United States Department of Labor
Employees' Compensation Appeals Board

M.H., Appellant	)	
and	)	**Docket No. 11-309**
	)	**Issued: September 27, 2011**
DEPARTMENT OF VETERANS AFFAIRS, COLUMBIA REGIONAL OFFICE, Columbia, SC, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 19, 2010 appellant timely appealed the July 26, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied her claim for an employment-related emotional condition. Pursuant to the Federal Employees' Compensation Act[1] and 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 sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On February 18, 2010 appellant, then a 31-year-old rating specialist, filed an occupational disease claim (Form CA-2) alleging that her disabilities had worsened due to

[1] 5 U.S.C. § 8101 *et seq.*

extreme stress and harassment associated with her workers' compensation claim.[2] She described her injuries as bipolar disorder, migraine headaches and fibromyalgia and January 2, 2007 as the date of injury. It was not until January 19, 2010 that appellant reportedly first realized her condition was caused or aggravated by her employment.

In a February 23, 2010 statement, appellant claimed to have been harassed from 2007 to 2010 due to poor management. She alleged that her previous supervisor, Mark VanMeter, continuously harassed her in 2007 and 2008. Mr. VanMeter allegedly stated "cruel things" to her. As a consequence, appellant experienced severe depression and flare-ups of her fibromyalgia. In May 2007, Mr. VanMeter commented about her absence due to chronic fatigue syndrome. Appellant alleged that he told her that perhaps it was time she found another occupation. She perceived Mr. VanMeter's remarks as very insulting.

On or about June 4, 2007, Mr. VanMeter allegedly threw a file at appellant and walked away without saying a word. Appellant stated that he came back 30 minutes later and did it again. On December 19, 2007 Mr. VanMeter allegedly told her to throw away or take home all personal items. Appellant stated that she left work early that day and cried all afternoon.

Another alleged incident occurred on December 21, 2007. That morning appellant reported to work following a dentist's appointment. She claimed to have requested more leave than she actually needed for her dental appointment. Mr. VanMeter told appellant she should not have come in a ½-hour early and that she could not get back the leave previously requested. He sarcastically stated that he would amend appellant's time card, but not until January 1, 2008.

On January 3, 2008 Mr. VanMeter allegedly told appellant that she was being placed on a performance improvement plan and that the matter would be addressed in a meeting scheduled for January 7, 2008. Appellant was upset by the news and cried for about 30 minutes.

On March 14, 2008 appellant allegedly overheard Ricky Ard say that the "'rating specialists [were] sitting on their lazy asses and working all their easy shit first.'" She also heard Mr. Ard say something about those "'damn trainees.'" Mr. VanMeter was reportedly present. Appellant felt these remarks were an insult to the entire Rating Board, who in her opinion worked very hard.

Appellant stated that she was the victim of Mr. VanMeter's April Fools' Day prank. Mr. VanMeter allegedly whispered in her ear that she would be moving to triage. Appellant asked whether she should keep the information to herself or if it was okay to tell others. Mr. VanMeter allegedly told her it was fine to tell other people. Appellant stated that she then asked Allison if she was leaving triage. Allison reportedly did not know what appellant was talking about. After word got back to Ricky (Ard), Mr. VanMeter came out and told them all it was just an April Fools' joke. Appellant claimed she became nervous and confused for about two hours and could not think straight.

[2] Appellant had recently filed a claim (Form CA-1) for a January 11, 2010 left knee injury she reportedly sustained while traveling on employment-related business in Orlando, Florida (File No. xxxxxx870).

On April 2, 2008 Mr. VanMeter was planning on pulling another office prank when appellant intervened and told the likely target what was going on. Appellant stated that Mr. VanMeter tried to lie about it and stated that "someone [did not] know what they [were] talking about," and "should sit down and shut up." She stated that "someone" was her and that she was offended by Mr. VanMeter's "'joke.'" Appellant claimed to have been harassed later that day when Mr. VanMeter addressed her in the elevator stating, "'There's my girl. She can take any of you down.'"

