

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On March 29, 2021 appellant, then a 57-year-old family nurse practitioner, filed an occupational disease claim (Form CA-2) alleging that she sustained work-related stress and mental abuse, which aggravated her preexisting depression, anxiety, nightmares, loss of sleep, and post-traumatic stress disorder (PTSD). She noted that she first became aware of her condition on July 15, 2019, and realized its relation to her federal employment on September 5, 2019. Appellant stopped work on March 26, 2021.⁴

A July 24, 2020 Employee Assistance Program (EAP) Assessment/Plan signed by an EAP coordinator noted that appellant presented with ongoing work-related stress and anxiety. The EAP coordinator noted that appellant reported some improvement in her anxiety and recommended referral to a psychotherapist or psychiatrist, which she declined. OWCP continued to receive EAP progress notes.

OWCP received a September 11, 2020 notice of change in patient care assignment from the employing establishment, which indicated that effective upon receipt of the letter, appellant would cease providing direct patient care due to safety concerns.

In a March 4, 2021 statement, appellant referred to 20 patient cases and discussed problems she had been confronted with in handling the cases.

A March 24, 2021 notice of separation during probation, from A.M., the employing establishment director, indicated that a recommendation was made to separate appellant effective March 26, 2021.

On April 6, 2021 Dr. Chioma U. Nwokolo Nwangwu, a Board-certified internist, related appellant's diagnoses including anxiety, PTSD and chronic insomnia.

In an April 22, 2021 response to the claim, T.C., the chief nurse of specialty care, noted that no employing establishment employees reported witnessing abuse of appellant. She noted that appellant's position required her to provide care to complex oncology patients and work with other providers and staff in a high-stress work environment. T.C. explained that appellant lacked experience in hematology/oncology and was given a slow transition with her volume of patient assignments and offered oncology courses and biotherapy and chemotherapy training. She provided the duties of the position and indicated that she was unaware of any duties of appellant that differed from the official position description. T.C. noted that there were no staffing shortages that affected appellant's workload or subjected her to extra demands. She explained that the section chief of hematology/oncology reported that appellant's performance did not meet expectations and that her clinical skills in the management and care of patients in hematology/oncology were marginal.

³ *Order Remanding Case*, Docket No. 22-0045 (issued April 14, 2023).

⁴ The employing establishment indicated that appellant's employment was terminated effective March 26, 2021.

By decision dated May 10, 2021, OWCP denied appellant's claim, finding that the alleged employment factors did not occur as described. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

On June 15, 2021 appellant requested reconsideration.

OWCP received a statement from appellant alleging that she was singled out, mistreated, discriminated against, and abused at work, which caused anxiety, depression, panic attack, PTSD, obsessive-compulsive disorder (OCD), insomnia, and stress. It also received a position description, an employee orientation form, appellant's résumé; a copy of appellant's prior statement, appellant's letter of resignation from a private sector position, a November 28, 2008 letter of recommendation for appellant from an urgent care clinic, a letter of recommendation for appellant from a medical provider, newspaper articles pertaining to a family clinic owned by appellant, documentation related to appellant's certification as a family nurse practitioner, and a handwritten list of appellant's current treatment and medication regimen.

In a letter dated June 28, 2021, the employing establishment again controverted appellant's claim.

By decision dated September 10, 2021, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

On October 4, 2021 appellant filed an appeal to the Board. In an April 14, 2023 order, the Board set aside the May 10 and September 10, 2021 decisions. The Board remanded the case for OWCP to make findings of fact as to whether the evidence of record established that any of appellant's allegations constituted compensable factors of employment.⁵

By *de novo* decision dated June 13, 2023, OWCP again denied the claim. It accepted as compensable that appellant was a nurse in the employing establishment's oncology department and dealt with patients. OWCP found, however, that the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted compensable factor of employment.

On June 28, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. She also submitted documents concerning legal complaints and described her childhood and the years preceding her work with the employing establishment.

