

FACTUAL HISTORY

On March 20, 2002 appellant, then a 40-year-old budget analyst, filed a claim alleging that her severe anxiety disorder/depression, tremors, hypertension, insomnia, migraines, muscle spasm, chronic fatigue syndrome and loss of appetite were a result of her federal employment. She attributed these conditions to the following: “I [have] encountered countless ongoing stressful interactions of inappropriate professionalism: countless events of unforeseen personality and hostile approaches; unfair treatment/unfriendly environment; vast amount of weight loss.”

On May 20, 2002 the Office requested that appellant submit additional evidence to support her claim, including a detailed description of the specific incidents that she believed contributed to her illness. She replied on July 13, 2002. Identifying the specific incidents to which she attributed her condition, appellant stated:

“Being appointed the primary focal point of a highly visible, fast paced [p]rogram. Also being assigned to perform [three] newly assigned task[s], upon my return, without training.

“Continuously requesting continuity information in writing from my [former] supervisor Jennie R. Sayre, who was initially the POC [point of contact]. All of which consisted of the [p]rogram [m]anagers expectation, the process carried out, funding sources, historical data containing documentation of each function transpired prior to me assuming the responsibilities.

“Being task[ed] to attend a budgetary meeting, without [the] knowledge of what was being spoken of and not being acknowledged as the person to assume the budgetary function.

“Inappropriate and unprofessional approaches.”

Appellant submitted a detailed narrative. The first event that she described occurred on March 28, 2001: “I began to feel strange when I noticed out of the corner of my right eye, that [Ms. Sayre] was continuously staring at me, while I was talking to Holiston Shankle [Chief of Program Control].” She suspected that this supervisor prompted Mr. Shankle to call in February 2001: “I felt as though [Ms. Sayre] was behind his call to me; trying to get to me, since she had been making several calls prior to his.” On April 4, 2001 the supervisor delivered a denial letter concerning flexiplace. Appellant elaborated on not wanting to be the point of contact due to her previous illness and lack of training. She alluded generally to several unprofessional and hostile work interactions with her supervisor around April 2001. Appellant alleged that her supervisor did not consider her needs and did not allow her to use flexiplace. She alleged that she lacked managerial support for continuity information and training. “I consumed exhaustion from writing emails and letters in my defense, so soon from returning from having a major surgery. I suffered severe migraines, uncontrollable anxiety attacks, with dots (floaters) before my eyes, suddenly feeling weak, light-headed with a feeling of unfair treatment at work.”

Appellant described an incident in which she told her supervisor that it was not possible to change a spreadsheet as requested. This annoyed the supervisor, who stood over appellant looking at the computer screen “with intentions to intimidate me, raising her voice with a hostile tone.” When the supervisor left the room, she slammed the door. Appellant added:

“Another encounter came about shortly after that day; basically creating a hostile and unfriendly working environment for me with the condition that I encountered. Due to her mannerism and demeanor towards me. I was having daily anxiety attacks on a regular basis for a period of time, from either by her sarcastic telephone conversations or becoming annoyed with her inconclusive emails, in regards of my request for training. I began to feel as though it was time for me to be reassigned. I was weakening and feeling miserable with the way business was being handled. Due to the severity of my illness and the accommodations that were needed for me, I knew [that] I needed to be reassigned to another [o]rganization. [Ms. Sayre] made things difficult for me to deal with her. Deliberately creating a feeling of, what I am to expect the next day, being placed in a situation, I had never experienced throughout my career.”

Appellant discussed a grievance she filed and the stress she experienced at the step one meeting on June 26, 2001. In July 2001, she returned to work to discover that her office had been moved without her knowledge, which caused a severe anxiety attack lasting for an unknown period of time and resulted in her hospitalization. Appellant alleged that her supervisor aggravated her stress level by calling on numerous occasions “continuously asking for doctors excuses” and by disapproving advanced annual leave. She related an incident in which her supervisor slammed a door so hard that a picture fell from the wall, breaking the glass. Appellant generally alleged displays of hostility and constant attempts to berate her ability and hinder her performance.

