

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

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**RHONDA L. HAMEL, Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL  
CENTER, Portland, OR, Employer**

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**Docket No. 04-2171  
Issued: February 4, 2005**

*Appearances:*  
*Rhonda L. Hamel, 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  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On September 2, 2004 appellant, filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated August 20, 2004 denying appellant's emotional condition on the grounds that it was not sustained in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has met her burden of proof in establishing that she sustained an emotional condition due to factors of her federal employment.

**FACTUAL HISTORY**

On June 7, 2004 appellant, then a 58-year-old secretary, filed an occupational disease claim alleging that she had developed an emotional condition on January 12, 2004 which she first related to factors of her federal employment on January 20, 2004. She stated that the key to her office was given to numerous persons and that she was held responsible for missing items including an electric stapler and two provider files which disappeared while she was on sick

leave. Appellant stated that a retaliating and hostile work environment caused her high blood pressure, anxiety, chest pain and stress. She also noted that she had requested a transfer; that her supervisor called her names and that her supervisor asked people to “write her up” for days that appellant was in the hospital. Appellant stated that her supervisor said within her hearing that appellant was “crazy and going nuts.” She alleged that one of her supervisor’s friends was sending emails requesting that appellant stop saying that she was afraid of her supervisor and her friend.

The Office requested additional factual and medical evidence from appellant in a letter dated July 9, 2004. The Office allowed 30 days for a response.

Appellant responded on July 19, 2004 and submitted several documents. In her July 19, 2004 statement, appellant asserted that she had no idea who had the missing files and that Jeffrey Pelligrini opened the office and allowed Susan Gilbert to remove the files while appellant was on sick leave. Appellant investigated and located the files in Mario Rivera’s office.

Appellant stated that when she returned from sick leave her office had been rearranged, her workstation downsized and the lock to her office had been changed. She noted that her file cabinets had been moved, and that the files were in disarray. Appellant filed a grievance regarding this unauthorized alteration of her work site. She alleged that Ms. Fox began to retaliate against her after she filed the grievance. Appellant asserted that numerous individuals retaliated against her, and harassed her through demeaning rumors, threats and slurring remarks creating a hostile work environment. She also stated that she was “physically terrified” of Ms. Fox and Ms. Ferraro. Appellant stated that she had overheard the mean things that the two of them did to persons who they did not like, who would not cheat on time cards or cover for the pair when they were not at work. She attributed her high blood pressure, damaged self-confidence and defamation of character to this knowledge.

In a note dated June 2, 2004, Dr. Paul Yutan, a Board-certified internist, noted that appellant alleged that she had a hostile work environment and was being verbally abused by her boss. He diagnosed acute stress reaction related to hostile work environment. On June 3, 2004 Dr. James Kern, an internist, diagnosed anxiety related to her current work environment and recommended that appellant change positions. In a note dated June 4, 2004, Dr. David L. Smith, a Board-certified rheumatologist, stated that appellant claimed she was experiencing stress at work due to name calling. Appellant also stated that she was afraid of coworkers because they knew where she lived.

Appellant submitted a series of emails beginning December 31, 2003 in which she noted that she was in her office on that date and that it appeared to her that her desk and supply drawers had been rifled. She stated that her electric stapler was missing and asked that this item be returned prior to her return to work the following week. Appellant stated, “The only ones with a key to this office are very limited so actually it wouldn’t be too hard to track down.” In a January 5, 2004 email, Dawn M. Vidal noted that the stapler had been located. Appellant stated that the borrowers need to order a replacement, as she had physical limitations requiring the use of the electric stapler. The order was made on January 13, 2004.

On January 16, 2004 appellant emailed Susan A. Gilbert regarding provider files which Ms. Gilbert obtained when Mr. Pelligrini opened appellant's office.

Appellant also submitted emails regarding those with office access. Her supervisor, Traci Fox, reviewed this list and noted that provider files were removed by an employing establishment official.

