United States Department of Labor
Employees' Compensation Appeals Board

M.T., Appellant	)	
and	)	**Docket No. 12-98**
	)	**Issued: July 20, 2012**
DEPARTMENT OF AGRICULTURE, FARM SERVICE AGENCY, Warwick, RI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

On October 24, 2011 appellant, through her attorney, filed a timely appeal of a September 21, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) 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 met her burden of proof to establish that she developed an emotional condition in the performance of duty due to factors of her federal employment.

FACTUAL HISTORY

On March 22, 2010 appellant, a 37-year-old county executive director, filed an occupational disease claim alleging that she sustained an emotional condition due to factors of her federal employment. She stated that she experienced stress and anxiety when she was detailed out of her duty station for six months to one year for training, forcing her to give up her

[1] 5 U.S.C. § 8101 *et seq.*

home and children. Appellant alleged that the employing establishment's failure to communicate and plan also contributed to her anxiety.

In a letter dated April 21, 2010, OWCP informed appellant that the evidence submitted was insufficient to establish her emotional condition claim. Appellant was advised to submit additional evidence and information, explaining in detail her allegations relating to harassment and describing any other employment-related conditions or incidents which she believed contributed to her illness. OWCP also requested a medical report containing a diagnosis and a rationalized opinion as to the cause of her condition.

On May 20, 2010 the employing establishment controverted appellant's claim. Administrative Officer Alison Rose stated that, as a county executive director (CED), appellant was responsible for employing, training and supervising subordinate county office and field employees. All newly-hired CED's are required to satisfactorily complete a 52-week County Office Trainee (COT) program, of which at least 6 months must be completed at various county offices. Ms. Rose stated that the previous Rhode Island State Executive Director excused appellant from completing the required training when she was initially hired because after only 24 days of training, she claimed that she could not continue the training away from her home. During her five-year tenure as a CED, appellant had serious communication problems with her staff. Additionally, appellant's repeated violations of policies and procedures indicated that she had not received adequate training when she was initially hired as a CED.[2]

Ms. Rose indicated that the employing establishment informed appellant, by letter dated December 15, 2009, that she would begin a 6- to 12-month training program beginning January 11, 2010 to improve her program knowledge and improve deficiencies. The starting date was later changed to January 19, 2010 at her request. Due to the fact that Rhode Island has only one office to cover the state, trainees must be sent to other states for training.

The record contains correspondence between appellant and the employing establishment dated January 21 through May 5, 2010 regarding time and attendance worksheets, sick leave and training assignments.

In a January 21, 2010 letter, the employing establishment informed appellant that she was expected to pay full time and attention to her training and that her communication with the home office would be limited to hours outside of her training schedule. Appellant was also informed that she did not have an option as to the location of her training. On February 26, 2010 she was informed that she was being assigned to Houlton, ME for training. Appellant responded by stating that her assignments were being made to intentionally place her life at risk.

[2] The following are examples of such violations: A leave audit confirmed that appellant left work a half hour early after working through her lunch break and falsified her time sheet by entering an incorrect arrival time. An investigation revealed that she had instructed a subordinate employee to shred documents and to backdate other documents in preparation for an audit. Appellant was suspended for 14 days for conduct unbecoming a supervisor. An investigation found that she had committed multiple violations of agency time and attendance regulations. The State Grievance Board determined that appellant violated a subordinate employee's privacy by discussing the employee's performance with another employee.

In a May 13, 2010 statement filed as an amendment to an Equal Employment Opportunity (EEO) complaint, appellant alleged discrimination based on disability and sex. She contended that the 6- to 12-month training requirement was not part of her position description, noting that the initial posting for her job was advertised as a COT, which did include a required 6-month to 1-year out of the office training. Appellant stated that she officially withdrew her application because she realized that her family commitments would not permit her to fulfill that requirement. She ultimately accepted the position as a "CED hard to fill" position, which required only an abbreviated version of training, which she had completed.