Appellant described an incident on December 17, 2001, when two federal police officers appeared at her door to question her about an alleged terrorist threat she made to commit bodily harm against another person. The officers interrogated her, badgered her and she experience a panic attack.

Since December 28, 2001, appellant stated that she received the same continuous and unprofessional conduct from her present supervisor, Barbara Atkinson, “a very close and personal friend of my former supervisor.” Ms. Atkinson’s behavior, she stated, appeared to be more retaliatory due to her friendship with Ms. Sayre. She began to involve herself with appellant’s work-related tasks, causing problems with her program. Appellant alleged that her supervisor misappropriated funds and wanted her to correct the mistakes. She alluded to her supervisor’s “inapproachable sarcastic demeanor.” The supervisor disapproved appellant’s request to attend a conference.

Appellant stated that she had an anxiety attack in March 2002 and was taken to the emergency room. The nurse told her that someone had called to see if she was there: “I have reason to believe that my supervisor [Ms.] Atkinson, called to see if I was really there. No other lady knew I was going except her.” Appellant stated that, on May 20, 2002, the supervisor prevented her from leaving an office by kicking the door closed, which caught her off guard,

“putting me in shock to visualize her to portray this kind of violent behavior in the workplace.” Photographs were taken of the footprint that the supervisor left on appellant’s coat from the kick.

Appellant stated that her supervisor downgraded her performance from a “[s]uperior” to an “[u]nacceptable” employee and that none of her program managers’ input was taken into consideration. During a meeting on August 5, 2002, appellant mentioned that she never wanted to meet with her supervisor behind closed doors again after the violence that she displayed in the workplace. The supervisor responded, “Oh she [is] just scared, I [am] going to beat her up.” After appellant looked at her and said “you know that will never happen,” the union representative intervened. The supervisor said she was just joking.

The Office received documents relating to appellant’s use of leave, her work performance and assignments and her flexiplace agreement. The Office also received copies of numerous emails that appellant sent or received at work.

Among the statements submitted by others, Jennifer D. Halton wrote that, on July 17, 2002, she sat in the office next to appellant’s and heard [Ms.] Sayre entering appellant’s office “raising her voice and then leaving slamming the door.” On March 22, 2002 Cheryl Smith, a contract specialist wrote:

“Upon [appellant’s] return to work after major surgery and reassigned as DARPA Financial Agent for XRBF, I heard several very disturbing facts, which occurred around mid Dec 2001. One was that she should just take her medical disability retirement as she was not well, but had refused. It was then stated by Mr. Jaegers to Ms. Sayre’s head of XRBF to do whatever was necessary to either fire her or have her quit but to get rid of her. He considered her a nuisance and nonproductive member of the group and she needed to be dispensed of. This is very distressing to me, as I have worked with [appellant] prior to her surgery and after and found her to be conscientious, considerate and very professional. She has always kept me informed on our DARPA funding and where in the process it was and when it would be ready for obligations.”

Ms. Atkinson commented on appellant’s allegations. She stated that she was unaware of the ongoing stressful interactions, inappropriate professionalism, hostility and unfair treatment or unfair environment that appellant had described. Ms. Atkinson added:

“I assumed supervisory responsibility for [appellant] in December 2001 and do not feel that we have a ‘good working relationship.’ She has been very negative, uncooperative and difficult to deal with. [Appellant] frequently refused to talk with me regarding her work assignments and requested that I communicate with her solely by email because she becomes more stressed when I interact with her personally. Her work has been reassigned/accomplished by other employees, also due to her absences or inability/unwillingness to complete her assigned tasks.”

* * *

“I feel that management has tried to accommodate [appellant] in order to prevent the types of situations she described. Upon returning from work, [appellant] was

relocated to another building because she feels Building 105 is a sick building. She refuses to meet, work or train in Building 105, which is the building [that] she was assigned to prior to her current illness(es). I do not interact with her personally on a daily basis, either because of her absences or because I have other obligations to fulfill. She was also allowed to work at home under a [f]lexiplace [a]greement at her request. Since [she] is not colocated with the rest of our staff members, so she is essentially free from any immediate management oversight and should therefore feel less stressed.”

