

FACTUAL HISTORY

On February 25, 2009 appellant, then a 59-year-old contract specialist/vice chancellor, filed an occupational disease claim alleging stress, inability to sleep, loss of appetite and depression due to supervisory harassment and a hostile work environment. She alleged that three days after beginning her job, her supervisor, Lisa Doyle, informed her that she wanted to remove her. Appellant stated that she “questioned why and copied her supervisor on the message. From that day forward she has disciplined me in front of staff and contractors with loud and rude outbursts; she has continuously harassed me and has created a very hostile work environment which has become unbearable to work in. Due to the stress and actions of her I had a break down on Feb. 18.” Appellant first became aware of her condition and its connection with her employment on February 18, 2009, the date she stopped work. Her supervisor controverted the claim. OWCP received an April 22, 2009 report from Dr. Lisa Halpern, a psychiatrist, who diagnosed anxiety and depression due to stress at work.

In a March 3, 2009 statement, Ms. Doyle denied appellant’s allegations. She advised that at no time was appellant informed that she desired or intended to remove her from her job. Ms. Doyle stated that appellant had never been disciplined in front of staff or contractors, subjected to loud and rude outbursts, harassed, or subjected to a hostile work environment. Appellant referred to a February 18, 2009 staff meeting, which she attended with three vice chancellors and a staff assistant. Ms. Doyle asked appellant to discuss strategies related to purchasing “FAC-C training,” but appellant refused to engage in the discussion and was granted permission to leave the meeting. She noted that at no time did appellant indicate or demonstrate that she was under physical stress or experiencing any emergency condition. At no time was appellant subjected to an outburst or any other unprofessional behavior. Ms. Doyle confirmed that appellant was given constructive feedback, provided suggestions for improvement when her behavior was discourteous or inappropriate and given private counseling when she failed to perform her duties. She denied targeting or harassing appellant.

In a letter dated April 2, 2009, OWCP requested additional factual and medical evidence from appellant and the employing establishment.

In an undated response received on April 29, 2009, appellant noted that she arrived at the employing establishment on January 12, 2009. She was directed to work with no guidance, instructions, introductions or tour of the facility. On January 15, 2009 Ms. Doyle informed appellant that she did not fit the position and that she was going to remove her from her job as vice chancellor. On January 23, February 4, 9, 17 and 18, 2009 she chastised appellant in front of several staff members and gave her unrealistic deadlines. While on annual leave, appellant was contacted twice in February 2009 for information pertaining to work. She asserted that Ms. Doyle intercepted an e-mail that she sent to an employee on February 10, 2009, that Ms. Doyle obtained false statements against her and did not investigate a claim made against her. Appellant was ostracized from the staff and no one was allowed to speak to her. She was denied supplies and a Blackberry, although others had Blackberries. Appellant alleged that she was required to work unpaid overtime on at least eight occasions in January and February 2009 and on weekends. Ms. Doyle refused to assist her on four occasions, sent harassing e-mails to her work and personal e-mail accounts and requested medical documentation to support her workers’ compensation claim while she was on annual leave. On February 5, 2009 she required that

appellant move furniture and on February 17, 2009, she was asked to perform janitorial work. Appellant stated that she did not receive a position description until February 2009, and it did not match the job announcement. Furthermore, a contractor was hired to perform registrations for her program on March 19, 2009. Appellant also alleged that Ms. Doyle would query her assistant and tried to get her assistant to make negative comments about appellant. She also noted that her request to attend a job fair was denied.

In an April 10, 2009 statement, Kenneth Little noted that he was an assistant to appellant from January 26 to February 13, 2009 and believed her allegations. Mr. Little worked daily with appellant performing professional and janitorial duties as directed by Ms. Doyle and this was his “first experience of seeing a supervisor, Ms. Lisa Doyle treat an employee, with such cruel and disrespectful behavior.” He stated that appellant was subjected to daily harassment and treated like an outcast in front of her peers by Ms. Doyle. Appellant was subjected to false accusations in front of her peers, required to do janitorial work and move furniture, procure coffee and condiments from her pocket for student use, and subjected to constant demands that could not be met due to inadequate staffing. Ms. Doyle approached him twice to obtain negative information about appellant.

By decision dated September 1, 2009, OWCP denied appellant’s emotional condition claim finding that she did not establish any compensable employment factors.

Appellant requested a hearing that was held on February 1, 2010. She testified that she was hired after a telephone interview and began work on January 11, 2009, as vice chancellor for the Federal Acquisition and Contracting Certification (FAC-C) program. In their initial meeting, she alleged that Ms. Doyle was not pleasant or receptive. Ms. Doyle told her that she did not fit the position and she was moved into an instructional position after working for three days. However, there was not an actual instructional position and Ms. Doyle’s supervisor, Jan Frye, stated that appellant was to perform her vice chancellor duties. Appellant testified that she was given work that she could not complete or perform as a pretext to fire her. She was hired in a new job with another employer in May 2009 and was seeking compensation from February 18 to May 25, 2009, the date before she started her new position. Appellant’s representative indicated that an Equal Employment Opportunity (EEO) complaint based on age and sex discrimination and retaliation was filed.

