United States Department of Labor
Employees' Compensation Appeals Board

G.G., Appellant	)	
and	)	**Docket No. 18-0432**
	)	**Issued: February 12, 2019**
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS DESIGNATION & SENTENCE COMPUTATION CENTER, Grand Prairie, TX, Employer	)	

Appearances:
Michael P. Sheridan, Esq., for the appellant[1]
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 27, 2017 appellant, through counsel, filed a timely appeal from a December 1, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

On June 13, 2014 appellant, then a 40-year-old classification and computation specialist, filed an occupational disease claim (Form CA-2) alleging that harassment by her supervisor caused emotional and stress-related physical conditions. She indicated that she first became aware of her claimed conditions on February 24, 2014 and of their relationship to her federal employment on May 27, 2014. Appellant stopped work on June 12, 2014.

In a June 11, 2014 written memorandum of a counseling session, S.R., an operations manager, advised appellant that she had failed to complete two work assignments within the assigned period and further indicated that this memorandum would not be used for evaluation or disciplinary purposes unless similar incidents arose in the future. In a June 20, 2014 memorandum addressed to appellant, S.R. observed that there had recently been a decline in appellant's work performance and recommended the Employee Assistance Program.

Appellant submitted medical evidence to OWCP, including a June 20, 2014 report wherein Dr. Robert A. Helsten, a physiatrist and family physician, noted that she reported a history that on February 24, 2014 her former supervisor talked with her and warned her about her new supervisor; that when she returned from a 10-day leave to adjust her stomach medications, none of her cases had been transferred, her caseload was disproportionately large, and she was given a shortened time-frame to complete the cases; and that on June 11, 2014 she was given a written letter regarding poor performance, all of which caused anxiety, depression, abdominal pain with nausea, and abdominal bloating. Dr. Helsten described physical examination findings, noted that she appeared anxious, and diagnosed depression, severe anxiety with post-traumatic stress disorder, upper abdominal pain, and gastroesophageal reflex disorder. He opined that these conditions were due to the two described events and appellant's heavy workload.

Appellant continued to submit reports from other medical practitioners which noted diagnoses of anxiety, situational depression, and gastrointestinal conditions.

In an August 11, 2014 development letter, OWCP advised appellant of the deficiencies in her claim. It requested additional factual and medical evidence and provided a questionnaire for her completion.[3] OWCP afforded appellant 30 days to submit the requested information. In a separate letter to the employing establishment, it requested comments from a knowledgeable supervisor regarding the accuracy of her statements.

In a September 9, 2014 statement, appellant described a timeline of events she believed contributed to her stress illness: (1) Working with violent male federal inmates from 1997 through

[3] Appellant began submitting claims for compensation (Form CA-7) beginning June 18, 2014 and continuing. By letter dated August 11, 2014, OWCP informed her that, as no decision had been rendered on her case, it was premature to adjudicate the CA-7 form claims.

2006[4] where appellant had to clean blood spills, received threats, witnessed a rape and masturbation, participated in a suicide watch, and witnessed fingerprinting of a dead inmate; (2) After appellant began work in an office setting in 2008, due to budget constraints with less hiring, she had an increased workload with no change in due dates; that she trained new staff, which was not in her job description; that as part of her job she was required to read presentence reports regarding crimes and would become particularly upset reading details of crimes against children; that she was not granted a requested reassignment; that her current supervisor S.R. was inexperienced and would micromanage timelines and duties; and that she had heard from a former supervisor that S.R. did not think highly of her.

In a September 4, 2014 statement, N.A., a coworker, noted that she had worked with appellant for eight years, indicating that the Quebec team handled complex sentence computations with stringent deadlines. She maintained that S.R. did not have the knowledge to provide guidance on complex issues and would rely on team members to assist her in carrying out supervisory duties. N.A. complained that S.R. made excessive changes, was inconsistent, biased, unfair, and created hostility and destroyed team morale.

In a September 18, 2014 statement, C.A., a former union vice-president, maintained that deadlines had been shortened at the employing establishment with employees given unrealistic timelines to complete their work and that management had adopted bully-type threats.

