

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

L.W., Appellant)
)
)
and) **Docket No. 14-1984**
) **Issued: June 8, 2015**
)
U.S. POSTAL SERVICE, MID-CAROLINAS)
DISTRICT, Charlotte, NC, Employer)
)

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On September 4, 2014 appellant filed a timely appeal of a July 21, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 established that she sustained an emotional condition in the performance of duty on March 12, 2013.

On appeal appellant disagreed with the denial of her claim.

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant timely requested oral argument before the Board. By an order dated February 26, 2015 the Board, after exercising its discretion, denied the request on the grounds that any arguments on appeal could be adequately addressed based on a review of the case record. *See Order Denying Request for Oral Argument*, Docket No. 14-1984 (issued February 26, 2015).

FACTUAL HISTORY

On March 20, 2013 appellant, then a 41-year-old acting business service network representative, filed a traumatic injury claim alleging on March 12, 2013 she sustained an anxiety disorder due to her supervisor questioning her about reporting late for work and instructing her to submit a leave slip. She noted that she arrived about 9:08 a.m. which sometimes is her normal arrival time.

On November 16, 2012 appellant and Denise A. Hayes, Acting Marketing Manager, signed an assignment order detailing appellant to the Business Section Network. The assigned tour duty hours were 8:00 a.m. to 5:00 p.m. with Saturday and Sunday as her days off. The period of the detail was from November 15, 2012 until March 1, 2013. The form noted that appellant's current assignment, prior to the detail, was as a customer service supervisor working from 9:50 a.m. until 6:50 p.m. with Sunday and Wednesday as her days off.

In support of her claim, appellant submitted a statement along with an undated work/school release form indicating that she was seen on March 12, 2013 and that she could return to work on March 14, 2013.³ The record also contains March 13 and 20, 2013 certificates to return to work by Dr. Jeffrey O. Cardwell, a treating physician, Board-certified in family medicine, stating that she was under his care from March 13 to 20, 2013.

In an undated statement, appellant alleged that Ms. Hayes asked her in a nasty tone where is your common decency. She responded by saying that Ms. Hayes was aware of her medical condition. Appellant alleged that Ms. Hayes implied that she could not perform her job and was always talking to a coworker, Alan Rybczyk. She was offended by Ms. Hayes' statements and began to defend herself. Ms. Hayes requested that appellant lower her voice and appellant responded that she was not going to take this harassment. Appellant returned to her desk to gather her belongings and to sign out. Ms. Hayes allegedly followed appellant and instructed her to complete a leave slip. Appellant left the building, informed Ms. Hayes that she would call the 1-800 number, and drove to a gas station to call her physician to make an appointment. She sat in the car following the call and returned to work at 3:15 p.m. to inform Jennifer E. Cureton, her supervisor, of her chest pains. Ms. Cureton informed Ms. Hayes that appellant was requesting medical treatment due to the meeting held that morning. Appellant alleged that Ms. Hayes informed her "that as far as she was concerned, [appellant] did not report to work." At this point appellant stated that she "became emotionally distraught" and could not recall any subsequent events.

In a March 20, 2013 statement, Ms. Hayes disagreed with appellant's statement regarding the incident and the accusations made by appellant. She stated that she was unaware appellant had been assigned or given a reporting time other than the hours of 8:00 a.m. to 5:00 p.m., Monday to Friday to the detail which had been requested by appellant. Ms. Hayes related that Ms. Cureton was having difficulty with appellant reporting late to work without calling and not knowing whether she would arrive late to work. Ms. Hayes called a meeting with both of them to discuss attendance issues. At the time she spoke to appellant, another employee, Mr. Rybczyk, was seated on the edge of her desk. Ms. Hayes told the employee that she needed

³ The title with the signature indicates that a registered nurse signed the form, but the signature itself is illegible.

to discuss something with appellant. She denied appellant's allegation that she made any comment about appellant constantly talking to Mr. Rybczyk. At no time did Ms. Hayes demand anything of appellant. She denied that Ms. Cureton requested a leave slip be completed for appellant arriving late.

Ms. Hayes denied saying anything in a nasty tone or derogatory manner. Appellant responded by being confrontational, loud, and hostile and saying she that did not have to attend the meeting and that she was not returning to work. Ms. Hayes stated that later, while Ms. Cureton was on vacation, she noticed that appellant had not reported to work and that she never knew whether appellant was at work. She knew that appellant had some health issues and that appellant had wanted a detail to this area. Ms. Hayes noted that appellant had only been working 30 minutes when she requested to be taken to the hospital due to chest pains. She indicated 911 had been called as transportation to the hospital is not provided by the employing establishment.

In a March 25, 2013 statement, Ms. Cureton provided an account of events from the March 12, 2013 incident until March 25, 2013, when appellant filed a traumatic injury claim. She related that appellant's scheduled report time was 8:00 a.m. and that on March 12, 2013 appellant arrived at work around 9:15 a.m. At about 9:30 a.m. Ms. Hayes requested that appellant come to a meeting to discuss her tardiness without notice. Mr. Rybczyk was at appellant's desk at that time so Ms. Hayes asked him to excuse her as she needed to discuss something with appellant. Ms. Hayes stated that it was common courtesy to call in, if one was going to be late. Appellant replied in a loud voice that "she had a lot of things going on." Ms. Hayes replied that everyone has issues, but "still show courtesy to each other." At this point appellant stated "she didn't have to be here and that she had enough documentation to keep her out of work." She then got up to leave, asked if anything else was required and Ms. Hayes responded that she needed a form 3971. Appellant stated that she "could do better than that" and would call the 800 number.

