

**United States Department of Labor
Employees' Compensation Appeals Board**

PATRICIA A. DAVIS, Appellant

and

**SOCIAL SECURITY ADMINISTRATION,
Tucker, GA, Employer**

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**Docket No. 04-848
Issued: July 19, 2004**

Appearances:
Patricia A. Davis, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On February 11, 2004 appellant filed a timely appeal of the December 19, 2003 decision of the Office of Workers' Compensation Programs denying her October 29, 2003 request for reconsideration. She also timely appealed the Office's April 24, 2003 decision, which denied her claim for an employment-related emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.¹

ISSUES

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty on February 11, 2003; and (2) whether the Office properly denied appellant's request for a review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

¹ The record on appeal includes evidence that was received after the issuance of the Office's decision dated December 19, 2003. The Board's review is limited to the evidence in the case record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

On February 18, 2003 appellant, then a 49-year-old claims representative trainee, filed a traumatic injury claim (Form CA-1), for an employment-related emotional condition. She alleged that on February 11, 2003 her mentor, Dantea Buckley, verbally assaulted her. Appellant stated that they got into an argument because Ms. Buckley wanted to talk down to her and insult her. She stopped work on February 13, 2003.²

The record includes a February 13, 2003 incident report that appellant prepared regarding the alleged verbal assault on February 11, 2003. When appellant asked Ms. Buckley a question, she responded with a “smart remark.” Appellant reportedly told Ms. Buckley that her comment was unnecessary and that she would not tolerate being spoken to in that manner. Appellant also stated that when she got up to leave her cubicle, Ms. Buckley reportedly jumped up herself and moved a chair in front of appellant and the two began to argue. During the argument, Ms. Buckley allegedly bounced around holding on to the chair “as if she was Mike Tyson.” Appellant stated that she very calmly moved around Ms. Buckley and left the cubicle to go speak with her supervisor. Shara Johnson, the supervisor, reportedly told appellant that she could not help her. Appellant stated that she took an hour of leave and reported to the Department of Veterans Affairs, Medical Center for treatment of a migraine headache and an anxiety attack.

Medical records indicate that appellant was treated for a migraine on February 11, 2003. The records, however, do not provide any information regarding the cause of her condition. Appellant was also treated for a migraine headache five days earlier on February 6, 2003.

In a February 21, 2003 report, Joe Caldwell, a supervisor, indicated that appellant had not interacted well with her coworkers since her arrival in August 2002. He stated that upon investigating the alleged verbal assault, he discovered that appellant apparently began an altercation by raising her voice with her assigned training mentor. Mr. Caldwell stated that several of appellant’s coworkers had been interviewed regarding the alleged events and her account of the incident was not supported by her coworkers. Mr. Caldwell noted that appellant’s coworkers expressed considerable concern about her attitude and perceived potential for violence. Mr. Caldwell spoke with Ms. Buckley regarding the incident and she expressed fear of appellant. He stated that the investigation revealed that appellant was not assaulted in any way by her mentor and that she initiated what could have become an altercation had Ms. Buckley not backed away from the situation.

On March 18, 2003 the Office advised appellant that the information submitted was insufficient to establish her eligibility for benefits. The Office requested that she submit additional factual and medical evidence.

Appellant submitted multiple statements and other documentation outlining alleged employment incidents dating back several years prior to the August 2002 transfer to her duty station in Georgia. She described difficulties she encountered in obtaining a hardship transfer from her prior office in Florida. Appellant also alleged a pattern of harassment and

² Appellant subsequently resigned effective May 31, 2003.

discrimination in her current location, which began shortly after her arrival in August 2002. She reported having difficulties with an earlier supervisor, but she did not specifically elaborate on the February 11, 2003 incident of alleged verbal abuse by Ms. Buckley.

In an April 24, 2003 decision, the Office denied appellant's claim based on her failure to establish that she was verbally assaulted on February 11, 2003 as alleged. The Office did not address any of the additional employment incidents that allegedly occurred prior or subsequent to February 11, 2003.

On October 29, 2003 the Office received an undated request for reconsideration. Appellant identified her date of injury as May 29, 2002 through February 11, 2003 and she explained that she was seeking reconsideration of her claim as an occupational disease claim and not solely based on the February 11, 2003 incident. Appellant stated that from May 29, 2002 through February 11, 2003, she was subjected to a hostile working environment, which led to her illness and subsequent resignation.

