

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

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V.F., Appellant)	
)	
and)	Docket No. 09-2117
)	Issued: June 29, 2010
DEPARTMENT OF VETERANS AFFAIRS,)	
JOHN J. PERSHING VETERANS MEDICAL)	
CENTER, Popular Bluff, MO, Employer)	
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Appearances: *Case Submitted on the Record*
Appellant, pro se
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
 DAVID S. GERSON, Judge
 MICHAEL E. GROOM, Alternate Judge
 JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 17, 2009 appellant filed a timely appeal of a March 27, 2009 Office of Workers’ Compensation Programs’ decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of appellant’s case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she developed an emotional condition due to factors of her federal employment.

FACTUAL HISTORY

On September 15, 2008 appellant, then a 58-year-old voluntary service specialist, filed a notice of occupational disease, alleging that she experienced an anxiety attack on September 11, 2008.¹ She submitted a memorandum dated September 11, 2008 addressed to her

¹ Appellant has a separate claim accepted by the Office for anxiety state on March 4, 2009.

supervisor, Stan Skorniak, stating that she had requested that the detail of Kevin Ellis end in January 2008 because he would not take her directions, made too many clerical mistakes and would not listen to or work with her. In April 2008 appellant stated that she did not want Mr. Ellis back in her office. Her supervisor determined that she could not be objective and that she could not have any input into the interview or selection process. Mr. Ellis was selected as appellant's assistant and instructed to take directions from her. Appellant set up weekly meetings because Mr. Ellis would not listen to her, stopped following her directions and began to give her instructions. She alleged that he refused to make copies of a check, letter and envelope as repeatedly requested. Mr. Ellis also directed appellant to get some paper out of the closet for him. On August 27, 2008 appellant again informed Mr. Ellis that he was to follow her direction, and he left the department without telling her. She experienced stress as a result of Mr. Ellis' lack of cooperation. Appellant requested that he be detailed to another job.

In a letter dated November 20, 2008, the Office requested additional factual and medical information from appellant. In an August 2008 statement, Beverly Adams, a volunteer, noted that appellant had asked Mr. Ellis to print a picture and he told appellant to get the paper out of the closet. Jacqueline B. Sterrette, a volunteer, completed a statement on October 8, 2008 and alleged that Mr. Ellis was often not in his office and frequently yelled on the telephone. She stated that Mr. Ellis asked her to do work which she knew was his.

In a September 22, 2008 report, Dr. Edith Hickey, a Board-certified family practitioner, stated that appellant reported chest pain and stress at work. The pain was consistent with anxiety and appellant experienced difficulty with a particular person at work. Dr. Naveed J. Mirza, a Board-certified psychiatrist, completed a report on December 8, 2008. She diagnosed generalized anxiety disorder and work-related stresses including ongoing conflict with her assistant who had trouble following directions and fulfilling his job responsibilities.

Appellant alleged that Mr. Ellis failed to process the paperwork for the volunteer drivers as required by the first of every month. She submitted e-mails requesting that he print out a program on Monday and his response that he would do so on Wednesday. Appellant stated that this delay would not allow the program to be completed in time and that she printed out the programs. She requested overtime to complete the program that Mr. Skorniak approved. Mr. Ellis made an illegal purchase with his employing establishment credit card, was frequently out of the office, made many typographical errors, and was not trustworthy. She submitted a statement dated July 1, 2008 that Mr. Ellis had directed student volunteers to perform work outside their assignments. On June 9, 2008 Mr. Ellis did not call for printer repair as she requested. Appellant provided Mr. Ellis with e-mails on July 8, 2008 and July 10, 2008 reminding him that creating new assignments and position descriptions for volunteers was part of her position description. Mr. Ellis responded that she not send him any more such e-mails. Appellant stated that Mr. Ellis improperly ordered fish food on July 11, 2008 with his employing establishment account.

On September 12, 2008 appellant participated in a meeting with Mr. Skorniak, Mr. Ellis and union representatives. She experienced an anxiety attack while relating the circumstances which led to her prior emotional condition. Appellant also attributed her condition to the actions of the Equal Employment Opportunity counselor, who informed her that she had no basis for a claim. On September 19, 2008 she alleged that Mr. Ellis made untrue statements about her

including that, if she forgot her medicine, she would become upset and that appellant had instructed him incorrectly about making purchases.