A proficiency report dated March 31, 2019 through March 31, 2020, from a rating official and the chief of neurology explained that appellant was a certified family nurse practitioner who worked full time in the oncology clinic cancer center. It noted that while they were initially impressed with appellant's work efforts, she was not proficient despite a step-by-step orientation program that took her lack of knowledge into account. The report explained that appellant's ability to comprehend was slower than average in learning to navigate the electronic health record, for example finding test results. It also noted that, despite several discussions with appellant about her clinical decision making and other reported performance concerns, she continued to need assistance with clinical evaluation of patients and medical decision making. The report further noted that providers opined that appellant was unable to perform her duties due to lack of basic

⁵ *Order Remanding Case*, Docket No. 22-0045 (issued April 14, 2023).

medical knowledge, lack of ability to interpret laboratory values, lack of ability to comprehend what was written in the medical chart, and lack of ability to clinically evaluate a patient and make appropriate clinical decisions or take appropriate actions. It noted that, on February 26, 2020, appellant did not act when she received a worsening creatinine level result on a patient, which signified a lack of medical knowledge and attention to detail, and on March 19, 2020, appellant did not act when she received a panic value of low hemoglobin, demonstrating a lack of medical knowledge. The report indicated a low satisfactory overall evaluation. Appellant refused to sign the evaluation alleging that it was false, unjust, and not based on all the facts and evidence.

OWCP also received a discrimination complaint dated February 1, 2022, and notes from the EAP coordinator dated September 6, 2019 through March 25, 2021.

April 24, 2023 hospital notes indicated that appellant was treated by Dr. Dylan Devlin, Board-certified in emergency medicine, for suicidal ideation and a moderate episode of recurrent major depressive disorder. Dr. Devlin noted that appellant presented with suicidal comments in the setting of increased stress after being terminated from employment and denied unemployment benefits. He placed appellant in observation pending psychiatric evaluation.

Appellant submitted documentation related to a court case wherein she alleged discrimination at work, mental and verbal abuse by supervisors and coworkers; damage to her reputation; discrimination during her two-year probationary period from April 1, 2019 to March 28, 2021; and mismanagement in the cancer center related to patient care and safety concerns.

A hearing was held on November 14, 2023. Following the hearing, appellant submitted a September 25, 2021 statement from her roommate, S.F., who related that appellant had accepted a position as an oncology provider at the employing establishment, even though her previous experience was as a family care/urgent care provider. S.F. indicated that appellant had to deal with unfairness from her supervisors who placed high expectations on her, even though she did not have formal training.

By decision dated January 19, 2024, OWCP's hearing representative affirmed the June 13, 2023 decision. She accepted as compensable the factor of stressful work in an oncology department. OWCP's hearing representative further found, however, that there was no rationalized medical opinion evidence establishing causal relationship between the stress of working in oncology to any medical condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the

⁶ *Supra* note 1.

employment injury.⁷ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁸

To establish an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or contributed to his or her claimed emotional condition; (2) medical evidence establishing that he or she has a diagnosed emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.⁹

Workers' compensation law does not apply to each and every injury or illness that is somehow related to a claimant's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.¹⁰ However, disability is not compensable when it results from factors such as an employee's fear of a reduction-in-force, or frustration from not being permitted to work in a particular environment, or to hold a particular position.¹¹

Administrative and personnel matters, although generally related to 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.¹² 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.¹³ 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.¹⁴

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.¹⁵

⁷ *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

⁸ 20 C.F.R. § 10.115(e); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *see T.O.*, Docket No. 18-1012 (issued October 29, 2018); *see Michael E. Smith*, 50 ECAB 313 (1999).

⁹ *See A.M.*, Docket No. 21-0420 (issued August 26, 2021); *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

¹⁰ *See A.M.*, *id.*; *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

¹¹ *Lillian Cutler*, *id.*

¹² *See J.W.*, Docket No. 17-0999 (issued September 4, 2018); *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹³ *See J.W.*, *id.*; *William H. Fortner*, 49 ECAB 324 (1998).

¹⁴ *J.W.*, *id.*; *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁵ *M.V.*, Docket No. 22-0227 (issued March 28, 2023); *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *K.W.*, 59 ECAB 271 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

Mere perceptions of harassment or discrimination are not compensable under FECA.¹⁶ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹⁸ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹⁹

ANALYSIS

The Board finds that appellant has not established a diagnosed medical condition causally related to the accepted compensable employment factor of stressful work in an oncology department.