At approximately 9:45 a.m. appellant opened the door, slammed it shut, and left. Ms. Hayes instructed Ms. Cureton to put appellant in an absent-without-leave status, changing her telephone pass code and ask about having her badge deactivated. At approximately 3:35 p.m. appellant returned, requested to speak with Ms. Cureton, and apologized for her earlier actions. She related to Ms. Cureton that she had been having chest pains since that morning, that her physician could not see her that day, and that she wanted a Form CA-1 or a Form CA-17. Ms. Cureton called Ms. Hayes who informed appellant over the telephone that she was not on the clock, that someone needed to pick her up or she needed to call 911 for her chest pains. Subsequently, appellant called 911 and, at approximately 4:05 p.m., she was transported to the hospital. Ms. Cureton stated that appellant had made several inaccurate allegations on her CA-1 form. She disputed that appellant arrived at 9:08 a.m., that this was her normal work time, that Ms. Hayes demanded that appellant report to Ms. Cureton's office, that appellant was asked to fill out a leave slip, that Ms. Hayes had talked to her in a nasty tone during the meeting, that Ms. Hayes stated that appellant was always talking with Mr. Rybczyk and not doing her work, that appellant mentioned the work harassment during the meeting, and that Ms. Hayes followed appellant to her desk after the meeting.

In a March 29, 2013 letter, the employing establishment controverted the claim.

In an April 1, 2013 letter, OWCP informed appellant that the evidence of record was insufficient to establish her claim. Appellant was advised as to the medical and factual evidence required to support her claim and was given 30 days to provide this information.

On April 7, 2013 appellant responded to questions posed by OWCP. She noted that she was called into a meeting with Ms. Cureton and Ms. Hayes in her supervisor's office. Appellant identified the factors of employment as harassment from her supervisor and job-related stress. In response to a question regarding similar symptoms or disability prior to the injury, she identified stress from her prior job of customer service supervisor.

In an April 10, 2013 report, Dr. Cardwell related that he had treated appellant since June 2010 for post-traumatic stress disorder. According to him, her condition had stabilized with counseling and prescription medicine until September 2010. Dr. Cardwell related that she required accommodations due to her medical situation. He commented that due to her condition appellant was "seeking long[-]term impairment."

On April 14, 2013 appellant filed an application for disability retirement.

By decision dated May 7, 2013, OWCP denied appellant's claim.

In a letter dated October 16, 2013, appellant requested reconsideration and submitted a March 12, 2013 emergency room report by Dr. Revathi Jyothindran, an emergency room specialist, in support of her request.

In the March 12, 2013 report, Dr. Jyothindran diagnosed anxiety disorder. Appellant related that her current condition was due to a work altercation where management allegedly threatened to fire her over her absences from work. She also stated that she felt pressed, overwhelmed, and stressed out. Dr. Jyothindran stated that appellant "appears to have an acute anxiety attack after a verbal altercation at work" and presents with depressive symptoms.

By decision dated October 13, 2013, OWCP denied the claims as appellant had failed to establish any compensable factor of employment.

In a form dated June 6, 2014, appellant again requested reconsideration and submitted an April 15, 2012 medical accommodation information form completed by Dr. Cardwell.

The form was completed by Dr. Cardwell on April 15, 2012. He diagnosed post-traumatic stress disorder with anxiety and depression. Dr. Cardwell noted that appellant was relatively stable and able to work half of her usual work schedule. He stated that "[a] scheduled change at work triggered significant worsening after some progress." Dr. Cardwell estimated the duration for the restrictions to be about 12 weeks, providing there were no further setbacks.

By decision dated July 21, 2014, OWCP denied modification.

LEGAL PRECEDENT

To establish a claim that she sustained an emotional condition in the performance of duty, the employee must submit the following: (1) medical evidence establishing she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged

to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.⁴

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.⁵ 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.⁶ 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.⁷ 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.⁸

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA.⁹ 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.¹⁰ 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.¹¹

The Board has held that the manner in which a supervisor exercises his or her discretion falls outside the coverage of FECA. This principal recognizes that a supervisor or manager must be allowed to perform his or her duties and that employees will, at times, disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.¹² Although the handling of leave requests and attendance matters are generally related to employment, they are administrative matters and not a duty of the employee.¹³

⁴ *V.W.*, 58 ECAB 428 (2007); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁵ *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

⁶ *A.K.*, 58 ECAB 119 (2006); *David Apgar*, 57 ECAB 137 (2005).

⁷ *Supra* note 1; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁸ *J.F.*, 59 ECAB 331 (2008); *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁹ *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹⁰ *See William H. Fortner*, 49 ECAB 324 (1998).