Ms. Atkinson noted that a grievance concerning the denial of appellant’s request for flexiplace was settled and that appellant began to work at home. The agreement was terminated in December 2001, however, for noncompliance. Appellant filed two more grievances, one for reprisal by her former supervisor, the other alleging that she was not trained to perform the duties of her performance work plan. Ms. Atkinson stated that it was appellant who requested all the responsibility for the DARPA program and now she was complaining that she was overwhelmed. Ms. Atkinson stated:

“On January 29[,] 2002, I issued a [l]etter of [c]ounseling to [appellant] because her conduct toward me was unacceptable. She refused to talk or meet with me, would not respond to meeting requests and at times, would leave the work place if I told her [that] I was coming to her office to meet with her. [Appellant] refused to accept/acknowledge assignments from me and insists on doing things her way or not at all. She consistently finds excuses or blames other for her failure to accomplish her tasks. [Appellant] displayed her rudeness by turning the volume up on her radio while I tried discussing her work assignments with her and having me wait outside her door while she engaged in a personal conversation with another employee. Finally, after repeated attempts to speak with [appellant], I issued the [l]etter of [c]ounseling.”

In a decision dated November 5, 2002, the Office denied appellant’s claim for compensation on the grounds that the evidence failed to establish that she sustained an emotional condition in the performance of her regularly or specially assigned duties. The Office found that the evidence established no compensable factor of employment.

In a decision dated June 24, 2003, the Office reviewed the merits of appellant’s claim but denied modification of the November 5, 2002 prior decision. The Office found that appellant provided no evidence establishing that her disability resulted from an emotional reaction to regular or specially assigned duties or to a requirement imposed by her federal employment.

LEGAL PRECEDENT

The Federal Employees’ Compensation Act² provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.³ The phrase “sustained while in the performance of duty” is regarded as

² 5 U.S.C. §§ 8101-8193.

³ *Id.* at § 8102(a).

the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of performance."⁴ "Arising in the course of employment" relates to the elements of time, place and work activity. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in her employer's business, at a place where she may reasonably be expected to be in connection with her employment and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto. This alone is not sufficient to establish entitlement to compensation. The employee must also establish an injury "arising out of the employment." To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration.⁵

As the Board observed in the case of *Lillian Cutler*,⁶ however, workers' compensation law does not cover each and every illness that is somehow related to the employment. When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her duties and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability resulted from her emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of her work. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from 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. Workers' compensation law does not cover an emotional reaction to an administrative or personnel action unless the evidence shows error or abuse on the part of the employing establishment.⁷

ANALYSIS

Appellant attributes her severe anxiety disorder, depression, tremors and other medical conditions to stressful interactions, unprofessional conduct, personality conflict, hostility and unfair treatment or an unfriendly environment at work. She identified her former supervisor, Ms. Sayre, and her present supervisor, Ms. Atkinson, as the individuals involved in these interactions and the sources of the alleged stress. As a general rule, however, appellant's emotional response to the actions of her supervisors is not something for which she may receive compensation benefits. The Board has held that an oral reprimand generally does not constitute a compensable factor of employment,⁸ neither do disciplinary matters consisting of counseling

⁴ This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

⁵ See *Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

⁶ 28 ECAB 125 (1976).

⁷ *Thomas D. McEuen*, 42 ECAB 566, 572-73 (1991), *reaff'g*, 41 ECAB 387 (1990).

⁸ *Joseph F. McHale*, 45 ECAB 669 (1994).

sessions, discussion or letters of warning for conduct;⁹ investigations;¹⁰ determinations concerning promotions and the work environment;¹¹ discussions about an SF-171;¹² reassignment and subsequent denial of requests for transfer;¹³ discussion about the employee's relationship with other supervisors;¹⁴ or the monitoring of work by a supervisor.¹⁵ To the extent, then, that appellant attributes her medical conditions to such actions as being appointed the [p]oint of [c]ontact on a program, being assigned certain tasks, having to attend a budget meeting, being denied [f]lexiplace, being asked to provide doctors' notes to support leave requests, being denied advanced annual leave, being moved from her office to another building or having her performance downgraded, her claim is not one that falls within the scope of the Act. Only when the evidence establishes actual error or abuse on the part of the employing establishment in connection with such administrative matters can entitlement to compensation benefits be considered.¹⁶