In a September 7, 2014 statement, P.N., a coworker, indicated that S.R., who micromanaged details, had created an unhealthy, intimidating, and hostile work environment by setting unrealistic expectations. He noted that S.R. had appellant and him train new employees because she lacked sufficient knowledge to train them and that she did not fairly rate her employees.

By letter dated December 16, 2014, OWCP forwarded appellant's statements to the employing establishment and asked for comments from a knowledgeable supervisor regarding the accuracy of the statements, with special attention as to whether accommodations were made and whether there were staffing shortages.

In a January 16, 2015 response, J.O., section chief at the employing establishment, described appellant's employment history, noting that she began work on August 1, 1999 as a medical records technician at NFPC and that following several transfers she resigned from the Bureau of Prisons on July 12, 2006. He continued that on January 6, 2008 appellant began work at the employing establishment, as a classification and computation technician (CCT), and on April 26, 2009 was promoted to her current position of classification and computation specialist (CCS). J.O. attached several position descriptions, including that for the CCS position. He reported that employees were divided into teams, all of which handled sexual abuse cases, and that appellant had never informed management that she became physically sick after reviewing such cases. J.O. explained that the majority of work at the employing establishment had time frames established by policy, and it was the responsibility of the operations manager, such as S.R., to

[4] At the time of these alleged incidents appellant was employed at alternate employing establishment facilities, including the Nellis Federal Prison Camp (NFPC) and Federal Correctional Institution (FCI), Herlong, California.

ensure that deadlines were met and that work was completed in accordance with policy and federal statute.

J.O. indicated that S.R. had assumed her position as an operations manager on October 21, 2013 and had been at the employing establishment for over 17 years. He noted that appellant requested reassignment on April 24, 2014, but because she had recently been counseled by her supervisor, and because she had been on extended leave since June 12, 2014, she was not considered a candidate for reassignment. J.O. noted that, due to promotions, there had been vacancies in the CCT position of the Quebec team, and that S.R. monitored the workload weekly and reassigned work to other teams as needed. He also advised that appellant had completed extensive training and attached her training records.

In January16, 2015 correspondence, S.R. noted that she was appellant's supervisor. She noted that, in December 2013, when a new CCT was assigned to the team, because appellant had commendable skills, she was assigned to train the new staff member. S.R. related that appellant never indicated that she did not want to train the new staff member. Moreover, appellant's training efforts were acknowledged. S.R. explained that appellant continuously rated processes and procedures in an effort to make them as efficient as possible, and that deadlines were imposed by employing establishment policy. She noted that appellant had requested reassignment on April 24, 2014, which she submitted to her supervisor, J.O., and that appellant had been on medical leave from May 7 to 19, 2014. S.R. noted that they had a talk about reassignment upon appellant's return to work. She related that appellant reported that she was not feeling well after a medical procedure and indicated that she might look for another job and planned to see what other options were available, noting that she had a lot on her plate due to family issues and the college classes she was taking. S.R. noted that she encouraged appellant to see if there were other jobs available at the employing establishment. She indicated that they also discussed appellant's workload, and she advised appellant that she could utilize a new CCS on the Quebec team to help complete her cases and to advise her if she needed additional assistance with completing her cases before the end-of-month deadlines. S.R. advised that, in monitoring the pending work for the entire team, she identified several cases appellant had not completed and that, since the deadline was nearing, she sent appellant an e-mail requesting an update on the status of the cases and offered to reassign the cases if she did not have sufficient time to complete them. She related that appellant responded, indicating that she did not require assistance, however, she failed to complete the cases by the deadline and had not notified her prior to the deadline. S.R. indicated that appellant had not told her of concerns regarding her work assignments or her supervision, and had not informed her that other staff had told her that she was "bad-mouthing" her. She concluded that she valued appellant's expertise and hoped that she could return to work and continue to be productive in her position as a CCS.

S.R. attached a memorandum of the counseling session held on June 11, 2014 for appellant's failure to complete work assignments. This document noted that appellant had been afforded the flexibility to monitor her workload and complete assigned tasks, but had failed to do so for two identified cases which demonstrated that she was unable to properly prioritize tasks and was not meeting the established expectations for the CCS position. S.R. also attached a series of e-mails dated May 28, 2014 in which she offered appellant assistance, which appellant declined.

