



## **FACTUAL HISTORY**

On March 3, 2008 appellant, then a 43-year-old voucher examiner, filed an occupational disease claim alleging that she sustained post-traumatic stress disorder (PTSD) and dysthymic disorder due to factors of her federal employment.

In an accompanying statement, appellant referred to a specific incident on December 5, 2007 when Michelle Moreland, a coworker, repeatedly told her that she had spoken with Rhonda Munnlyn, a supervisor, about the workload. She went to the supervisor's office. Ms. Moreland "aggressively and angrily" entered the room waving her arms, shouting and pointing a finger at appellant. She called appellant a liar and used profanity. Appellant believed that Ms. Moreland might hit her. Ms. Moreland pounded her fist on Ms. Munnlyn's file cabinet, came within 16 inches of appellant and shouted at appellant using profanity. Ms. Munnlyn asked appellant and Ms. Moreland to resolve their differences. Appellant was reluctant, given Ms. Moreland's verbal assault and intimidation but agreed to shake hands and hug her, even though she told Ms. Munnlyn that she "really felt uncomfortable doing that..."<sup>2</sup>

In a certification of health care provider form dated March 4, 2008, Dr. Rick Graber, a psychologist, noted that appellant had a history of serious physical and emotional abuse with PTSD, "retriggered by recent work-related events." He found that she should remain off work.

In a letter to appellant dated March 31, 2008, Dr. Graber and Dr. Hugh Starks, a Board-certified psychiatrist, stated:

"On December 5, 2007 you reported an incident at work in which you were verbally attacked by another employee at the [employing establishment] in front of supervisory staff. The incident resulted in dramatically increased anxiety for you, including fears that you could have this happen again, that nothing was being done to address the situation and that your job was in serious jeopardy. This in turn affected your ability to concentrate, disrupted your ability to sleep, triggered depressive feelings and symptoms, depleted your energy, negatively affected your self-esteem and generally resulted in a sense that you were not really safe at work."

Dr. Graber and Dr. Starks diagnosed an acute stress disorder and PTSD and noted that appellant participated in counseling. They stated:

"The treatment was helpful to you in managing symptoms during the highest stress times and now the situation is markedly improved. This is due substantially to the departure of the person who made the verbal assaults, as well as management's efforts to improve the overall milieu of the office. There is little doubt that the episodes and stressors at work were directly related to these symptoms and now that the situation has improved your work performance, attitude and overall outlook have changed markedly to being much more positive. It seems very appropriate that your sick leave and vacation time, which you had to

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<sup>2</sup> On March 2, 2008 appellant described events that occurred subsequent to the December 5, 2007 work incident.

use in dealing with these stressors, should be restored due to the connection between your symptoms and the unusual stressors at work.”

By decision dated October 1, 2008, the Office denied appellant’s emotional condition claim. It determined that she had not established any compensable factors of employment.

In a statement dated September 26, 2008, received by the Office on October 2, 2008, Ms. Munnlyn stated:

“In December 2007, there was a work incident between [appellant] and Ms. Moreland concerning a work process. This evolved into a heated discussion between the two employees in the supervisor’s office. [Appellant] said that she felt threatened by Ms. Moreland although in subsequent conversations with [Jim Else, the fiscal chief], she denied feeling threatened. I was in attendance at this meeting and did not believe that she was in any danger from Ms. Moreland. I met with both employees separately and the issue was resolved without any disciplinary action for either employee. Ms. Moreland is no longer employed with the [employing establishment] as of April 2008.”<sup>3</sup>

On October 14, 2008 appellant requested an oral hearing.

On February 11, 2008 Mr. Else, the fiscal chief, noted that he had three meetings with appellant regarding the work environment. He indicated that he had reviewed the December 5, 2007 work incident and taken appropriate action. Mr. Else noted that appellant advised she continued to feel threatened by Ms. Moreland.

At the hearing, held on February 4, 2009, appellant described the incident with Ms. Moreland on December 5, 2007 and her subsequent stress-related condition. She clarified that she was attributing her condition solely to the December 5, 2007 work incident.<sup>4</sup>

In a report dated January 20, 2009, Dr. Graber described appellant’s weekly treatment and noted that some of the treatment “was directed at helping you deal with some symptoms of depression and anxiety related to an incident in December 2007 in which you were verbally attacked in front of a supervisor by another [employing establishment] employee.” He noted that she had improved functioning due to her treatment.

In a statement dated March 19, 2009, appellant’s representative argued that the March 31, 2008 medical report from Dr. Graber and Dr. Stark attributed her acute stress disorder and PTSD to the work incident. He asserted that she claimed three days of annual leave for time missed due to her emotional reaction to the hostile work environment.

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<sup>3</sup> Ms. Munnlyn also addressed events occurring subsequent to December 5, 2007.

<sup>4</sup> The hearing representative questioned whether appellant was attributing her condition solely to the December 5, 2007 incident. Appellant related that an additional incident occurred on September 12, 2008 and the hearing representative advised her to file a separate claim for that incident.

By decision dated April 1, 2009, the hearing representative affirmed the October 1, 2008 decision as modified to show that appellant had established harassment by Ms. Moreland on December 5, 2007 as a compensable employment factor. He found, however, that the medical evidence was insufficiently rationalized to establish that appellant sustained an emotional condition as a result of the establish work factor. The hearing representative further noted that appellant attributed her emotional condition solely to events occurring on December 5, 2007.

On appeal, appellant's representative asserted that appellant was the victim of workplace bullying. He described the effects of workplace bullying and asserted that the employing establishment erred in failing to address or prevent the "bullying tactics of Ms. Moreland towards [appellant] that was occurring on a daily basis."