On January 8, 2009 Mr. Skorniak stated that he was appellant's direct supervisor and that he had to rely on appellant to run the voluntary services. Appellant was not asked to participate in the hiring selection of her assistant because she was biased against Mr. Ellis. Mr. Skorniak stated that he instituted weekly meetings to address appellant's concerns with Mr. Ellis. He noted that she became very emotional during a September 12, 2008 meeting and that she was advised that Mr. Ellis could not be detailed elsewhere. Mr. Skorniak requested that appellant submit to a fitness-for-duty examination due to her emotional outbursts at the September 12, 2008 meeting. He submitted an outline of the duties of appellant and Mr. Ellis which stated that appellant gave direction to Mr. Ellis.

Appellant returned to work on October 10, 2008 and stated that she was able to work without further anxiety attacks.

By decision dated March 27, 2009, the Office denied appellant's claim finding that she failed to substantiate a compensable factor of employment which she felt caused or contributed to her diagnosed emotional condition.

LEGAL PRECEDENT

To establish her claim that she sustained an emotional condition in the performance of duty, a claimant must submit: (1) medical evidence establishing that she has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her stress-related condition.² If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.³ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁴

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁵ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁶ There are situations where an injury or illness has some connection with the employment but

² *Leslie C. Moore*, 52 ECAB 132 (2000).

³ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁴ *Id.*

⁵ 28 ECAB 125 (1976).

⁶ 5 U.S.C. §§ 8101-8193.

nevertheless does not come within coverage under the Act.⁷ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an 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 results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁸ A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.⁹

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.¹⁰ Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹¹

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹²

ANALYSIS

Appellant, a supervisor, was assigned Mr. Ellis as an assistant. She developed an emotional condition due to actions he took which she alleged created a hostile work environment. Appellant stated that Mr. Ellis refused to follow her instructions, usurped her duties such as assigning tasks for the volunteers, and asked her to provide him with paper to complete a requested task.

Appellant has attributed her emotional condition to her regular employment duties of acting in a supervisory capacity in regard to Mr. Ellis. Appellant's duties include giving directions and work assignments to Mr. Ellis. She alleged that he did not follow her instructions and submitted several e-mails indicating that Mr. Ellis did not complete a project within the

⁷ See *Robert W. Johns*, 51 ECAB 136 (1999).

⁸ *Lillian Cutler*, *supra* note 5.

⁹ *Roger Williams*, 52 ECAB 468 (2001).

¹⁰ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹¹ *Kim Nguyen*, 53 ECAB 127 (2001). See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹² *Alice M. Washington*, 46 ECAB 382 (1994).

deadline. Appellant was then required to use overtime in order to complete the project. The requirement that appellant supervise Mr. Ellis and complete work not finished by Mr. Ellis in a timely manner relate to her regular or specially assigned duties under *Cutler* and constitute an employment factor.

Appellant stated that Mr. Ellis issued instructions to her by requesting that she locate and provide the paper he needed to complete an assignment. She submitted a witness statement supporting this allegation. Appellant stated that she did not provide the paper. This allegation does not relate to appellant's regular or specially assigned work duties as there was no requirement that appellant provide the paper and in fact she did not do so. This allegation simply relates to appellant's perception that Mr. Ellis acted improperly by asking his supervisor to get some photo paper out of a closet. The Board finds that appellant's emotional reaction is self-generated in that it resulted from her perceptions regarding her status.¹³

Appellant also alleged that Mr. Ellis created a hostile work environment by leaving his office, taking over appellant's duties and generally not following appellant's instructions. She has not submitted any witness statements or other evidence corroborating that these events occurred as alleged. As appellant did not submit any evidence to substantiate these allegations, the Board finds that appellant has not established a compensable employment factor under the Act with respect to these allegations.

Appellant has established an employment factor as it pertains to her responsibility to supervise Mr. Ellis and to complete any unfinished work. As she has established a compensable employment factor, the Office must base its decision on an analysis of the medical evidence. The Office found that there were no compensable factors of employment and did not analyze or develop the medical evidence. The case will be remanded to the Office for this purpose. After such further development as deemed necessary, the Office should issue an appropriate decision on this claim.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant sustained an emotional condition in the performance of duty. Appellant has established employment factors as described above and the case is remanded to the Office for further development consistent with this decision of the Board.

¹³ *J.C.*, 58 ECAB 594 (2007).

ORDER

IT IS HEREBY ORDERED THAT the March 27, 2009 decision of Office of Workers' Compensation Programs is set aside and the case remanded to the Office for proceedings consistent with this decision of the Board.

Issued: June 29, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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