Ms. Fox emailed appellant on April 2, 2004 and stated that appellant should not place a password on the division telephone line voicemail. She also stated that appellant should not place a message regarding appellant's leave usage on that line. Ms. Fox requested that appellant leave a general message for the entire division.

Ms. Fox completed an email on April 2, 2004 stating that she had changed the core lock to the mail office and that, upon appellant's return to work on Thursday, April 8, 2004, Dennis E. Hutchinson, acting director, would open the office for appellant, and ask for her master key. He was to inform her that due to after hour access Ms. Fox had the key changed to the mail office. Ms. Fox indicated that, after appellant had surrendered her master key, then the main door was to be rekeyed such that the new key would open only the main door. Ms. Fox stated, "Security knows about this so they can be called if [appellant] gets out of hand."

Appellant alleged that she never received the April 8, 2004 memorandum from Ms. Fox informing her that the key had been changed, that she should surrender her master key immediately and that she would receive a new key to the front office as soon as possible.

In a letter dated April 19, 2004, Ms. Fox noted that management did move appellant's desk while she was on leave. She stated, "Management will consider input from the employee regarding arrangement of her work area and will abide by the Master Labor Agreement."

In a report of contact dated April 28, 2004, Dawn Vidal stated that Ms. Fox informed her that appellant had provided Greg Fox, Ms. Fox's estranged husband, with notes regarding bad things that Ms. Fox had said about him. Ms. Fox further stated that appellant had informed Mr. Fox of Ms. Fox's financial troubles and troubles with her daughter. Ms. Vidal did not hear appellant make these remarks. The witnesses were Mr. Fox and Penny Mathis. Ms. Mathis informed appellant that she could not submit the documents to Mr. Fox. Ms. Vidal concluded that appellant's behavior was very inappropriate as she was using confidential information gained through her position to threaten and harm her supervisor.

On May 21, 2004 the Office of Special Counsel noted that appellant had provided information on a disclosure matter. An Equal Employment Opportunity counselor noted on May 28, 2004 that appellant had reported harassment and a hostile work environment and requested reassignment to another area or supervisor.

Melinda S. Brinegar emailed appellant on June 7, 2004 and instructed her to personally contact Ms. Fox regarding unplanned leave usage and not to notify any other area.

By decision dated August 20, 2004, the Office denied appellant's claim finding that she failed to substantiate a compensable factor of employment and therefore failed to meet her burden of proof in establishing an emotional condition in the performance of duty.<sup>1</sup>

### **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 her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>2</sup> 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>3</sup>

Generally, actions of the employing establishment in administrative or personnel matters unrelated to the employee's regular or specially assigned work duties, do not fall within the coverage of the Act.<sup>4</sup> While an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment, mere perceptions are insufficient. In determining whether the employing establishment erred or acted abusively, the Board determines whether the employing establishment acted reasonably.<sup>5</sup>

For harassment, retaliation 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. Mere perceptions of harassment, retaliation or discrimination are not compensable under the Act.<sup>6</sup>

### **ANALYSIS**

Appellant alleged that her emotional condition was due to the removal of an electric stapler and two files which occurred while she was on sick leave. She stated that she was held responsible for the care of these items and that the removal caused her stress and anxiety. In

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<sup>1</sup> Following the Office's August 20, 2004 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See *Thomas D. McEuen*, 41 ECAB 387, 390-91 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>4</sup> *James E. Norris*, 52 ECAB 93, 100 (2000).

<sup>5</sup> *Bonnie Goodman*, 50 ECAB 139, 143-44 (1998).