OWCP accepted that appellant has established a compensable factor of employment that working in an oncology department was inherently stressful. As OWCP has accepted a compensable employment factor, it is necessary to consider the medical evidence of record.

In an April 6, 2021 report, Dr. Nwangwu diagnosed anxiety, PTSD, and chronic insomnia. He did not, however, offer an opinion regarding the cause of appellant's diagnosed conditions. A medical report that does not provide an opinion on causal relationship is of no probative value.²⁰ Dr. Nwangwu's opinion is therefore insufficient to establish the claim.

In April 24, 2023 hospital notes, Dr. Devlin noted that appellant presented with suicidal comments in the setting of increased stress after being terminated from employment and denied unemployment benefits. He did not offer a rationalized medical opinion causally relating appellant's emotional condition to the accepted compensable factor of her employment.²¹ Dr. Devlin's report is, therefore, insufficient to establish appellant's claim.

¹⁶ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁷ *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, *supra* note 15.

¹⁸ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁹ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

²⁰ *G.M.*, Docket No. 24-0388 (issued May 28, 2024); *C.R.*, Docket No. 23-0330 (issued July 28, 2023); *K.K.*, Docket No. 22-0270 (issued February 14, 2023); *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

²¹ *See M.H.*, Docket No. 23-0647 (issued February 21, 2024); *C.V.*, Docket No. 22-0078 (issued November 28, 2022).

An EAP coordinator noted that appellant presented with ongoing work-related stress and associated anxiety. However, EAP coordinators are not considered physicians under FECA. The Board has held that certain healthcare providers such as nurse practitioners are not considered physicians as defined under FECA and, therefore, are not competent to provide a medical opinion.²² As such, the reports from the EAP coordinator are of no probative value and are insufficient to establish the claim.

As the medical evidence of record is insufficient to establish causal relationship between appellant's diagnosed emotional condition and the accepted compensable employment factor of inherently stressful work in an oncology department, the Board finds that she has not met her burden of proof.

The Board further finds that appellant's remaining allegations do not constitute compensable employment factors. Appellant alleged that her supervisors unfairly critiqued her work and discharged her during her probationary period. The employing establishment controverted her claim and submitted a September 11, 2020 notice of change in patient care assignment which indicated that she would cease providing direct patient care due to safety concerns. OWCP also received a proficiency report dated March 31, 2019 to March 31, 2020, from a rating official, which recounted deficiencies in appellant's work. It noted that she was not proficient despite a step-by-step orientation program that took her lack of knowledge into account. The report also noted that appellant was unable to perform her duties due to lack of basic medical knowledge, lack of ability to interpret lab values, lack of ability to comprehend what was written in the medical chart, and lack of ability to clinically evaluate a patient and make appropriate clinical decisions or take appropriate actions. The evidence therefore establishes that the employing establishment properly determined that appellant's performance during her probationary period was inadequate and properly terminated her employment. Thus, appellant has not established error or abuse by the employing establishment in this regard.²³

Appellant further alleged discrimination and harassment by supervisors and coworkers. The Board notes that her numerous statements are vague and imprecise and do not contain specific dates or witnesses. A claim based on harassment must be corroborated by probative and reliable evidence.²⁴ Appellant has not provided probative evidence corroborating any of these allegations. The Board thus finds that she has not established a compensable work factor with regard to her allegations of harassment and discrimination.

²² Section 8101(2) of FECA provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (May 2023); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA). See also *P.D.*, Docket No. 24-0281 (issued May 16, 2024) (nurse practitioners are not considered physicians as defined under FECA); *J.B.*, Docket No. 23-0884 (issued January 22, 2024) (a nurse practitioner is not considered a qualified physician under FECA); *J.D.*, Docket No. 21-0164 (issued June 15, 2021) (nurse practitioners are not physicians as defined under FECA).

²³ *J.W., id.*; *G.M.*, Docket No. 17-1469 (issued April 2, 2018).

²⁴ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

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 established a diagnosed medical condition causally related to the compensable employment factor of stressful work in an oncology department.

ORDER

IT IS HEREBY ORDERED THAT the January 19, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 9, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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