

Management Service Line]. [My supervisor] [Kevin] Grillo went off on me, yelled and screamed at me and slammed a door in my face and then shouted at me ‘to go home now.’” She indicated that she first became aware of her condition on February 22, 2005. Appellant submitted a statement dated February 21, (sic) 2005 detailing the exchange she had that day with her supervisor:

“I went to his office doorway and asked to speak to him in private since he had two non IMS volunteers in his office. He asked where we could talk in private and I told him in the office next to his which was empty. When we went into this office, just inside the doorway, I informed him that some of his employees were getting preferential treatment while others were given extra assignments on a regular basis and reminded him of the help desk schedule he had posted that very morning where one employee had the help desk 10 times during a two-week period and another employee had it zero times. He quickly got very angry and asked me who the employees were that were getting preferential treatment. I then told him who the two were since he had asked as if he didn’t know. He is the only one who makes the help desk schedule and assigns work orders when he needs to. I then said that he did not have to take my word for it to check the help desk and work order schedules. I said to him that I did not know if this was just an overlooked thing or what. I informed him again (a fact that I had informed him of many times in the past) that because of my past history with VA that blatant bias has a very detrimental affect on my mental state. Mr. Grillo then became furious and shouted at me ‘I’ll go get the schedule.’ He was so angry at me I was crying and I thought that he might physically assault me. At this point we could not have been in the office more than two or three minutes. He then turned and went out the door and slammed it very hard in my face. I then heard him slam his own office door very hard. Within 15 seconds he came back into the office I was still in and with the door open screamed at me ‘Go home right now.’ I did as I was ordered and left work about 1:25 PM. Mr. Dean Hensley, Phillip Battles and Lawrence Billips were at the help desk a few feet when this incident occurred.”

Kevin Grillo offered his own account of what happened on February 22, 2005:

“At approximately 1:00 p.m., February 22, 2005 [appellant] entered my office demanding that I speak with her. Her tone of voice alarmed me because I thought an altercation had taken place and that I needed to address the issue. I stopped what I was doing and immediately gave her my full attention. [Appellant] did not ask to see me, but demanded that I speak with her. I had other people in my office and I asked if there was some place else we could talk. [Appellant] pointed to the office next door to me for our discussion.

“We went into the other room and she immediately accused me of giving preferential treatment to others in my section, which then put me on the defensive. Her gestures were forceful and her tone of voice was hostile to me. She said that I always let two people get away with anything they want. When I asked who these two were, she pointed out Pam Rankin and Stephanie Brawley (two people she

has a conflicting past history with). I personally took offense to this statement because I know I ask these two individuals to do very difficult and technical projects. This is not preferential treatment but one of putting the best person on the job to complete the job in the short time period we need to accomplish these duties. I also took offense to this statement knowing that I have continuously done everything to make the work environment in IMSL a pleasant one for [appellant]. (1) [Appellant] has a special tour of duty no one else has 9:30 a.m. to 6:00 p.m. (2) She was moved into an office with a coworker of her choosing due to the inability to get along with the other female employees in the section. (3) [Appellant] was given the opportunity to attend classes for her training off station at a place that she could handle and at her choice of learning institution. (4) She has repeatedly told me that this job is too stressful for her and I have only assigned duties that would accommodate her stress level. If anything the preferential treatment has gone the other way enough so that other employees in my section have repeatedly complained about it.”

* * *

“I stood there and listened to her go on about how unfair everything was to her. I decided to leave the conversation. I left the room stating that I would check the schedule and made no other remarks to her. After a few minutes in my office, I thought the best action to be taken was to tell her to go home. I did not want [her] disgruntled behavior to influence the behavior of the other employees or disrupt their work schedule.”

Faye B. Ortiz explained what she and her husband witnessed inside Mr. Grillo’s office on February 22, 2005:

“During the morning one of his female employees came into his office and seemed upset with him. She told him he made mistakes on the work schedule. She was very rude to him telling him how the schedule was not correct. I was amazed that this employee talked to him in this manner. Kevin kept his cool and actually thanked her for noticing the error and said he would correct them as soon as possible. Then a little while later she came back again and being just as rude wanted to know why he assigned her work to do. Both of us chuckled thinking, how can this employee tell her boss that he can[no]t give her work. She told him that the work was being done by someone else, and he told her to close out the job ticket. Then not too long later she came in again complaining about not going to Galveston. Once again her tone of voice was very rude to Kevin, but like he always does, he took it in stride and kept cool.

“It was not until the afternoon, when Kevin was coming back from going down to the canteen to get his lunch that things really went bad for him. [He] came in to the office carrying his lunch in hand, set it on his desk and was getting ready to eat, when this same lady came into the office demanding a meeting with him. She once again seemed very angry and used a tone of voice of total disrespect to Kevin. Kevin never got a bite to eat. They left the room to take the matter in

private. Shortly after, Kevin came back into the room visibly shaken by what ever took place in the other room and closed his door loud. He apologized to us because he said he did not mean to close the door so loudly but he had a very bad meeting next door. He was so upset he threw away his lunch. Then he got up and went into his doorway and told the lady to go home. Then he close[d] his door again (softly this time) and went back to his desk. He truly looked as if someone had truly hurt him emotionally. We have never seen Kevin like this, but I will say that lady seemed to push all his buttons that day. She was rude and very unprofessional and no supervisor should ever have an employee talk the way she did to him.”