Appellant admitted to having had conduct issues with one of her subordinates, which resulted in her failure to meet the communication element in her most recent performance review. She alleged that, during her October 26, 2009 review, Supervisor Frank Bouchard became very angry and verbally threatened that if she rated one of her subordinates as "does not meet," he would then proceed with changing her "successful" ratings to "does not meet." Appellant reportedly told Mr. Bouchard that she felt threatened by his remarks and felt that it was unfair and wrong for him to make such a statement.

On December 15, 2009 appellant was informed that she would be required to participate in long-term out-of-office training beginning January 11, 2010, based on a recent investigation and "program weaknesses" discovered through the investigation. She alleged that the same employee that presented conduct issues had provided false information regarding her time and attendance. The employing establishment ignored appellant's pleas to reconsider the off-site training due to the fact that she was a single parent with a learning-disabled child and would be forced to give up her home and place her children in her father's care. Paul E. Brule reportedly told her that "it is tough, he knows it's difficult, but it is [her] problem and that the unemployment rate is 12.9 percent in Rhode Island." He allegedly made numerous comments regarding his authority referring to himself as "Washington's fair haired boy" and that he "can do just about anything and get any way with it, except for sexual harassment or physical threats."

At appellant's request, the employing establishment changed the start date for the training to January 19, 2010. Appellant was informed that each location would host training for a two-week period and that, prior to the end of each two-week period, she would be informed of the next training location in order for her to make necessary travel arrangements. She was advised to turn in her office keys and told that she was not to return to the Rhode Island office until the training was complete.

Appellant alleged that the employing establishment unreasonably denied her request for a rental car, which she claimed to need because her government-issued truck was not safe in "ice and snow" conditions. She was removed from e-mail distribution lists and the county office newsletter listing of employees, excluded from biweekly teleconferences and all employee and orientation meetings and had limited access to inter and intranet and requests. Also appellant's requests for document copies (time and attendance sheets and leave slips) went unanswered. On the last day of scheduled training in West Chester she was notified that she would continue training in that location for an additional two weeks, at the end of which she was informed by Mr. Bouchard that her next training location was in Watertown, NY. Appellant experienced significant difficulties between all training sessions, due to lack of communication and hazardous weather conditions. On Friday March 14, 2010 her symptoms of stress required hospitalization.

In an undated statement, appellant reiterated that she believed that the employing establishment was intentionally selecting office travel destinations that put her life at risk. She complained that she was given insufficient notice of her travel assignments to obtain hotel reservations and that she was arbitrarily moved from location to location. While in the Houlton office appellant intercepted a fax from Rhode Island District Director Bouchard to SED Todd, stating: "[Appellant] is weak in personnel management. Do not train her in this area." Appellant indicated that she was very upset by the fax and the amount of travel, lack of communication, lack of planning and deceit on behalf of the employing establishment was extremely overwhelming and stressful. She traveled thousands of miles in a short period of time, mostly in severe weather conditions.

In a July 26, 2010 response to appellant's May 13, 2010 statement, the employing establishment denied her allegations. Mr. Bouchard reiterated that prior to becoming a CED, a person is required to satisfactorily complete a 52-week training program COT, which requires training at various county offices. When appellant was selected as a CED, after being a "PT," she was required to complete a COT-like training to become familiar with the various programs administered by a county office and learn the administrative and supervisory functions of a CED. She, however, completed only 24 days of training before she claimed that she could not continue the training away from her home. Mr. Bouchard noted that the previous Rhode Island State Executive Director had not required appellant to complete the training required by agency rules, policy and procedure at the time she was hired.

Mr. Bouchard indicated that the vacancy posting did not waive the one-year training requirement as claimed by appellant. He quoted the vacancy announcement job summary, which stated:

> "Incumbent serves as a [CED] Trainee in the Rhode Island FSA [Farm Service Agency] [c]ounty [o]ffice. Major Duties: The CED Trainee receives managerial and program training necessary for the advancement to a full performance [CED]. Depending on experience, successful completion of an [a]gency directed training program may be required."