Appellant alleged that on April 25, 2008 Mr. VanMeter called her in to his office and told her that someone reported that she was talking every afternoon. She claimed the allegations were false. Appellant found it difficult to concentrate on her work as she was too upset.

During the period 2009 to 2010, appellant claimed harassment by her current supervisor, Dave R. Wilson. She stated that Mr. Wilson was not particularly helpful when she had questions and most times his attitude was "'I don't know.'" Sometimes appellant would wait days for an answer. She alleged that it took an entire week before someone submitted her January 2010 workers' compensation claim. Due to a clerical error, appellant was underpaid by approximately $300.00, in January 2010. She believed Mr. Wilson was partly to blame for this payroll error, which took several weeks to resolve. Appellant alleged that neither her supervisor nor the human resources liaison, Marisol Rice, was particularly responsive to her requests for assistance in processing her claim.

Appellant alleged that on January 22, 2010 Mr. Wilson questioned why her doctor proposed keeping her off work for another week because of a strain. She stated that the last straw was when Mr. Wilson did not respond to her February 18, 2010 e-mail regarding missing food from her desk and an office refrigerator. Appellant subsequently filed for disability retirement and her last day was February 19, 2010.

Appellant provided various e-mails from January to February 2010 regarding leave/payroll issues associated with her prior workers' compensation claim. The e-mails alleged that she was underpaid $298.96 because of a payroll coding error regarding her January 11, 2010 absence. That was the day appellant injured her left knee, and there was some questions as to continuation of pay (COP/CP) was the appropriate code to enter. She also perceived an error with respect to her annual and sick leave balances, which had been reported in one-tenth increments rather than quarter or half-hour increments.

On January 28 and 29, 2010 appellant exchanged e-mails with Mr. Wilson regarding the amount of time she should devote to assigned duties. She had missed work due to her January 11, 2010 left knee injury and had fallen behind. Appellant asked Mr. Wilson if she could spend additional time on a special project (TPSS Module) she had been assigned. Mr. Wilson first allowed her to spend two hours a day in accordance with the project guidelines, but later increased the time allotted to four hours a day. He instructed appellant to devote the remaining four hours to her regular duties as a rating specialist. Appellant annotated both e-mails that she considered Mr. Wilson's responses to be rude.

The employing establishment did not respond to appellant's allegations with respect to Mr. VanMeter. Mr. Wilson provided a March 9, 2010 statement that he had supervised appellant

for approximately three months beginning in November 2009. Appellant was reportedly the most productive rating specialist of the 45 he supervised and received an "Outstanding" on her performance appraisal. Mr. Wilson commented on appellant's January 11, 2010 left knee injury and the steps he took regarding her claim. He indicated that he had in fact acted on appellant's February 18, 2010 e-mail regarding missing food. While Mr. Wilson did not reply to the e-mail, he spoke with appellant and questioned several other employees to see if they too were missing items. He distributed a February 23, 2010 e-mail to all rating specialists informing them of what occurred and advising staff to secure their personal property during daytime hours. Mr. Wilson also reported the matter to his supervisor. There was no indication by appellant that she wanted to file a criminal complaint for alleged theft. Mr. Wilson noted that appellant advised him by e-mail on February 24, 2010 that she was filing for retirement disability and that February 19, 2010 was her last day at work.

The medical evidence included a September 26, 2007 report from Dr. Suneetha Morthala, who diagnosed fibromyalgia syndrome.[3] In a February 18, 2010 report, Dr. Eric R. Williams, a Board-certified psychiatrist, noted that he had been treating appellant since January 2, 2007. Her current diagnosis was bipolar disorder. Due to her bipolar disorder and other medical problems, appellant's condition fluctuated at times. Dr. Williams stated that for the past few weeks her condition had deteriorated due to increasing amounts of stress from work and other sources. He further noted that the recent effects of stress on appellant's physical and mental well-being had been observed and documented. Dr. Williams advised that, if there was any possible way to reduce the amount of stress and anxiety at work, it would be most helpful in returning appellant to her best level of professional performance, as well as keeping her symptoms under control.