In a February 2, 2010 letter, appellant’s representative provided additional evidence, including e-mail correspondence from January 22 to April 3, 2009 from Ms. Doyle. The January 22, 2009 e-mail to appellant requesting that she create a travel policy; a January 23, 2009 e-mail from appellant to Ms. Doyle about an information technology (IT) problem and Ms. Doyle asserted that appellant represented the employer in a negative light to an external source and asserted that appellant’s behavior did not contribute to success. In a January 23, 2009 e-mail, Ms. Doyle requested that appellant complete an assignment while she was preparing classrooms and working funding issues. In January 23, 2009 e-mails, appellant requested that she be chastised privately and not in front of others. She noted concerns regarding Ms. Doyle’s feeling that she did not fit the image of a vice chancellor as she was not petite or young. Appellant notes that Ms. Doyle had sought another position for her as proof that she did not want her as part of her team. In a January 26, 2009 e-mail to Mr. Frye, Ms. Doyle’s supervisor, she recounted the e-mails of January 23, 2009 and her concerns about Ms. Doyle. In a February 4,

2009 e-mail, appellant informed Ms. Doyle that she was filing an EEO complaint due to Ms. Doyle's "outburst" that day chastising her in front of staff and contractors. In a February 18, 2009 e-mail to Ms. Doyle, she requested medical leave authorization. They also included a February 5, 2009 e-mail from Ms. Doyle to appellant asking that she establish a policy for an ongoing intern social event. Appellant also sent an e-mail to Ms. Doyle and informed her that she believed she was working in a hostile work environment. She also included several e-mails pertaining to her leave.

Appellant also provided an August 25, 2009 EEO affidavit from Efrain Fernandez, a director for the Center for Acquisition Innovation. He and Ms. Doyle were coworkers who reported to the same boss. While Mr. Fernandez did not work directly with appellant or observe her interaction with Ms. Doyle, she came to his office very upset and almost in tears when appellant reported to work. Ms. Doyle had interviewed appellant without physically seeing her and she "looked like an old cleaning lady." She explained that appellant had interviewed very well and was well credentialed but "she just didn't look the part." Mr. Fernandez recommended that she "be careful and focus on performance and not on her looks, and if she didn't look the part ... maybe she could get some counselor that could help [appellant] dress better." He stated that it was the first inkling that it might be something to do with her looks or maybe her age. Mr. Fernandez noted that other vice chancellors dressed professionally in business suits and appellant was more informal. Ms. Doyle mentioned that she did not dress the part. She told Mr. Fernandez that she could not have appellant as assistant chancellor to represent the employing establishment because of the way she looked. Although appellant had "very good credentials and a good resume, she just did not look the part." Mr. Fernandez stated that Ms. Doyle constantly referred to appellant's looks to the point that he got tired of hearing about it. He stated that appellant stopped work on February 20, 2009. Mr. Fernandez noted that on May 5, 2009 management refused to allow her to retrieve personal items from her office. In April, Ms. Doyle asked him to deactivate appellant's building access card because she felt that appellant was entering the building and going through documents, but a report run by Mr. Fernandez did not confirm this. Mr. Fernandez stated that a week or two after appellant started work, Ms. Doyle stated that she was documenting appellant's "every action ... every single thing was documented, which ... she did not do that with the other two chancellors, or vice chancellors." Ms. Doyle stated that she was going to have appellant submit a strategic plan or operating plan because she was going to prove that appellant was not able to do the job. Mr. Fernandez suggested that Ms. Doyle give appellant a few weeks to get acclimated but she rejected this asserting that someone in appellant's position should be able to immediately create a plan. He doubted if other vice chancellors were held to the same standard. Mr. Fernandez believed that Ms. Doyle wanted to get rid of appellant from the very first day and did everything she could to make that happen. He opined that Ms. Doyle was setting appellant up to fail. Mr. Fernandez noted that Ms. Doyle told him that she would only communicate with appellant through e-mail as she wanted to document every conversation.

In a May 20, 2010 letter, appellant's representative indicated that he was submitting the deposition statement of a coworker who "verifies some of the problems with which [appellant] was confronted on the job." However, no statement accompanied his letter.