By decision dated March 30, 2015, OWCP denied the claim. It found that appellant had not established a compensable factor of employment and, therefore, her claimed condition had not occurred in the performance of duty.

On March 30, 2016 appellant, through counsel, requested reconsideration. Appellant continued to submit medical evidence to OWCP.

By decision dated August 25, 2016, OWCP denied modification of its prior decision. It again found that appellant had failed to establish a compensable factor of employment.

On August 25, 2017 appellant, through counsel, again requested reconsideration. In a September 22, 2016 statement, S.C., a former coworker, indicated that she worked with appellant from October 2002 to July 2005 at NFPC. During that period of employment an inmate attempted suicide and another inmate had died which caused appellant to have to fingerprint and take pictures of the deceased inmate. S.C. noted that appellant showed her files that were of deceased inmates. She further indicated that appellant had worked from July 2005 to July 2006 at FCI, Herlong, California. During that period a fight had occurred in the recreation yard and the prison was on lockdown for a few days.

By decision dated December 1, 2017, OWCP denied modification of its prior decisions.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence[6] including that he or she sustained an injury in the performance of duty, and that any specific condition or disability from work for which he or she claims compensation is causally related to that employment injury.[7]

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*,[8] the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.[9] There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under FECA.[10] 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

[5] *Supra* note 2.

[6] *See W.F.*, Docket No. 17-0640 (issued December 7, 2018).

[7] *Id*.

[8] 28 ECAB 125 (1976).

[9] *Id.*

[10] *See M.R.*, Docket No. 18-0305 (issued October 18, 2018); *Robert W. Johns*, 51 ECAB 136 (1999).

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.[11]

Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[12] Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.[13] Personal perceptions alone are insufficient to establish an employment-related emotional condition.[14] 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.[15]

To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable 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.

Initially, the Board finds that appellant's claim for employment incidents that occurred during the period 1997 to 2006 at NFPC and FCI, Herlong, California is barred by the time limitations of FECA. Section 8122(a) of FECA provides that an original claim for compensation for disability or death must be filed within three years after the injury or death.[17] The Board has held that, if an employee continues to be exposed to injurious working conditions after such awareness, the time limitation begins to run on the last date of this exposure.[18]

The record in this case supports that appellant resigned from federal employment at a prison facility on July 12, 2006. This would be the date of her last exposure because, after that date, she was no longer physically exposed to a prison population.[19] Appellant did not file a claim until June 13, 2014. When she was reemployed in 2008, she worked in an office setting, not at a prison. Appellant's claim would still be regarded as timely under section 8122(a)(1) if her

[11] *C.V.*, Docket No. 1580 (issued September 17, 2018); *Charles D. Edwards*, 55 ECAB 258 (2004).

[12] *G.R.*, Docket No. 18-0893 (issued November 21, 2018).

[13] *Id*.

[14] *M.R., supra* note 10; *Roger Williams*, 52 ECAB 468 (2001).

[15] *A.C.*, Docket No. 18-0507 (issued November 26, 2018).

[16] *R.V.*, Docket No. 18-0268 (issued October 17, 2018); *Alice M. Washington*, 46 ECAB 382 (1994).

[17] 5 U.S.C. § 8122(a).

[18] *S.J.*, Docket No. 08-2048 (issued July 9, 2009).

[19] *Id.*

immediate superior had actual knowledge of a claimed injury within 30 days.[20] However, there is no evidence of record to support that she reported an emotional condition to a superior during this period. Thus, appellant's claim for any incidents that occurred during the period 1997 to 2006 is untimely.[21]

As to her claim for the period beginning in 2008, when appellant began work at the employing establishment, the Board finds that she has not met her burden of proof to establish an emotional condition in the performance of duty.