Appellant alleged wrongdoing by attributing her medical conditions to "inappropriate and unprofessional approaches." She noted intimidation, hostility, attempts to berate her and general mistreatment by her supervisors. As a rule, however, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.¹⁷ The Board has held that, in claims for a mental disability attributed to work-related stress, the claimant must submit factual evidence in support of his or her allegations of stress from "harassment" or a difficult working relationship. The claimant for compensation must specifically delineate those factors or incidents to which the emotional condition is attributed and must submit supporting factual evidence verifying that the implicated work situations or incidents occurred as alleged. Vague or general allegations of perceived "harassment," abuse or difficulty arising in the employment is insufficient to give rise to compensability under the Act.¹⁸ Based on the evidence submitted by the claimant and the employing establishment, the Office is then required to make factual findings which are reviewable by the Board. The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a

⁹ *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

¹⁰ *Sandra F. Powell*, 45 ECAB 877 (1994).

¹¹ *Merriett J. Kauffman*, 45 ECAB 696 (1994).

¹² *Lorna R. Strong*, 45 ECAB 470 (1994).

¹³ *James W. Griffin*, 45 ECAB 774 (1994).

¹⁴ *Raul Campbell*, 45 ECAB 869 (1994).

¹⁵ *Daryl R. Davis*, 45 ECAB 907 (1994).

¹⁶ *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁷ *See Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

¹⁸ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

basis in fact for the contentions made, as opposed to mere perceptions which, in turn, may be fully examined and evaluated by the Office and the Board.¹⁹

Appellant's allegation consist primarily of her own perception of events. She felt strange on March 28, 2001, for example, when she noticed that Ms. Sayre was "continuously staring" at her. From this, appellant "felt as though" the supervisor was "trying to get me." On another occasion, the supervisor stood over appellant looking at the computer screen "with intentions to intimidate me." The supervisor's intention in these matters is a matter of speculation, as the record contains very little in the way of witness statements or other independent evidence to substantiate harassment or abusive conduct on the part of appellant's supervisors.

The record does contain several witness statements, but this evidence is not sufficient to establish error or abuse by appellant's supervisors. Ms. Halton, whose office was located next to appellant's office, stated that she overheard Ms. Sayre raise her voice and slam a door. This evidence provides an insufficient evidentiary basis to make a finding of error or abuse in the exercise of supervisory discretion or the discharge of supervisory responsibilities. Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.²⁰ The statement of Ms. Halton makes clear that she was not in appellant's office, but overheard Ms. Sayre raise her voice and, presumably, slam a door upon exiting. This statement is not based on witnessing the incident and is not specific as to the interaction between appellant and her supervisor in which the supervisor raised her voice. This is not sufficient to establish harassment or abuse by the supervisor.²¹

In a statement dated March 22, 2002, Ms. Smith noted that she had learned of "several very disturbing facts" around mid December 2001, in that appellant should take medical disability retirement and a statement by a Mr. Jaegers to Ms. Sayre's head of XRBF "to do whatever was necessary" to either fire appellant or have her quit. Ms. Smith's statement does not establish error or abuse by any supervisor. She did not identify any party stating that appellant should take retirement. The statement attributed to Mr. Jaegers to Ms. Sayre's supervisor, does not establish any instance of harassment as alleged by appellant against Ms. Sayre. It does not appear that Ms. Sayre made any comment or was a party to the conversation.

The record indicates that appellant has pursued some of her allegations through the grievance procedure, but that she has submitted no final decision or formal finding that either of her supervisors committed error or abuse in the discharge of their duties. Without such evidence to document or substantiate her allegations in this case, appellant has failed to establish a factual basis for her claim. While she may not have "good working relationship" with Ms. Atkinson, she has submitted insufficient evidence to establish administrative error or abuse. For this reason, the Board will affirm the denial of her claim for compensation benefits.

¹⁹ *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

²⁰ *Harriet J. Landry*, 47 ECAB 543 (1996).

²¹ *See Dennis J. Balogh*, 52 ECAB 232 (2001).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the June 24, 2003 and November 5, 2002 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 14, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member