<sup>6</sup> *Reco Roncoglione*, 52 ECAB 454, 456 (2001).

support of her claim, she submitted a series of emails noting the location of the stapler and the files. Appellant also attributed her emotional condition to an email from Ms. Fox ordering her not to place personal messages on the office voice mail, and to the change of the lock on her office door. She implicated an email from Ms. Brinegar regarding the method of making unplanned leave requests as attributing to her emotional condition. These events pertain to administrative matters. There is no evidence that the employing establishment erred by allowing another division to use a stapler while appellant was on leave, nor in allowing other authorized persons access to files. There is no evidence in the record that appellant was chastised as a result of the removal of these items from her office. Furthermore, the employing establishment's decision to change the locks was reasonable given appellant's concerns and the request that appellant not place personal messages on the office-wide voice mail was also reasonable. Finally, the Board has consistently held that conflicts regarding leave are to be considered administrative or personnel matters and are not compensable unless there is evidence of error or abuse on the part of the employing establishment.<sup>7</sup> Appellant did not submit any evidence establishing error or abuse by the employing establishment in requesting that she follow the chain of command in making a leave request. Therefore, the Board finds that the above described events are not compensable factors of employment.

Appellant also alleged that she requested a transfer and that her supervisor failed to act on her request. The Board has held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform her regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.<sup>8</sup>

Appellant has attributed her emotional condition to the employing establishment's decision to rearrange her workstation while she was on leave. She filed a grievance concerning this action. Ms. Fox responded and admitted that the employing establishment had in fact rearranged appellant's workstation. She asserted that the employing establishment would now consider input from appellant regarding the alterations and that the employing establishment would abide by the governing agreements. The Board finds that the employing establishment conceded that it committed an error by failing to consult with appellant prior to rearranging her workstation. As appellant has established error or abuse in an administrative matter, she has established a compensable factor of employment in regard to the improper alteration of her workstation.

Appellant further alleged that she experience retaliation, harassment and a hostile work environment as a result of the previously described actions of the employing establishment, as well as due to Ms. Fox's actions of calling her names, suggesting disciplinary actions to other supervisors, to the verbal abuse of Ms. Fox calling appellant crazy and stating that she was going nuts, and to demeaning rumors, threats and slurring remarks. As noted previously, for harassment, retaliation 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. Mere perceptions of harassment, retaliation or discrimination are not compensable under the Act.

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<sup>7</sup> *James P. Guinan*, 51 ECAB 604, 607 (2000).

<sup>8</sup> *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

Appellant has submitted no evidence supporting her allegation of harassment, retaliation or discrimination. The record does not contain witness statements or other corroborating evidence substantiating that the verbal abuse, improper discipline or other implicated actions actually occurred. As appellant has failed to submit the necessary factual evidence to support her claim, the Board finds that she has not established that the harassment, retaliation or discrimination occurred or that the alleged events are otherwise compensable factors of employment.

In the present case, appellant has only identified a compensable factor of employment with respect to error or abuse in an administrative or personnel matter, that the employing establishment improperly rearranged her workstation without her knowledge and input. However, appellant's burden of proof is not discharged by the fact that she has established an employment factor which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.<sup>9</sup>

Appellant submitted a note dated June 2, 2004 from Dr. Yutan, a Board-certified internist, noting that appellant attributed her diagnosed condition of acute stress reaction to a hostile work environment and verbal abuse by Ms. Fox. As Dr. Yutan did not attribute appellant's condition to her accepted employment factor, his report is not sufficient to establish her claim for an emotional condition causally related to her federal job duties.

On June 3, 2004 Dr. Kern, an internist, diagnosed anxiety due to appellant's work environment, but did not provide a history of injury including the accepted employment factor and did not provide an opinion on the causal relationship between the accepted factor of improper rearrangement of appellant's workstation and her diagnosed condition. For these reasons his report is not sufficient to meet appellant's burden of proof.

Dr. Smith, a Board-certified rheumatologist, completed a report on June 4, 2000 and attributed appellant's stress to name calling and fear of her coworkers. He did not mention the accepted factor of employment. Without an opinion that the sole accepted factor caused or contributed to appellant's diagnosed emotional condition, this report does not contain the necessary opinion on causal relationship and is not sufficient to meet appellant's burden of proof.

### **CONCLUSION**

The Board finds that appellant has established one compensable factor of employment; however, the medical evidence is not sufficient to establish that she sustained an emotional condition as a result of her federal job duties.

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<sup>9</sup> See *William P. George*, 43 ECAB 1159, 1168 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 20, 2004 is hereby affirmed as modified.

Issued: February 4, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member