United States Department of Labor
Employees' Compensation Appeals Board

G.H., Appellant	)	
and	)	**Docket No. 19-1633**
	)	**Issued: March 16, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Brooklyn, NY, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On July 29, 2019 appellant, through counsel, filed a timely appeal from a May 7, 2019 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 a stress-related condition in the performance of duty.

FACTUAL HISTORY

On July 26, 2014 appellant, then a 49-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 26, 2014 she sustained anxiety and headaches due to stress caused by D.S., her immediate supervisor. She claimed that D.S. created a hostile, confrontational work environment and caused "too much pressure." Appellant further asserted that D.S. was "trying [to] kill [her]." Appellant stopped work on the date of injury. On the reverse side of the claim form, D.S. checked a box marked "No" to indicate that the claimed injury had not occurred while appellant was in the performance of duty. She noted, "[Appellant] had a headache, was stressed out."

In a July 30, 2014 statement, appellant indicated that on July 26, 2014 she was working her mail delivery route and submitted an employing establishment Form 3996 requesting extra time to finish delivering mail on her route. She asserted that, at approximately 9:30 a.m., she was surprised by D.S. hovering over her while she was bending over to put mail in a bag and her head began to hurt badly. Appellant claimed that she was afraid for her safety and that a memory came back to her of D.S. snatching mail out of her hand in May 2017. She indicated that her heart began to race and she became scared. Appellant asserted that D.S. started talking loudly in a demeaning and confrontational tone of voice and said that she was going to give her a 3996 mail packet because obviously she did not know how to use a 3996 form. She indicated that the pain in her head became very severe and D.S. ignored her and began to talk even louder about the 3996 packet. Appellant maintained that she begged D.S. to back away from her, but that she would not budge. She asserted that D.S. was "trying to kill" her and that she kept antagonizing her.

Appellant advised that she began to cry out for help as she could not take it anymore. She indicated that everything went black and that, when she "came to," three coworkers, E.C., A.C., and A.G., were standing around her. Appellant then told them how D.S. was trying to kill her. She indicated that she had been filing numerous grievances regarding the hostile, confrontational work environment D.S. created for over a year and a half without anyone doing anything. Appellant indicated that C.O., a coworker, told her that D.S. was entitled to discuss why a 3996 request was being approved or disapproved and she noted that she responded that D.S. stood too close to her and spoke in a loud, demeaning, and confrontational manner. She asserted that, as she was leaving the workplace, D.S. said "Feel better" to her with a smirk on her face.[3]

In an undated statement, N.D., a coworker, indicated that, on July 26, 2014, D.S. approached appellant, but did not enter her work area or violate her personal space. He asserted that D.S. was very cordial in her discussion of a 3996 packet request with her. N.D. noted that "words were exchanged" between D.S. and appellant regarding the 3996 packet request. He maintained that appellant began to yell and scream for D.S. to leave her alone and said to D.S.,

[3] Appellant submitted excerpts from an employing establishment document which generally discussed the making of 3996 package requests.

"You're killing me." N.D. indicated that appellant continued to scream that D.S. was killing her. He asserted that he did not witness anything that warranted appellant's behavior and he advised that he felt appellant's yelling was "totally unnecessary."

In a July 31, 2014 letter controverting appellant's claim, D.S. indicated that at 9:18 a.m. on July 26, 2014 appellant gave her a PS Form 3996 requesting an additional one and a half hours to deliver mail on her route. She asserted that every time appellant was on her mail route she requested unwarranted assistance or overtime. D.S. noted that, when she went to appellant to talk about her 3996 request, appellant said, "I have a headache and leave me alone" and that she told appellant that she had a right to talk to her. She maintained that she did not raise her voice or invade appellant's space and that appellant started to yell, "I have a headache, you're trying to kill me, leave me alone." D.S. noted that management recently disciplined appellant for poor attendance and job performance.

Appellant submitted Part B of an authorization for examination and/or treatment (Form CA-16) dated July 26, 2014 in which Dr. Anthony Boutin, Board-certified in emergency medicine, diagnosed tension headache and checked a box marked "Yes" indicating that the diagnosed condition was caused or aggravated by an unspecified employment activity. In a duty status report (Form CA-17) dated July 26, 2014, Dr. Boutin listed a date of injury of July 26, 2014 and identified a diagnosis due to injury as headache. On July 30, 2014 Dr. Charmaine Johnson, an osteopath Board-certified in family medicine, indicated that, due to a stressful work environment causing headaches, appellant would be absent from work from July 28 to August 18, 2014.

In an August 14, 2014 development letter, OWCP requested that appellant submit additional evidence in support of her claim, including a physician's opinion supported by a medical explanation as to how the claimed employment incidents and conditions caused or aggravated a diagnosed medical condition.[4] It provided a questionnaire for her completion and afforded her 30 days to provide the necessary evidence.