By decision dated December 19, 2003, the Office denied appellant's request for reconsideration. The Office determined that the instant claim was limited to the single traumatic incident of February 11, 2003 and that appellant failed to submit any relevant and pertinent new evidence regarding the alleged verbal assault that day. The Office advised her to file a separate occupational disease claim to address her allegations of long-term harassment, intimidation and racial discrimination dating back to May 29, 2002.

LEGAL PRECEDENT -- ISSUE 1

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.³

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 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.⁴ Perceptions and feelings alone are not

³ 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).

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

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.⁵

ANALYSIS -- ISSUE 1

Appellant alleged that Ms. Buckley verbally assaulted her on February 11, 2003. Verbal abuse or threats of physical violence in the workplace are compensable under certain circumstances.⁶ 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.⁷ Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute compensable factors of employment.⁸

In this instance, appellant has failed to establish that Ms. Buckley verbally assaulted her on February 11, 2003. The Board notes that appellant did not describe any specific words which were made by Ms. Buckley on February 11, 2003. Appellant vaguely reported that Ms. Buckley made a "smart remark" and that, when appellant rose to leave her cubicle, Ms. Buckley jumped up and blocked her way with the chair and the two started arguing. Ms. Buckley allegedly held on to a chair "as if she was Mike Tyson." Appellant has not provided a sufficiently detailed account of the alleged incident to establish verbal abuse. While the record establishes that appellant and Ms. Buckley interacted on February 11, 2003 the record does not substantiate appellant's allegations of verbal abuse. Appellant has failed to substantiate her allegation that she was verbally assaulted by Ms. Buckley on February 11, 2003.

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.⁹ This principle recognizes that a supervisor or manager in general must be allowed to perform his or her duties and employees will, at times, dislike the actions taken, but mere disagreement or dislike of a supervisory or managerial action will not be actionable, absent evidence of error or abuse.¹⁰ In the instant case, appellant has not submitted evidence of error or abuse to establish that Ms. Buckley acted unreasonably in discharging her responsibilities as the assigned mentor to review appellants work.

Appellant failed to establish a compensable employment factor occurring on February 11, 2003. As such, the Office properly denied her claim for an employment-related emotional condition.

⁵ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁶ *Fred Faber*, 52 ECAB 107, 109 (2000).

⁷ *Id.*

⁸ *Marguerite J. Toland*, 52 ECAB 294, 298 (2001).

⁹ *Id.* at 299.

¹⁰ *Id.*

LEGAL PRECEDENT -- ISSUE 2

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.¹¹ Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹²

ANALYSIS -- ISSUE 2

Appellant's October 29, 2003 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. Appellant sought to amend her claim from a single incident traumatic injury arising on February 11, 2003 to an occupational disease claim dating back to May 29, 2002. The Office properly confined its review to the single incident appellant alleged in her February 18, 2003 claim. As the Office noted, appellant may file a separate occupational disease claim to address the employment incidents that allegedly predated the February 11, 2003 incident that is the subject of the instant claim. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).¹³

With respect to the third requirement, that the information submitted constitute relevant and pertinent new evidence not previously considered by the Office, appellant submitted an October 6, 2003 statement from Linda F. Cilien, a former colleague with whom she worked in Florida. As this statement does not address the February 11, 2003 incident, it is not relevant to the issue on reconsideration. Appellant also submitted an unsigned and undated statement attesting to the fact that she and her mentor had "words" on February 11, 2003 and that both employees raised their voices. The affiant goes on to state that, "If this was a verbal assault, then both employees verbally assaulted one another." The issue is not whether appellant and Ms. Buckley argued on February 11, 2003, but whether their discussion constituted verbal abuse. Regardless of any questions of authenticity, the unnamed affiant provides an opinion, but insufficient detail to assist in determining whether appellant was verbally assaulted as alleged on February 11, 2003. Accordingly, this document is similarly insufficient to warrant reopening the claim for merit review. Appellant did not submit any relevant and pertinent new evidence and she is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).¹⁴

¹¹ 20 C.F.R. § 10.606(b)(2) (1999).

¹² 20 C.F.R. § 10.608(b) (1999).

¹³ 20 C.F.R. §§ 10.608(b)(2)(i) and (ii) (1999).

¹⁴ 20 C.F.R. § 10.608(b)(2)(iii) (1999).

As appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office properly denied appellant's October 29, 2003 request for reconsideration.

CONCLUSION

The Board finds that appellant failed to establish that she sustained an emotional condition in the performance of duty on February 11, 2003. The Board further finds that the Office properly denied appellant's October 29, 2003 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the December 19 and April 24, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 19, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member