By decision dated November 30, 2010, OWCP's hearing representative affirmed the September 1, 2009 decision. She found that, while appellant testified that Ms. Doyle yelled at

her, the evidence was insufficient to establish harassment or supervisory abuse. The hearing representative determined that Mr. Fernandez's statement indicated that Ms. Doyle made inappropriate comments about appellant's appearance but this was gossip between two coworkers and that his statement was insufficient to show that Doyle acted inappropriately toward appellant.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every illness that is somehow related to an employee's employment. There are situations where an injury or 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 specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA. 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.²

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition, for which he claims compensation was caused or adversely affected by employment factors.³ This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions, for which compensation is claimed.⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP as part of its adjudicatory function, must make findings of fact regarding, which working conditions are deemed compensable factors of employment and are to be considered by the physician when providing an opinion on causal relationship and, which working conditions are not deemed factors of employment and may not be considered.⁵ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of the matter establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.⁶

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 126 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

ANALYSIS

Appellant alleged that her emotional condition resulted from a number of employment incidents and conditions related to her position as a contract specialist/vice chancellor. Her claim primarily involved allegations that her supervisor, Ms. Doyle, harassed⁷ her in an effort to remove her and created a hostile work environment by means that included giving her unreasonable deadlines and inappropriately disciplining⁸ her in front of coworkers.

The Board finds that the case is not in posture for a decision. The Board notes that appellant submitted a sworn affidavit from Mr. Fernandez. He stated that, while he did not observe Ms. Doyle interacting with appellant, Ms. Doyle spoke to him contemporaneously regarding appellant's situation, including within a few hours of appellant beginning work with the employer. Mr. Fernandez's sworn statement clearly supports appellant's contention that Ms. Doyle sought appellant's removal because Ms. Doyle did not care for appellant's appearance. Although the hearing representative dismissed such assertions as gossip between Mr. Fernandez and Ms. Doyle, Mr. Fernandez's sworn statement bears directly on appellant's allegation that her claimed condition is due to Ms. Doyle seeking to remove her for improper reasons. Furthermore, the statement of Mr. Little, who worked directly with appellant from January 26 to February 13, 2009, supported that appellant was treated differently from other vice chancellors by Ms. Doyle. While Ms. Doyle submitted a statement which she denied acting inappropriately, she did not provide any further comment following OWCP's receipt of the statements from Mr. Fernandez and Mr. Little. Following receipt of these statements, OWCP did not ask the employing establishment to further address these statements nor request that the employing establishment provide a statement from Mr. Frye, Ms. Doyle's supervisor.

Although it is a claimant's burden to establish his or her claim, OWCP is not a disinterested arbiter but, rather, shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source. OWCP shares responsibility to see that justice is done.⁹ OWCP regulations provide that an employer who has reason to disagree with an aspect of the claimant's allegation should submit a statement that specifically describes the factual argument with which it disagrees and provide evidence or argument to support that position.¹⁰ If

⁷ See *K.W.*, 59 ECAB 271 (Docket No. 07-1669, issued December 13, 2007) (for harassment or discrimination to give rise to a compensable disability, there must be evidence that establishes that the acts alleged or implicated by the employee did, in fact, occur; mere perceptions and feelings of harassment will not support an award of compensation).

⁸ See *V.W.*, 58 ECAB 428 (2007) (although the handling of disciplinary actions, the assignment of work duties and the monitoring of work activities are generally related to the employment, they are administrative functions of the employer and not duties of the employee; however, such matters will be considered a compensable work factor where the employee shows error or abuse by the employer).

⁹ *R.E.*, 59 ECAB 323 (Docket No. 07-1604, issued January 17, 2008).

¹⁰ 20 C.F.R. § 10.117(a). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7(a)(2) (June 2011) (in certain types of claims, such as a stress claim, a statement from the employer is imperative to properly develop and adjudicate the claim).

the employer does not submit a written explanation to support its disagreement, OWCP may accept the claimant's report of injury as established.¹¹

The case will, consequently, be remanded to OWCP to further develop the factual evidence and, thereafter, to make appropriate findings on appellant's allegations. OWCP shall request that the employing establishment address the assertions set forth in the statements of Mr. Fernandez and Mr. Little as well as a detailed statement from Ms. Doyle addressing those statements. It shall also request a statement from Mr. Frye, as well as any other persons, with contemporaneous knowledge of appellant's allegations regarding the employer in 2009.¹² Following this and such further development as OWCP deems necessary, it should issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

¹¹ *Id.* See *Alice F. Harrell*, 53 ECAB 713 (2002); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5(d)(1) (June 2011) (acceptance of the claimant's statements as factual is not automatic as the claims examiner should consider the totality of the evidence and evaluate any inconsistencies prior to making a determination).

¹² OWCP should also request submission of any other germane evidence emanating from the EEO matter initiated by appellant.

ORDER

IT IS HEREBY ORDERED THAT the November 30, 2010 decision of the Office of Workers' Compensation Programs is set aside and remanded for further proceedings consistent with this opinion of the Board.

Issued: April 19, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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