In response, appellant submitted another copy of Dr. Johnson's July 30, 2014 report.

By decision dated September 24, 2014, OWCP denied appellant's claim for a stress-related condition because she had not established a compensable employment factor. It determined that she had not established fact of injury, noting that the evidence she submitted failed to "support that you actually experienced the employment incident(s) alleged to have occurred."

Between late-2014 and mid-2015, appellant submitted additional evidence including a July 30, 2014 request to file a grievance regarding the July 26, 2014 incident involving D.S., a

[4] OWCP treated appellant's claim as an occupational disease claim, rather than a traumatic injury claim, because the claimed incidents and conditions at work occurred over the course of more than one workday or work shift. *See* 20 C.F.R. § 10.5(q), (ee).

March 25, 2015 disciplinary action for being absent without official leave, and several medical reports dated between July 2014 and January 2015.[5]

On February 6, 2019 appellant, through counsel, requested reconsideration of the September 24, 2014 decision and submitted additional medical reports.

By decision dated May 7, 2019, OWCP denied modification of its September 24, 2014 decision. It noted that appellant's case was reviewed on its merits "because of the age of the reconsideration."

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 his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.[6] 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.[7]

A claimant has the burden of proof to establish 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.[8] This burden includes the submission of a detailed description of the employment factors or conditions which he or she 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.[9]

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

[5] A number of the medical reports discussed conditions caused by a July 17, 2014 fall at work. The case record contains documentation from a separate claim file, OWCP File No. xxxxxx368, showing that OWCP had accepted the claim for several right elbow and right knee conditions. The July 17, 2014 employment injury under OWCP File No. xxxxxx368 is not the subject of the present appeal.

[6] *Lillian Cutler*, 28 ECAB 125 (1976).

[7] *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

[8] *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[9] *P.B.*, Docket No. 17-1912 (issued December 28, 2018); *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

not be considered.[10] 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, it must base its decision on an analysis of the medical evidence.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a stress-related condition in the performance of duty.

Appellant alleged that she sustained an emotional condition due to various incidents and conditions at work. Therefore, the Board must initially review whether these alleged incidents and conditions are covered employment factors under the terms of FECA. The Board finds that appellant's claim does not directly relate to her regular or specially assigned duties under *Lillian Cutler*.[12] Rather, appellant primarily claimed that D.S., her immediate supervisor, subjected her to harassment and discrimination.

Appellant alleged that, on July 26, 2014, D.S. submitted an employing establishment Form 3996 requesting extra time to finish delivering mail on her route. She claimed that D.S. yelled and screamed at her, stood too close to her, and generally treated her in a demeaning and confrontational manner. Appellant asserted that, due to these actions, she felt that D.S. was "trying to kill" her. She also alleged that D.S. had subjected her to a hostile work environment for more than a year and a half prior to July 26, 2014, including an occasion in May 2014 when D.S. snatched mail out of her hands.

To the extent that disputes and incidents alleged as constituting harassment are established as occurring and arising from an employee's performance of his or her regular duties, these could constitute employment factors.[13] The Board has held that unfounded perceptions of harassment do not constitute an employment factor.[14] Mere perceptions are not compensable under FECA and harassment can constitute a factor of employment if it is shown that the incidents constituting the claimed harassment actually occurred.[15]

The Board finds that appellant has not submitted sufficient corroborative evidence in support of her allegations regarding the actions of D.S. Appellant did not submit witness statements which supported her account of the events of July 26, 2014. D.S. denied that she yelled at appellant or invaded her personal space on that date. The case record also contains a statement in which N.D., a coworker, indicated that D.S. approached appellant on July 26, 2014 and spoke

[10] *See O.G.*, Docket No. 18-0359 (issued August 7, 2019); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[11] *Id.*

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

[13] *D.B.*, Docket No. 18-1025 (issued January 23, 2019); *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

[14] *See F.K.*, Docket No. 17-0179 (issued July 11, 2017).

[15] *See id.*

to her, but that she did not enter her work area or violate her space. N.D. noted that D.S. was very cordial in her discussion of a 3996 packet request with appellant, but that appellant then began to yell and scream at D.S. In addition, appellant did not submit the final findings of any complaint or grievance she might have filed with respect to her claims of harassment and discrimination, such as an EEO complaint or a grievance filed with the employing establishment. Therefore, the Board finds that appellant has not established a compensable employment factor with respect to the claimed harassment and discrimination.

As the Board finds that appellant has not established a compensable employment factor, it is unnecessary to consider the medical evidence of record.[16]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a stress-related condition in the performance of duty.[17]

[16] *See B.O.*, Docket No. 17-1986 (issued January 18, 2019) (finding that it is not necessary to consider the medical evidence of record if a claimant has not established any compensable employment factors). *See also Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

[17] The case record contains a Form CA-16 which was completed on July 26, 2014. A properly completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the May 7, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 16, 2020
Washington, DC

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

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board