United States Department of Labor
Employees' Compensation Appeals Board

AVIS S. JOHNSON, Appellant	)	
and	)	**Docket No. 05-1803**
	)	**Issued: January 11, 2006**
SOCIAL SECURITY ADMINISTRATION, OFFICE OF HEARINGS & APPEALS, New Orleans, LA, Employer	)	

Appearances:
Avis S. Johnson, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 30, 2005 appellant filed a timely appeal of the July 7, 2005 merit decision of the Office of Workers' Compensation Programs which affirmed the denial of her traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant sustained an emotional condition in the performance of duty on July 8, 2004.

FACTUAL HISTORY

On July 16, 2004 appellant, then a 57-year-old legal assistant, filed a traumatic injury claim alleging that she experienced a sudden onset of hysteria as a result of a July 8, 2004 altercation with her supervisor, Marilyn Swear. She stopped working the day of her alleged

injury.[1] Appellant stated that Ms. Swear confronted her about a work issue in an intimidating manner. She described Ms. Swear's demeanor as disrespectful, condescending, abrasive and humiliating. The July 8, 2004 discussion allegedly involved the amount of cases appellant processed when she worked from home on June 28, 2004. Ms. Swear allegedly told her that two cases were insufficient for an eight-hour day. She also allegedly told appellant that the eight cases she completed in June were not enough. Appellant stated that she reminded Ms. Swear that she had been on leave for a good portion of the month of June. She also indicated that Ms. Swear was incorrect about the number of cases she completed in June. Instead of 8 cases, appellant claimed that she actually worked on 10 cases, in addition to performing other administrative duties.

Appellant alleged that during their July 8, 2004 discussion, Ms. Swear became uncompromising and unreasonable. She allegedly threatened to place appellant on leave for only having worked on two cases. Appellant also indicated that Ms. Swear refused to take into account the size of the cases or accept the explanation she offered. She claimed that Ms. Swear persistently goaded her. Appellant alleged that Ms. Swear later returned to her desk and left a note inquiring about the status of a case. Ms. Swear also left a memorandum requesting that the two meet again that afternoon to further discuss the matter. Appellant stated that she was afraid to meet with Ms. Swear because she was an emotional wreck and unable to rehash the incident. She stated that the incident with Ms. Swear occurred in the presence of her coworkers, which made it humiliating for her. Appellant stated that her mental state was seriously affected as a result of this incident and that she was unable to work due to her mental condition.[2]

Judy C. Hollins, a coworker, stated that she observed an incident on July 8, 2004 at 9:30 a.m., that left appellant "visibly upset." She described what she and another coworker did to console appellant, however, Ms. Hollins did not provide any details about the discussion between appellant and Ms. Swear.[3]

In a July 28, 2004 statement, Ms. Swear acknowledged that she had a July 8, 2004 conversation with appellant regarding her work performance. She advised her that the quantity of work completed on her work-at-home day was inadequate. Appellant completed only two very small cases, which Ms. Swear believed was insufficient to fill an eight-hour workday. During the course of the conversation, appellant reportedly became upset. She allegedly told Ms. Swear that she wanted to be excused because this was the first time she had ever done so little work. Ms. Swear responded that she expected more work to be completed. Appellant then began to scream and said to Ms. Swear, "'how dare you talk to me or question me about my work because I am not under numeric standards.'" Ms. Swear asked appellant to calm down and stop screaming, but she continued. Appellant responded by calling Ms. Swear a "devil" and indicated that she did not want to talk to her. At that time, two employees came over to try and

[1] Appellant retired effective October 1, 2004.

[2] In addition to describing the July 8, 2004 employment incident, appellant provided background information about her work history, the office environment and her past relationship with Ms. Swear.

[3] Another coworker, Marie D. Lewis, provided a similar account of appellant's condition. She stated that, because of appellant's emotional state, she advised her to leave for the day. Ms. Lewis apparently did not witness the incident involving appellant and Ms. Swear as she was in her own office at the time.

settle appellant down. The employees asked Ms. Swear to walk away and, when she complied, appellant reportedly screamed "I rebuke you in the name of Jesus." Ms. Swear also stated that she attempted to schedule a counseling session with appellant later that afternoon, but appellant left work early that day.[4]

The relevant medical evidence included a July 19, 2004 note from Dr. Lemuel J. Clanton, a Board-certified surgeon, indicating that appellant was under his care and unable to work due to extreme nervousness, anxiety, stress and depression. In a July 20, 2004 report, Dr. Lauren P. Barial, indicated that she treated appellant for a depressive episode on July 8, 2004. She stated that appellant reported having a confrontation with her supervisor at work and felt compelled to leave in order to prevent the situation from escalating. Dr. Barial attributed her condition to the work situation. Appellant was also examined on August 19, 2004 by Dr. Robert W. Davis, a Board-certified psychiatrist, who diagnosed acute stress reaction and dysthymia. He reported that she had a confrontation with a supervisor at work and she "'lost it, crying and screaming.'" Dr. Davis indicated that appellant was disabled.