By decision dated July 26, 2010, OWCP denied appellant's claim. It found that she failed to establish any compensable employment factors.

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 disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.[4]

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.[5] Disability is not compensable, however, when it results from factors such as an

[3] Dr. Morthala is a Board-certified internist with a subspecialty in rheumatology.

[4] *See Kathleen D. Walker*, 42 ECAB 603 (1991).

[5] *Pamela D. Casey*, 57 ECAB 260, 263 (2005).

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.[6]

An employee's emotional reaction to administrative or personnel matters generally falls outside the scope of FECA.[7] 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.[8] However, to the extent 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.[9]

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.[10] 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.[11]

ANALYSIS

Appellant claimed to have been harassed by two supervisors over a three-year period from 2007 to 2010. She identified a number of employment incidents that related to the filing of a January 2010 workers' compensation claim for a left knee injury. The "last straw" was appellant's supervisor's alleged failure to respond to an e-mail regarding certain food items missing from appellant's desk and the office refrigerator. Appellant did not allege that the claimed emotional condition resulted from performing her regular or specially assigned work duties. The Board finds that she has not established a compensable employment factor under *Cutler*.[12]

Appellant alleged several incidents regarding a former supervisor, Mr. VanMeter. She claimed Mr. VanMeter harassed her from 2007 to 2008 and stated cruel things. Appellant alleged an April Fools' Day Parade, the denial of involving Mr. VanMeter leave and a performance improvement plan. For appellant to prevail on her claim, she must support her allegations and establish error or abuse on behalf of her supervisor.[13] Although the employing

[6] *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[7] *Andrew J. Sheppard*, 53 ECAB 170, 171 (2001); *Matilda R. Wyatt*, 52 ECAB 421, 423 (2001).

[8] *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005).

[9] *Id*.

[10] *Kathleen D. Walker*, *supra* note 4.

[11] *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).

[12] *Supra* note 6.

[13] *Kathleen D. Walker*, *supra* note 4.

establishment did not specifically respond to appellant's allegations regarding Mr. VanMeter, the Board notes that appellant did not substantiate any of her various allegations regarding harassment.[14] Appellant did not submit any witness statements or other evidence to substantiate her allegation. She did not substantiate verbal abuse or error or abuse in the leave denial. Accordingly, appellant has not established any compensable employment factors with respect to her alleged interactions with Mr. VanMeter.

The remaining complaints involved appellant's most recent supervisor, Mr. Wilson, and various incidents that stemmed from her filing of a workers' compensation claim in January 2010. The handling of appellant's claim for a January 11, 2010 left knee injury has no bearing on her day-to-day or specially-assigned duties.[15]

Although processing a compensation claim is generally related to the employment, it is an administrative function of the employer and not a duty of the employee, and thus, not compensable absent evidence of error or abuse by the employer.[16] Appellant claimed that it took an entire week before someone submitted her January 2010 workers' compensation claim. However, she did not substantiate this allegation, nor did she demonstrate how an alleged week-long delay in processing the claim was either erroneous or abusive. Appellant also alleged that her supervisor, Mr. Wilson, and the human resources liaison, Ms. Rice, were not responsive to her requests for assistance regarding her workers' compensation claim. These particular allegations are vague and unsubstantiated. As previously noted, appellant must support her allegations with probative and reliable evidence.[17]

Appellant also indicated that a clerical error resulted in her being underpaid by approximately $300.00. She stated that Mr. Wilson was partly to blame for the January 2010 payroll error, which reportedly took a couple of weeks to resolve. The various e-mails submitted by appellant document that she was in fact underpaid due to a coding error associated with her January 11, 2010 absence due to injury. While time and attendance issues are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.[18] The record does not demonstrate that appellant's employer, and particularly Mr. Wilson, was at fault with respect to the coding error regarding her January 11, 2010 absence due to injury. The evidence reflects that, once appellant brought the payroll error to Mr. Wilson's attention, the issue was resolved in a matter of days, not a couple of weeks as claimed. Appellant reported the problem to Mr. Wilson on Friday, February 5, 2010, and the matter was resolved by February 11, 2010.