¹¹ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹² *S.M.*, Docket No. 09-2290 (issued July 12, 2010); *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

¹³ *C.T.*, Docket No. 08-2160 (issued May 7, 2009); *Jeral R. Gray*, 57 ECAB 611 (2006).

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.¹⁴ Mere perceptions of harassment or discrimination are not compensable under FECA.¹⁵ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.¹⁶ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹⁷ A claimant must establish a factual basis for his or her allegations of harassment or discrimination with probative and reliable evidence.¹⁸

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. OWCP denied her emotional condition claim as she had a failed to establish any compensable work factors. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.

The employing establishment denied that appellant was subjected to harassment during the March 12, 2013 meeting and she has not submitted sufficient evidence or corroboration to establish that she was harassed by either Ms. Hayes or Ms. Cureton.¹⁹ The Board has recognized the compensability of physical threats or verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.²⁰

Appellant attributed her emotional condition to events occurring on March 13, 2013 when she was called into a meeting with Ms. Hayes and Ms. Cureton concerning her arriving late to work without notifying her supervisor. She also alleged that during the meeting Ms. Hayes implied that appellant could not perform her position and was constantly talking to Mr. Rybczyk, a coworker.

An employee's complaints about the manner in which supervisors perform supervisory duties or the manner in which supervisors exercise supervisory discretion fall, as a rule, outside the scope of coverage provided by FECA. This principle recognizes that a supervisor must be

¹⁴ *K.W.*, 59 ECAB 271 (2007); *Robert Breeden*, *supra* note 5.

¹⁵ *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁶ *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, *supra* note 5.

¹⁷ *G.S.*, Docket No. 09-764 (issued December 18, 2009); *Ronald K. Jablanski*, 56 ECAB 616 (2005); *Penelope C. Owens*, 54 ECAB 684 (2003).

¹⁸ *Robert Breeden*, *supra* note 5; *Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁹ *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment with probative and reliable evidence).

²⁰ *L.K.*, Docket No. 08-849 (issued June 23, 2009); *Donney T. Drennon-Gala*, 56 ECAB 469 (2005); *Charles D. Edwards*, 55 ECAB 258 (2004).

allowed to perform his or her duties and that employees will at times dislike actions taken.²¹ Furthermore, the Board has held that discussions of job performance by an employee's supervisor, and the monitoring and assignment of work are administrative functions that do not fall under the coverage of FECA absent a showing of error or abuse.²² For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.²³ Mere perceptions of harassment or discrimination are not compensable.²⁴

Appellant has not shown that management committed error or abuse with respect to discussing her tardiness and lack of prior notice. These are administrative matters.²⁵ While appellant alleged that arriving at 9:08 a.m. was sometimes her normal time, she has not submitted any evidence supporting this contention. Moreover, the record contains a copy of the detail assignment which stated that her duty hours would be 8:00 a.m. to 5:00 p.m. Appellant also alleged that Ms. Hayes instructed her to complete a leave form. Both Ms. Hayes and Ms. Cureton deny that this was stated and that they only discussed appellant's time and attendance issues and her failure to call when she would be late for work. Appellant also alleged that Ms. Hayes stated that she was always talking to Mr. Rybczyk and implied that she could not perform her job. She has not submitted any evidence supporting this allegation. Moreover, both Ms. Hayes and Ms. Cureton deny these allegations. Accordingly, appellant has not established a compensable factor in that regard.

For the reasons set forth above, appellant has not established any compensable employment factors under FECA and, therefore, has not met her burden of proof to establish an emotional condition in the performance of duty.²⁶

On appeal appellant contends that Ms. Hayes verbally assaulted her which was the cause of her anxiety attack and ambulance ride to the emergency room. She also contends that the employing establishment was aware that her medical restrictions required that she not be placed in a confrontational situation. Appellant reiterated that she had been verbally abused when a manager accused her of not having any common decency. In concluding, she contended that, as the employing establishment was aware of her medical condition, it was responsible for the anxiety attack and later trip to the emergency room from work. As discussed above, appellant has not established that the factors she identified were compensable factors of employment. She

²¹ *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

²² *See Donney T. Drennon-Gala*, *supra* note 20.

²³ *C.T.*, Docket No. 08-2160 (issued May 7, 2009); *Robert G. Burns*, *supra* note 15.

²⁴ *J.F.*, *supra* note 16; *James E. Norris*, 52 ECAB 93 (2000).

²⁵ *See S.M.*, Docket No. 09-2290 (issued July 12, 2010); *Joe M. Hagewood*, 56 ECAB 479 (2005) (the handling of attendance matters are generally related to employment but are administrative functions of the employing establishment and not duties of the employee); *Ernest St. Pierre*, 51 ECAB 623 (2000) (allegations pertaining to irregularity of breaks is an administrative matter).

²⁶ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *See E.R.*, Docket No. 09-599 (issued June 3, 2009); *Robert Breeden*, *supra* note 5; *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

has not established verbal abuse or that there was error or abuse by the employing establishment in any administrative matter.

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 failed to establish an emotional condition in the performance of duty on March 12, 2013.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 21, 2014 is affirmed.

Issued: June 8, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board