Mr. Bouchard stated that the Rhode Island FSA state committee endorsed the selection of appellant for the CED position "with the stipulation that, as she has not completed COT training, she must satisfactorily complete a training program similar to a COT program and she shall serve a 1-year managerial probationary period." Due to weaknesses in program knowledge, as well as personnel and disciplinary issues, the Rhode Island County Committee and State Executive Director, with the concurrence of the Director of Field Operations in Washington, DC, directed her to resume her training out of the office. The training requires employees to "shadow" CED in other states. Because of past friction between appellant and neighboring states' employees, the Directors of both Connecticut and Massachusetts declined their assistance with her training. She was, therefore, scheduled to train in other Northeast States, including Pennsylvania, New York, Maine and Vermont. Scheduling was dependent on the current activities of each office and when a CEO would be available to train appellant.

Mr. Bouchard stated that it was unnecessary for appellant to move from her home during a storm, as she had a month's notice of her training.

The position description for a CED trainee reflects successful completion of an agency directed training program may be required.

In a May 10, 2005 memorandum, the Rhode Island state committee recommended appellant for employment as CED with the stipulation that she must satisfactorily complete a training program similar to a COT program and that she should serve a one-year managerial probationary period.

In a decision dated January 25, 2011, OWCP denied appellant's claim on the grounds that she had failed to establish a compensable factor of employment.

Appellant submitted medical reports from treating psychologists who opined that she suffered from depression as a result of work stressors. In an undated report, Lucille Frieden, PhD., stated that appellant developed anxiety and depression when she was abruptly required to move out of her home and relocate her children in order to begin an intensive period of training. Further, stressors included being removed from the employing establishment e-mail account and other attempts to isolate her. Appellant was angry and upset by arbitrary demands of the job.

On January 31, 2011 appellant requested a telephonic hearing, which was held on May 10, 2011. At the hearing, she testified that her December 2009 notification of training came as a complete surprise, as she had never been advised of any problems with her performance. Appellant opined that the training was given in remote locations and was not relevant to her regular job assignments. She stated that Mr. Brule had made her life "hell" and forced her to resign her position. Appellant complained about the procedure followed when she was investigated for falsifying time sheets, alleging that a subordinate had actually lied about her actions and that she was eventually exonerated. She stated that she was forced to give up her home and move her children to her father's house because of the required training. Appellant expressed her belief that the agency's action in requiring her to participate in training was retaliatory and unreasonable and caused unnecessary hardship. On March 2, 2010 she was given a fax indicating that she was weak in personnel management but was not to receive training in that area. Appellant interpreted the fax to mean that the employing establishment had no real intention of training her in the areas she was deficient.

Appellant submitted documents referenced during the telephonic hearing, including: time and attendance sheets; an October 27, 2009 memorandum from appellant regarding her 2009 performance evaluation; a December 15, 2009 notice of proposed suspension; and a December 23, 2009 letter from appellant contesting a proposed five-day suspension.

A fax sent from the Rhode Island State Office on March 1, 2010 to "Bill" stated as follows:

> "Attached is the original plan we put together for [appellant.] Do n[o]t worry about revising some management and personnel sections as this is a weak point. Thanks for your help!"

In a September 21, 2011 decision, an OWCP hearing representative affirmed the January 25, 2011 decision, finding that appellant had failed to establish a compensable factor of employment.

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 illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to his or her regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of FECA. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of a claimant's work or her fear and anxiety regarding her ability to carry out her duties.[3] By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.[4] Moreover, although administrative and personnel matters are generally related to employment, they are functions of the employer and not duties of the employee. Thus, the Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.[5]

When working conditions are alleged as factors in causing disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment, which may be considered by a physician when providing an opinion on causal relationship and which are not deemed factors of employment and may not be considered. When a claimant fails to implicate a compensable factor of employment, OWCP should make a specific finding in that regard. If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.[6] When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then OWCP must base its decision on an analysis of the medical evidence.[7] As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim. Rather the allegations must be corroborated by the evidence.[8]

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

[4] *See also Ronald K. Jablanski*, 56 ECAB 616 (2005); *see Peter D. Butt, Jr.*, 56 ECAB 117 (2004); *Barbara J. Latham*, 53 ECAB 316 (2002).

[5] *See Charles D. Edwards*, 55 ECAB 258 (2004); *see also Ernest J. Malagrida*, 51 ECAB 287, 288 (2000).

[6] *Margaret S. Krzycki*, 43 ECAB 496 (1992).