[14] For harassment to give rise to a compensable employment injury there must be evidence that harassment occurred. *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996). The mere perception of harassment is not compensable. *Id.*

[15] *David C. Lindsey, Jr.*, 56 ECAB 263, 270-71 (2005).

[16] *Id.*

[17] *Kathleen D. Walker*, *supra* note 4.

[18] *T.G.*, 58 ECAB 189, 197 (2006); *Joe M. Hagewood*, 56 ECAB 479, 488 (2005).

Appellant identified a couple of e-mails she received from Mr. Wilson as being "rude." She had requested a block of time to work on a special project she had fallen behind on due to her January 11, 2010 left knee injury. Mr. Wilson initially allowed appellant two hours a day to devote to the special project, but subsequently increased it to four hours. Ostensibly, the January 28 and 29, 2010 e-mail exchange between appellant and Mr. Wilson is benign. It is not readily apparent why appellant found Mr. Wilson's responses "rude." Furthermore, she did not specifically take issue with the amount of time Mr. Wilson allotted to her various assigned duties.[19] Consequently, any emotional reaction to the above-noted e-mail exchange is not compensable.

Appellant also claimed that Mr. Wilson had not responded to her February 18, 2010 e-mail regarding stolen food. In his March 9, 2010 statement, Mr. Wilson indicated that, while he did not reply to the e-mail, he did in fact address the issue with appellant. He also noted that he had spoken with other employees to see if they had any similar experiences. Mr. Wilson claimed to have reported the matter to his supervisor. Additionally, he stated that he sent an e-mail to the staff on February 23, 2010 informing them of what occurred and advising the staff to secure their personal property during daytime hours. Appellant was likely unaware of this e-mail because her last day of work was February 19, 2010. Consequently, the Board finds that appellant has not substantiated her allegation that Mr. Wilson failed to address her concerns regarding missing food items.

The few remaining allegations pertain to so-called harassment by Mr. Wilson. Appellant claimed that he was not particularly helpful when she had questions. She stated that most times Mr. Wilson's attitude was "'I don't know.'" Appellant also stated that sometimes she would wait days for an answer. She further alleged that, on January 22, 2010, Mr. Wilson questioned why her doctor proposed keeping her off work for another week just because of a strain. Allegations of harassment must be substantiated by reliable and probative evidence.[20] The mere perception of harassment will not suffice.[21] The noted instances of alleged harassment by Mr. Wilson are unsubstantiated, and therefore, not compensable.

As the above analysis demonstrates, appellant has not established any compensable employment factors. Some of her allegations were either vague or unsubstantiated, while others pertained to administrative or personnel matters generally excluded from coverage under FECA. As to this latter category, appellant has not demonstrated error or abuse on the part of her employer. Moreover, she did not specifically implicate her regular or specially assigned duties as a factor in her claimed emotional condition. Because appellant failed to establish a

[19] Assigning work and monitoring performance are administrative functions of a supervisor. *Donney T. Drennon-Gala*, 56 ECAB 469, 475 (2005); *Beverly R. Jones*, 55 ECAB 411, 416 (2004); *Charles D. Edwards*, 55 ECAB 258, 270 (2004). The manner in which a supervisor exercises his discretion falls outside FECA's coverage. This principle recognizes that supervisors must be allowed to perform their duties, and at times employees will disagree with their supervisor's actions. Mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor. *Linda J. Edwards-Delgado*, 55 ECAB 401, 405 (2004).

[20] *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991).

[21] *Donna J. DiBernardo*, *supra* note 14.

compensable factor of employment, OWCP properly denied her claim without addressing the medical evidence of record.[22]

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the July 26, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 27, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[22] *Garry M. Carlo, supra* note 11.