



## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> Appellant, a 57-year-old clerk, filed an occupational disease claim for stress, depression and anxiety that arose on or about September 15, 2003. She described a variety of incidents she believed either caused or contributed to her claimed emotional condition. These included time and attendance matters, availability and adequacy of job training, work assignments, reassignment of particular job duties and office space allocation. The Board previously found those administrative and personnel matters noncompensable.<sup>3</sup> Appellant also alleged she was sexually harassed by her supervisor, Kenneth W. Fair, who made sexual advances and sexually-suggestive remarks. Additionally, she alleged that Mr. Fair and Ronnie E. Hall, a coworker, were verbally abusive. Appellant claimed they had both called her “dumb” and “stupid” and stated that she was not smart enough to learn anything. As to the alleged verbal abuse and sexual misconduct/harassment, the Board found her allegations were not in posture for decision, and remanded the case for further development.<sup>4</sup> On remand, OWCP obtained statements from Mr. Fair and Mr. Hall, who both denied appellant’s allegations. OWCP again denied appellant’s claim by decision dated April 21, 2008.

Appellant requested reconsideration and submitted new evidence, but on May 1, 2009 OWCP denied her request on the basis that the evidence submitted was irrelevant or immaterial. The Board set aside the May 1, 2009 decision denying reconsideration, and remanded the case for further merit review.<sup>5</sup> The Board noted a statement from a Virginia White.<sup>6</sup>

In its latest merit decision dated September 3, 2010, OWCP denied modification. With respect to Ms. White’s statement, OWCP found that she had not witnessed any of the claimed incidents or provided relevant dates and a detailed description of specific incidents of name calling or sexual misconduct by appellant’s supervisor.

## **LEGAL PRECEDENT**

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

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<sup>2</sup> Docket Nos. 09-1654 (issued July 14, 2010) and 07-1556 (issued January 28, 2008).

<sup>3</sup> The Board’s January 28, 2008 decision (Docket No. 07-1556) is incorporated herein by reference.

<sup>4</sup> Docket No. 07-1556.

<sup>5</sup> The Board’s July 14, 2010 decision (Docket No. 09-1654) is incorporated herein by reference.

<sup>6</sup> According to Ms. White, appellant told her that her supervisor called her “dumb & stupid,” tried to get her to talk about her sex life and would come by and pinch her on the butt. She stated that appellant’s supervisor tried to get her to go with him for drinks, asked her to do drugs, and “even [asked] her if she wanted to [fu-k].” Ms. White stated that in 2002 appellant told her that her supervisor tried to touch her “private parts” while they were in the same vehicle working. She stated that appellant told her on several occasions that she told her supervisor that “no way was she going to have sex with him.”

disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup>

An employee's emotional reaction to administrative or personnel matters generally falls outside the scope of FECA.<sup>10</sup> Although related to the employment, administrative and personnel matters are functions of the employer rather than the regular or specially assigned duties of the employee.<sup>11</sup> However, to the extent the evidence establishes 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.<sup>12</sup>

Perceptions and feelings alone are not 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.<sup>13</sup> When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter, OWCP must base its decision on an analysis of the medical evidence.<sup>14</sup>

### ANALYSIS

The Board has previously addressed and affirmed OWCP's findings with respect to employment incidents involving time and attendance matters, availability and adequacy of job training, work assignments, reassignment of particular job duties and office space allocation. Appellant has not submitted any evidence or argument regarding the above-noted noncompensable administrative and/or personnel matters. Accordingly, the only unresolved

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<sup>7</sup> See *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>8</sup> *Pamela D. Casey*, 57 ECAB 260, 263 (2005).

<sup>9</sup> *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>10</sup> *Andrew J. Sheppard*, 53 ECAB 170, 171 (2001); *Matilda R. Wyatt*, 52 ECAB 421, 423 (2001).

<sup>11</sup> *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005).

<sup>12</sup> *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>13</sup> *Kathleen D. Walker*, *supra* note 7.

<sup>14</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992). 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).

issues are whether appellant established verbal abuse on the part of Mr. Hall and Mr. Fair or sexual misconduct/harassment on the part of Mr. Fair.

Verbal abuse or threats of physical violence in the workplace are compensable under certain circumstances.<sup>15</sup> This does not imply that every ostensibly abusive or threatening statement uttered in the workplace will give rise to coverage under FECA.<sup>16</sup> Verbal altercations and difficult relationships with supervisors, when sufficiently detailed and supported by the record, may constitute compensable factors of employment.<sup>17</sup>

The various allegations of verbal abuse and sexual misconduct are described in detail in the Board's January 28, 2008 decision, which is incorporated herein. Mr. Fair denied appellant's accusations. He initially denied her allegations of sexual harassment in a statement dated July 13, 2005, and again on September 26, 2006. More recently, Mr. Fair denied these allegations in a March 27, 2008 statement, which OWCP obtained in response to the Board's January 28, 2008 decision. As to Mr. Hall's alleged verbal abuse, he provided a March 27, 2008 statement wherein he denied criticizing or belittling appellant. He also stated that he never called appellant stupid or dumb.

Both Mr. Hall and Mr. Fair have denied appellant's allegations of verbal abuse and/or sexual misconduct/harassment. Ms. White did not witness any of the alleged incidents of sexual harassment, but merely reported what appellant told her had occurred in 2002-03. Appellant previously indicated that Mr. Fair's "unwanted advances and verbal statements were not performed in front of any employee or coworker." The Board finds that appellant has not provided sufficient evidence to substantiate her allegations of verbal abuse and sexual misconduct/harassment.

Because she failed to establish a compensable factor of employment, OWCP properly denied appellant's claim without addressing the medical evidence of record.<sup>18</sup>

### **CONCLUSION**

Appellant failed to establish that she sustained an emotional condition in the performance of duty.

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<sup>15</sup> *Fred Faber*, 52 ECAB 107, 109 (2000).

<sup>16</sup> *Id.*

<sup>17</sup> *Marguerite J. Toland*, 52 ECAB 294, 298 (2001).

<sup>18</sup> *Garry M. Carlo*, *supra* note 14.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 3, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 20, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

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

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