWCP should then consider whether the evidence of record substantiates that factor. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim; the claim must be supported by probative evidence.[16] Where the matter asserted is a compensable factor of employment and the evidence of record established the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.[17]

ANALYSIS

In the present case, appellant has not established that her emotional condition is related to her regular duties as a distribution operations supervisor or her scheduled tour of duty. Her allegations do not relate to such potential compensable factors as overwork or any claim of her inability to perform the duties required in her position.[18] Rather, appellant attributed her emotional reaction to actions taken by her supervisors and coworkers. The Board must initially review whether these alleged incidents and conditions of employment are compensable factors of employment under the terms of FECA.

Appellant alleged that during the week of September 6, 2010 her supervisor, Ms. Chung, yelled at her and threatened to write her up because she was not working fast enough. The Board has held that a manager or supervisor must be allowed to perform their duties and that employees will disagree with actions taken. Mere disagreement or dislike of actions taken by a supervisor

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[14] *See Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[15] *See Dennis J. Balogh*, 52 ECAB 232 (2001).

[16] *See Charles E. McAndrews*, 55 ECAB 711 (2004).

[17] *See Jeral R. Gray*, 57 ECAB 611 (2006).

[18] *See Reco Roncaglione*, 52 ECAB 454 (2001) (disagreement with the associate warden held not compensable, whether viewed as a disagreement with supervisory instructions or as perceived poor management); *Robert Knoke*, 51 ECAB 319 (2000) (where the employee attributed his emotional injury to the manner in which his supervisor spoke to him about undelivered mail, the Board found that a reaction to the instruction itself was not compensable, as work assignments given by supervisors in the exercise of supervisory discretion are actions taken in an administrative capacity and, as such, are outside the coverage of FECA); *Rudy Madril* , 45 ECAB 602 (1994) (where the employee questioned his supervisor's instructions to move from belt number five to belt number six and unload mail and became upset because he felt he was being pushed and picked on, the Board found that the incident was not a compensable factor of employment); *Frank A. Catapano*, 46 ECAB 297 (1994) (supervisory instructions, with which the employee disagreed, held not compensable in the absence of evidence of managerial error or abuse).

will not be compensable absent evidence establishing error or abuse.[19] The fact that a supervisor or employee may raise his or her voice during the course of an argument does not warrant a finding of verbal abuse.[20] An employee's reaction to an administrative or personnel matter is not covered under FECA, unless there is evidence that the employing establishment acted unreasonably.[21] Appellant has not presented sufficient evidence that her supervisor acted unreasonably or engaged in error or abuse. She has failed to establish a compensable work factor.

On appeal, appellant contends that her coworkers threatened her and brought guns to work. She also alleges that a man took drugs and started fighting her and calling her bad names. The Board has held that not every ostensibly abusive or threatening statement uttered in the workplace will give rise to coverage under FECA.[22] For harassment to give rise to compensability under FECA, there must be evidence that harassment did, in fact, occur. Mere perceptions of harassment are not compensable under FECA.[23] In the present case, OWCP found that appellant was not subjected to any harassment and did not submit any evidence substantiating her allegations. Specifically, there is no evidence substantiating any derogatory remarks made by a craft employee on September 6, 2010 or another employee on the workroom floor from April 6 to 7, 2012.

An August 29, 2010 memorandum addressed to Mr. Jones confirmed that he was placed in an off-duty status for driving a vehicle containing a beer can and a weapon to the east parking lot of postal premises. The evidence of record does not establish that this incident rose to the level of harassment directed at appellant or that he threatened her. Appellant has not established a compensable work factor.[24]

The November 14, 2010 incident report from Ms. Chung indicated that appellant was trying to manage Mr. Jackson who was being uncooperative and appeared to be under the influence. It does not provide any detail as to what the discussion entailed. There is no description of what was stated during appellant's conversation with Mr. Jackson.

Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.[25] Grievances and EEO complaints do not establish that workplace harassment or unfair treatment occurred.[26] The Board

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[19] *Linda Edwards-Delgado,* 55 ECAB 401 (2004).

[20] *Joe M. Hagewood*, 56 ECAB 479 (2005).

[21] *See Alfred Arts*, 45 ECAB 530 (1994).

[22] *See K.D.*, Docket No. 11-841 (issued September 29, 2011); *Fred Faber*, 52 ECAB 107, 109 (2000).

[23] *See Michael Thomas Plante*, 44 ECAB 510 (1993); *William P. George*, 43 ECAB 1159 (1992).

[24] *See J.J.*, Docket No. 07-2014 (issued January 24, 2008).

[25] *Supra* note 15.

[26] *See Parley A. Clement*, 48 ECAB 302 (1997).

has recognized the compensability of verbal altercations or abuse when sufficiently detailed by the claimant and supported by the record. This does not imply, however, that every statement uttered in the workplace will give rise to compensability.[27] There is no evidence of record from any witness substantiating appellant's contention that she was harassed by Mr. Jackson, Mr. Jones or any other coworker. Because appellant has not presented sufficient evidence that she was harassed by her coworkers, she has failed to identify a compensable work factor.[28] Thus, she has not met her burden of proof to establish a claim.[29]

Appellant submitted no evidence corroborating her allegations. The Board has held that mere allegations, in the absence of factual corroboration, are insufficient to meet a claimant's burden of proof.[30] Appellant's perceptions must be construed to be self-generated. While her physicians referred to harassment at work, they were not present during these encounters and their depictions rely on her representations, which are not corroborated by evidence of record. As appellant failed to provide evidence to establish a compensable factor of employment, the Board finds that she has not met her burden of proof.

Furthermore, it is unnecessary to address the medical evidence of record as appellant has failed to establish a compensable factor of employment.[31]

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 that she sustained an emotional condition in the performance of duty.

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[27] *See David C. Lindsey*, 56 ECAB 263 (2005).

[28] *See H.C.*, Docket No. 12-457 (issued October 19, 2012).

[29] As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record. *Marlon Vera*, 54 ECAB 834 (2003).

[30] *See Bonnie Goodman*, 50 ECAB 139 (1998).

[31] *See Garry M. Carlo*, 47 ECAB 299, 305 (1996).

ORDER

IT IS HEREBY ORDERED THAT the January 7, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 24, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board