Appellant submitted a medical form report indicating that her post-traumatic stress disorder was well controlled until inappropriate aggressive behavior from the employer on February 22, 2005.

In a decision dated July 29, 2005, the Office denied appellant’s claim for compensation. She requested reconsideration.

The Office received depositions obtained as part of appellant’s Equal Employment Opportunity (EEO) complaint concerning the February 22, 2005 incident and broader allegations of discrimination. Lawrence A. Billips, Jr., testified that he was working the help desk outside Mr. Grillo’s office on February 22, 2005 but could not hear any conversation. “[Appellant] came out of the office, slammed the door. Mr. Grillo came, opened the door, and told her to go home. And that was it.” Winfred Dean Hensley, another witness, testified as follows:

“I was standing at the end of the help desk. I was n[o]t actually working on the desk sitting down, but I was standing at the help desk talking to the two individuals that were assigned the help desk when I heard a loud slam from down the hallway. I could not see where it was coming from, just that it was coming from that particular hallway. Then a few second[s] later, Kevin Grillo walked up to his door and -- well, he entered his door. He slammed his door. Then he opened his door back up almost immediately and yelled to the individual who was just coming into -- down the hall, which is [appellant], to go home, to go home now.”

On October 18, 2006 the employing establishment’s EEO office issued a final agency decision on appellant’s EEO complaint. The Director of the Office of Employment Discrimination Complaint Adjudication found that there was substantial evidence to support the conclusion that appellant failed to prove pretext and that management’s actions were not motivated by discriminatory animus with respect to its actions and decisions in her case. The Director concluded that appellant failed to establish by a preponderance of the evidence that she was discriminated against, based on reprisal and disability, with regard to the claims raised in her complaint.

In a decision dated May 4, 2007, the Office reviewed the merits of appellant’s claim for compensation and denied modification of its prior decision. The Office found that the evidence did not support that she sustained an emotional condition in the performance of duty.

LEGAL PRECEDENT

The Federal Employees' Compensation Act¹ provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² But workers' compensation does not cover each and every injury or illness that is somehow related to employment.³ An employee's emotional reaction to an administrative or personnel matter is generally not covered. Nonetheless, the Board has held that error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.⁴ Perceptions alone are not sufficient to establish entitlement to compensation. To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations with probative and reliable evidence.⁵

ANALYSIS

Appellant has filed a claim that is generally outside the scope of workers' compensation. She attributes her emotional condition primarily to an interaction she had with her supervisor on February 22, 2005. If the weight of the probative and reliable evidence establishes administrative error or abuse or unreasonable conduct by Mr. Grillo, appellant's claim may be compensable.

The factual evidence is well developed in this case. The record contains statements and testimony from the major players and witnesses. The problem with this evidence is that it presents differing accounts of what happened on February 22, 2005. Appellant's statement makes it appear that she acted quite reasonably and that Mr. Grillo "went off" on her. Mr. Grillo's statement has it basically the other way around. The statement of Ms. Ortiz, who witnessed what happened inside Mr. Grillo's office, lends support to Mr. Grillo's version of events. According to her account, it was appellant who acted in a rude, disrespectful and unprofessional manner during the day. Ms. Ortiz verified that Mr. Grillo closed his door in a loud manner and apologized for doing so. Mr. Billips was outside the supervisor's office and testified that appellant slammed a door. Mr. Hensley, also outside the supervisor's office at the end of the help desk, testified hearing two slammed doors. He saw Mr. Grillo slam one of them. Mr. Hensley also testified that Mr. Grillo yelled to appellant to "go home now."

The Board is unable to find from this evidence that Mr. Grillo acted in an erroneous or abusive fashion under the circumstances. The Board has generally held that being spoken to in a raised or harsh voice does not in itself constitute verbal abuse or harassment.⁶ It may be that

¹ 5 U.S.C. §§ 8101-8193.

² *Id.* § 8102(a).

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Margreate Lublin*, 44 ECAB 945 (1993).

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

⁶ *Beverly R. Jones*, 55 ECAB 411, 418 (2004).

Mr. Grillo was simply responding in kind. Whatever the case, it is appellant's burden of proof to submit the evidence necessary to establish that her supervisor committed error or abuse or acted unreasonably in an administrative or personnel matter, and she has not met that burden.

Appellant filed an EEO claim against the agency, encompassing not only the incident that occurred on February 22, 2005 but other, broader claims of discrimination. She was unable, however, to convince the adjudicator by a preponderance of the evidence that she was in fact discriminated against. Appellant's perception of discrimination, indeed, her perception of what happened on February 22, 2005, is no basis for the payment of compensation benefits. She must establish a factual basis for her claim with probative and reliable evidence.

Because the factual evidence does not establish administrative error or abuse or unreasonable conduct, appellant has not shown that her claim is compensable. She has not shown that her claim falls within the exception to the general rule that any emotional reaction she might have to the actions of her supervisor is not something that falls within the scope of workers' compensation. The Board will affirm the Office's May 4, 2007 decision denying her claim for compensation benefits.

CONCLUSION

The Board finds that appellant has not met her burden to establish that she sustained an emotional condition in the performance of duty. She has not established a factual basis for her claim.

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 13, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board