[7] *See Charles D. Edwards*, *supra* note 5.

[8] *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Arthur F. Hougens*, 42 ECAB 455 (1991) and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence established such allegations).

With regard to emotional claims arising under FECA, the term harassment, as applied by the Board is not the equivalent of harassment as defined or implemented by other agencies, such as the EEO Commission, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers' compensation under FECA, the term harassment is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by coworkers. Mere perceptions and feelings of harassment will not support an award of compensation.[9]

For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence introduced, which establishes that FECA 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. Rather, the issue is whether the claimant under FECA has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[10]

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that an emotional condition was caused or adversely affected by her employment.[11] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents are sufficient to establish a causal relationship.[12]

ANALYSIS

The Board finds that appellant has failed to establish a compensable employment factor. Therefore, appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

Appellant has not attributed her emotional condition to the performance of her regular or specially assigned duties under *Cutler*.[13] Indeed, she has in no way implicated as causative her work responsibilities as a CED with the state of Rhode Island. As made clear under the *Cutler* standard, workers' compensation law is not applicable to each and every illness or injury that is somehow incidental to an employee's federal employment. Under *Cutler*, emotional conditions arising from general feelings of job insecurity, such as the frustration of an employee in not receiving a promotion or to work in a particular position or job environment, are not compensable factors. An emotional condition arising from such factors is generally considered as being self-generated.[14]

[9] *Beverly R. Jones*, 55 ECAB 411 (2004).

[10] *James E. Norris*, 52 ECAB 93 (1999).

[11] *See Charles D. Edwards, supra* note 5.

[12] *See Ronald K. Jablanski, supra* note 4; *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[13] *Lillian Cutler, supra* note 3.

[14] *Id.*

Appellant attributes her emotional condition primarily to the employing establishment's requirement that she undergo a six-month to one-year training program, whereby every two weeks she was to move to a different location and to report home every other weekend. These allegations relate to administrative or personnel matters, which are unrelated to her regular or specially assigned work duties and do not fall within the coverage of FECA.[15] Although the handling of disciplinary actions and leave requests, 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.[16] The Board has also found, however, that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[17] In this case, appellant has not submitted sufficient evidence to show that the employing establishment committed error or abuse with respect to this matter. On the contrary, the evidence presented establishes that the employing establishment acted reasonably under the circumstances in requiring appellant to participate in training.

Appellant contends that the 6- to 12-month training requirement was not part of her position description and that any requirement for long-term, out-of-office training had been waived. She stated that she had completed an abbreviated version of training and had successfully performed the duties of her position until December 15, 2009 when she was abruptly informed of the training requirement. Appellant argued that the imposition of the training requirement was unnecessarily abusive. The evidence, however, reflects that all newly-hired CED's are required to satisfactorily complete a 52-week COT program, of which at least 6 months must be completed at various county offices. Appellant was excused from completing the training when she was initially hired because after only 24 days of training, she claimed that she could not continue the training away from her home. The employing establishment controverted the claim, however, noting that during her five-year tenure as a CED, appellant had serious communication problems with her staff and repeatedly violated policies and procedures, indicating that she had not received adequate training when she was initially hired as a CED. The evidence establishes and appellant acknowledged, that she had conflicts with coworkers, subordinates and supervisors.[18] Under the circumstances of this case, the Board finds that the employing establishment's requirement that appellant undergo long-term, out-of-office training was reasonable.

[15] *See Lori A. Facey*, 55 ECAB 217 (2004). *See also Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[16] *Id.*

[17] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[18] Appellant contends assessment of work performance on which the decision to require training was based unfounded and that one of the investigations was based on statements from an employee that were shown to be false. Assessments of work performance and investigations are also administrative functions of the employer and she has not submitted any independent evidence, such witness statements or a grievance, EEO or other administrative decision which finds that the employing establishment erred or acted unreasonably with regard to the involved administrative matters.