Regarding appellant's alleged stress due to her assigned work duties after 2008, appellant alleged that, due to budget constraints, she had an increased workload. The Board has held that overwork, when substantiated by sufficient factual information to corroborate a claimant's account of events, may be a compensable factor of employment.[22] The Board finds, however, that appellant submitted no evidence supporting her allegations of overwork or inability to do her work with regard to deadlines or timeframes. Both J.O. and S.R. indicated that work was to be completed in accordance with employing establishment policy and federal statutes, and J.O. explained that, while there had been vacancies in the CCT position of the Quebec team, S.R. monitored the workload weekly and reassigned work to other teams as needed. Moreover, S.R. explained that appellant turned down help when offered. Appellant submitted no evidence to substantiate her allegation of increased workload. Without evidence substantiating these allegations, she has failed to meet her burden of proof to establish a compensable factor of employment under *Cutler*.[23]

Appellant also asserted that her condition was caused because, as part of her job, she was required to read presentence reports regarding crimes and would become particularly upset reading details of crimes against children. While these reports upset her, her desire to work in a certain environment is not a compensable factor of employment.[24]

Appellant also attributed her emotional condition to additional actions of the employing establishment, including that she was not granted a requested a transfer and that she was required to train staff, which was not in her job description. In *Thomas D. McEuen*,[25] 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 employing establishment 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 facts surrounding the administrative or personnel action established error or abuse by employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated, not employment generated. In

[20] 5 U.S.C. § 8122(a)(1).

[21] *See J.P.*, Docket No. 07-1159 (issued November 15, 2007).

[22] *See R.V., supra* note 16.

[23] *Id*.

[24] *See T.E.*, Docket No. 08-1955 (issued March 5, 2009).

[25] 41 ECAB 387 (1990), *reaff'd on recon*, 42 ECAB 566 (1991).

determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[26]

As to appellant's request for a transfer, the Board has held that inability to transfer is an administrative function which, absent error and abuse, would not be compensable.[27] Appellant did not submit probative evidence establishing error and abuse regarding this administrative matter. Regarding training a new employee, S.R. explained that because appellant had commendable skills, she was assigned to train a new staff member. She also noted that appellant had not indicated that she did not want to perform this task. Appellant has not alleged that the actual training of a new employee caused stress, she only voiced disagreement because it was not in her job description. The Board thus finds that she has not established a compensable employment factor with regard to these administrative and personnel matters.[28]

Appellant stopped work on June 12, 2014, after S.R. had given her a written memorandum of counseling the previous day. The memorandum noted that she had not completed two cases within an assigned period, even though S.R. had offered help in completing the assignments after appellant's return from personal medical leave on May 19, 2014. Appellant turned down the offered help. Although she submitted statements from coworkers who also complained about S.R.'s management, these are insufficient to establish error or abuse as to this specific act of counseling of appellant for failure to complete work assignments.

As to appellant's general complaint regarding S.R.'s management style, the Board has found that an employee's complaints concerning the manner in which a supervisor performs his or her duties as a supervisor, or in the manner in which a supervisor exercises his or her supervisory discretion fall, as a rule, outside the scope of coverage provided by FECA. This principle recognizes that a supervisor or manager in general must be allowed to perform his or her duties, and that employees will at times dislike the actions taken, but mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.[29]

Perceptions of harassment or discrimination are not compensable under FECA. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.[30] Appellant has submitted insufficient evidence to establish a persistent disturbance, torment, or persecution, *i.e.*, mistreatment by employing establishment management. She, therefore, has not established a factual basis for her claim of harassment by probative and reliable evidence.[31]

Thus, contrary to her assertions on appeal, appellant has not established a compensable employment factor under FECA and, therefore, has not met her burden of proof to establish that

[26] *See Y.B.*, Docket No. 16-0193 (issued July 23, 2018).

[27] *See E.M.*, Docket No. 16-1695 (issued June 27, 2017).

[28] *See A.C.*, *supra* note 15.

[29] *Id.*

[30] *G.M.*, Docket No. 17-1469 (issued April 2, 2008).

[31] *Id.*

she sustained an emotional or stress-related condition in the performance of duty. As she has not established a compensable employment factor, the Board need not consider the medical evidence of record.[32]

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.

ORDER

IT IS HEREBY ORDERED THAT the December 1, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 12, 2019
Washington, DC

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

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

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

[32] *A.C., supra* note 15.