### **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 his 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>5</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 his frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>6</sup>

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.<sup>7</sup> A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and Equal Employment Opportunity complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.<sup>8</sup> The issue is whether the claimant has submitted sufficient evidence under the Act to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>9</sup> 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 basis in fact for the contentions made, as opposed to mere perceptions

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<sup>5</sup> 5 U.S.C. § 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>6</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>7</sup> *See C.S.*, 58 ECAB 137 (2006); *Michael Ewanichak*, 48 ECAB 364 (1997).

<sup>8</sup> *See Charles D. Edwards*, 55 ECAB 258 (2004); *Parley A. Clement*, 48 ECAB 302 (1997).

<sup>9</sup> *See James E. Norris*, 52 ECAB 93 (2000).

of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.<sup>10</sup>

### ANALYSIS

Appellant did not attribute her emotional condition to the performance of her work duties or to administrative error. While she provided a description of incidents occurring after December 5, 2007, at the hearing she specified that she was not attributing her condition to any even not occurring on December 5, 2007. Appellant maintained that she experienced PTSD and dysthymic disorder as a result of a verbal altercation with Ms. Moreland on December 5, 2007. If disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from the employee's performance of her regular duties, these could constitute employment factors.<sup>11</sup> Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the evidence of record, may constitute factors of employment.<sup>12</sup>

Appellant alleged that she was in her supervisor's office on December 5, 2007 when Ms. Moreland burst into Ms. Munnlyn's office, shouting and waving her finger. Ms. Moreland used profanity toward appellant and pounded her fist on a filing cabinet. While Ms. Munnlyn maintained that she believed that appellant was not in any actual danger from Ms. Moreland, this is not determinative of whether her emotional reaction falls within coverage of the Act. The employing establishment did not dispute that the events described by appellant occurred as alleged. The Office thus properly accepted that she established harassment and verbal abuse by Ms. Moreland as a compensable work factor. The issue, consequently, is whether the medical evidence establishes that appellant sustained an injury causally related to the compensable work factor.

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. She must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to an accepted compensation employment factor.<sup>13</sup> In a form report dated March 4, 2008, Dr. Graber diagnosed a history of PTSD "retriggered by recent work-related events." He found that appellant should remain off work. Dr. Graber did not address whether her diagnosed condition was causally related to the December 5, 2007 work incident and thus his report is of little probative value.

On March 31, 2008 Dr. Graber and Dr. Starks related that appellant described being "verbally attacked by another employee at the [employing establishment] in front of supervisor[y] staff." They noted that the incident caused anxiety, in part because of fear that it would happen again, concern that the employing establishment was not managing the situation

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<sup>10</sup> *L.S.*, 58 ECAB 249 (2006); *Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>11</sup> *Janice I. Moore*, 53 ECAB 777 (2002).

<sup>12</sup> *C.S.*, *supra* note 6; *Marguerite Toland*, 52 ECAB 294 (2001).

<sup>13</sup> *Alice M. Washington*, 46 ECAB 382 (1994).

and job insecurity. Dr. Graber and Dr. Starks diagnosed an acute stress disorder and PTSD. They stated, “There is little doubt that the episodes and stressors at work were directly related to these symptoms....” Dr. Graber and Dr. Starks, however, failed to adequately address how the December 5, 2007 incident resulted in the diagnosed conditions of acute stress disorder and PTSD.<sup>14</sup> Without detailed medical reasoning attributing appellant’s condition to the compensable work factor, the report is not sufficient to meet her burden of proof. Additionally, Dr. Graber and Dr. Starks attributed appellant’s fear in part to her belief that, the December 5, 2007 incident might occur again, her fear of job loss and her lack of confidence in management. The Board has held, however, that the possibility of a future injury does not form a basis for the payment of compensation under the Act.<sup>15</sup> The Board has also held that a claimant’s job insecurity is not a compensable factor of employment.<sup>16</sup>

In a report dated January 20, 2009, Dr. Graber described appellant’s weekly treatment directed in part to assisting her with depression and anxiety arising from a verbal assault in December 2007 by a coworker. While he referred to the December 2007 employment incident, he did not explain how the work factor resulted in the diagnosed conditions of depression and anxiety. Without any rationale for Dr. Graber’s opinion on causation, his report is of little probative value.<sup>17</sup>

The Board finds that the medical evidence does not contain a medical opinion, based on a complete background and supported by rationale, establishing a diagnosed emotional condition causally related to the December 5, 2007 employment incidents. Consequently, appellant has not met her burden of proof to establish that she sustained an emotional condition causally related to factors of her federal employment.

On appeal, appellant’s representative asserted that appellant was the victim of workplace bullying. He described the effects of workplace bullying and asserted that the employing establishment erred in failing to address or prevent the “bullying tactics of Ms. Moreland towards [appellant] that was occurring on a daily basis.” At the hearing, however, appellant related that she was claiming only the events occurring on December 5, 2007 as the cause of her emotional condition.

### **CONCLUSION**

The Board finds that appellant has not established an emotional condition in the performance of duty casually related to the December 5, 2007 employment incident.

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<sup>14</sup> *C.F.*, 60 ECAB \_\_\_\_ (Docket No. 08-1102, issued October 10, 2008); *M.D.*, 59 ECAB \_\_\_\_ (Docket No. 07-908, issued November 17, 2007).

<sup>15</sup> *Manual Gill*, 52 ECAB 282 (2001).

<sup>16</sup> *Robert Breeden*, 57 ECAB 622 (2006).

<sup>17</sup> *See William P. George*, 43 ECAB 1159 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 1, 2009 and October 1, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 8, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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