Appellant claimed that by forcing her to move from location to location every two weeks for a long period of time, the employing establishment essentially required her to give up her home and children, who would have to relocate to new school system and reside with her father. Her displeasure, however, represents her frustration from not being permitted to work in a particular work environment, which is not a compensable factor under FECA.[19] The Board notes that appellant herself was partly responsible for additional travel requirements. The training for appellant's supervisory position required the employee to "shadow" CEDs in other states. Because of past friction between appellant and neighboring states' employees, the Directors of both Connecticut and Massachusetts declined their assistance with appellant's training. Training was, therefore, required to be scheduled in other Northeast States, including Pennsylvania, New York, Maine and Vermont. Appellant also alleged that the employing establishment intentionally chose training destinations that put her life at risk. The Board finds that her claim is not supported by the facts of the case. Therefore, appellant's feelings must be considered self-generated.

Appellant contends that the employing establishment was "pushing her around" with no real intention of training her. In support of her claim, she cited a fax sent to a training location from the Rhode Island State Office on March 1, 2010. The fax advised the trainer not to "worry about revising some management and personnel sections as this is a weak point." As the fax in question involves an administrative matter, the issue is whether there exists any evidence of error or abuse on the part of the employing establishment. The wording of the fax suggests that appellant had some weakness in the areas of management and personnel. It also suggests that the trainer is not to revise sections in the training manual relating to those areas. It does not suggest that the employing establishment intended to deprive appellant of training in those areas. Therefore, appellant has not established error or abuse with regard to this matter.

Appellant contends that the training was either redundant or pointless and that her supervisors' inability to properly communicate and plan contributed to her emotional condition. Her dissatisfaction, however, with perceived poor management constitutes frustration from not being able to work in a particular environment or to hold a particular position and is not compensable under FECA.[20] Appellant did not submit sufficient evidence to show that these matters rise to the level of a compensable work factor.

Appellant's allegations regarding the employing establishment's refusal to authorize a rental car, instructions received from the district Director while on travel, removal from e-mail distribution lists and employee listings; exclusion from teleconferences and employee meetings and limited access to inter and intranet also relate to administrative matters. In response to her claims, the employing establishment explained that the restrictions were designed to enable her to devote full time and attention to her training. Appellant has not established that these actions were unreasonable.

Appellant alleged that during her October 26, 2009 review, Mr. Bouchard became very angry and verbally threatened that if she rated one of her subordinates as "does not meet," then

[19] *See Cydia R. Harrill*, 55 ECAB 522 (2004).

[20] *Id.*

he would change her "successful" ratings to "does not meet." She also alleged that when she requested reconsideration of the off-site training requirement, Mr. Brule told her that "it is tough, he knows it's difficult, but it is [her] problem and that the unemployment rate is 12.9 percent in Rhode Island." He allegedly made numerous comments regarding his authority referring to himself as "Washington's fair haired boy" and that he "can do just about anything and get any way with it, except for sexual harassment or physical threats." The Board has recognized the compensability of verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.[21] Appellant provided no evidence to corroborate the alleged statements or actions. She has not alleged, nor does the evidence reflect, that her supervisor posed any threat to her. The Board finds that appellant's emotional reaction to her supervisor's behavior was self-generated.[22]

Appellant alleged discrimination based on disability and sex. The Board has held that a claimant must establish a factual basis for her allegations with probative and reliable evidence.[23] Appellant did not provide any evidence to support her allegations. As noted, in order to establish harassment or discrimination, there must be evidence that the acts alleged or implicated by the employee did in fact occur.[24] She submitted documents relating to an EEOC claim. The Board notes, however, that the record does not contain a final decision relating to her claim. The evidence of record is not sufficient to establish a compensable factor of employment regarding her allegations of harassment and discrimination. Appellant has not substantiated a compensable factor of employment.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish an emotional condition arising from her federal employment.[25]

[21] *See Mary A. Sisneros*, 46 ECAB 155, 163-64 (1994); *David W. Shirey, supra* note 14.

[22] *See David S. Lee*, 56 ECAB 602 (2005).

[23] *T.G.*, 58 ECAB 189 (2006).

[24] *C.S.*, 58 ECAB 137 (2006).

[25] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *See L.K.*, Docket No. 08-849 (issued June 23, 2009); *Marlon Vera*, 54 ECAB 834 (2003); *Margaret S. Krzycki*, *supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the September 21, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 20, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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