In a decision dated September 20, 2004, the Office denied appellant's claim for an employment-related emotional condition.

Appellant requested an oral hearing, which was held on April 7, 2005. By decision dated July 7, 2005, the Office hearing representative affirmed the September 20, 2004 denial on the basis that she failed to establish a compensable employment factor as the cause of her claimed emotional condition.

LEGAL PRECEDENT

To establish that she sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.[5]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one'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

[4] Ms. Swear submitted another statement dated August 25, 2004 reiterating the events of July 8, 2004 as set forth in her July 28, 2004 statement. She also stated that it was standard procedure for employees to be assigned a reasonable amount of work to perform at home and, if the work was not completed, the employee was expected to provide an explanation as to why it was not accomplished. Ms. Swear provided information about the work environment, how cases were generally processed and appellant's past performance, which notably had improved over the past 2 years.

[5] *See Kathleen D. Walker*, 42 ECAB 603 (1991). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, 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 hold a particular position.[6] Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.[7]

ANALYSIS

Appellant alleged that her emotional condition stemmed from a July 8, 2004 conversation with Ms. Swear regarding her work output. Ms. Swear expressed dissatisfaction over the number of cases appellant processed while working at home on June 28, 2004 and appellant took exception to the conversation as well as to Ms. Swear's demeanor. She reportedly would not accept appellant's explanation about why she processed only two cases. Complaints about the manner in which a supervisor performs her duties or the manner in which a supervisor exercises her discretion fall, as a rule, outside the scope of coverage provided by the Act.[8] This principle recognizes that a supervisor or manager in general must be allowed to perform her duties and employees will, at times, dislike the actions taken. Mere disagreement or dislike of a supervisory or managerial action will not be actionable, absent evidence of error or abuse.[9] As a supervisor, Ms. Swear was well within her authority to monitor appellant's work during a period she worked from home. She explained that it was standard procedure for employees to be assigned a reasonable amount of work to perform at home and, if the work was not completed, the employee was expected to provide an explanation. Appellant has not demonstrated error or abuse on Ms. Swear's part in inquiring about her work productivity on July 8, 2004.

Appellant characterized Ms. Swear's demeanor on July 8, 2004 as disrespectful, condescending, abrasive and humiliating. She also asserted that Ms. Swear was uncompromising and unreasonable and had goaded her to the point of hysteria. Verbal abuse or threats of physical violence in the workplace are compensable under certain circumstances.[10] This, however, does not imply that every ostensibly abusive or threatening statement uttered in the workplace will give rise to coverage under the Federal Employees' Compensation Act.[11] Verbal altercations and difficult relationships with supervisors, when sufficiently detailed and supported by the record, may constitute compensable factors of employment.[12]

---

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

[7] *Ruthie M. Evans*, 41 ECAB 416 (1990).

[8] *Marguerite J. Toland*, 52 ECAB 294, 299 (2001).

[9] *Id.*

[10] *Fred Faber*, 52 ECAB 107, 109 (2000).

[11] *Id.*

[12] *Marguerite J. Toland*, *supra* note 8 at 294, 298.

The record establishes that appellant and Ms. Swear had a conversation about case production on July 8, 2004. This exchange, however, cannot be characterized as either a verbal altercation or verbal abuse. Appellant has not identified any particular words, acts or gestures by Ms. Swear to support her allegation that her supervisor was disrespectful, condescending, abrasive and humiliating. She also did not provide any witness statements that addressed the specific details of the July 8, 2004 conversation. At the April 7, 2005 hearing, appellant testified that she was the one screaming. She also admitted calling Ms. Swear a "devil." The evidence of record does not establish that Ms. Swear was verbally abusive or threatening during the course of her July 8, 2004 conversation with appellant. As appellant failed to establish a compensable employment factor, the Office properly denied her claim.

CONCLUSION

The Board finds that appellant failed to establish that she sustained an emotional condition in the performance of duty on July 8, 2004.

ORDER

IT IS HEREBY ORDERED THAT the July 7, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 11, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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