

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**S.H., Appellant**

**and**

**ARCHITECT OF THE CAPITOL, TRAINING  
DEPARTMENT, Washington, DC, Employer**

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**Docket No. 12-1744  
Issued: June 7, 2013**

*Appearances:*  
*Jeffrey H. Leib, Esq., for the appellant*  
*Office of Solicitor, for the Director*

Oral Argument May 7, 2013

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On August 6, 2012 appellant, through counsel, filed a timely appeal from the February 9, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 sustained an emotional condition in the performance of duty.

**FACTUAL HISTORY**

On June 19, 2009 appellant, then a 43-year-old human resources specialist, filed an occupational disease claim alleging stress, post-traumatic stress disorder and agoraphobia due to

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

various incidents and conditions at work. She first became aware of her claimed condition on August 6, 2008 and became aware of its relation to her work on September 30, 2008. Appellant stopped work on September 30, 2008 and returned on February 19, 2009 in a different office.

In an accompanying statement, appellant asserted that her claimed medical condition occurred as a result of threatening, hostile and violent behavior she experienced beginning in March 2008 by her supervisor, Steve Hayleck. She alleged that Mr. Hayleck's behavior dramatically changed towards her with the announcement that the senior specialist, Kathy Freeman, was retiring effective August 1, 2008. Appellant claimed that between March and August 2008, Mr. Hayleck sent her e-mails advising her that she should be performing at a higher level. Mr. Hayleck became increasingly aggressive, confrontational and intimidating toward her. On August 6, 2008 he subjected her to physical threats and violence. Appellant claimed that Mr. Hayleck came to her desk, screaming and waving a piece of paper in her face which concerned an e-mail sent to a jurisdiction head regarding approval of a training class for an employee.<sup>2</sup> She tried to explain the e-mail, but Mr. Hayleck kept screaming while his face was getting very red and his jaw was tightening. Appellant alleged that Mr. Hayleck blocked her at her desk and she became afraid that he was going to physically hurt her so she crouched in her chair hoping he would leave. She asserted that Kristy Miller, a coworker, witnessed this incident.

After the August 6, 2008 incident, appellant called Jerome Ciango, the manager of the Employee Assistance Programs Office, who advised her to handle the matter at the lowest management level possible.<sup>3</sup> Mr. Ciango referred appellant to Rebecca Tiscione, director of the Human Resources Management Division, and she spoke to Ms. Tiscione on several occasions about her problems with Mr. Hayleck. Appellant claimed that in late August 2010 Mr. Hayleck told her that the e-mails she sent him about her whereabouts were an unnecessary distraction<sup>4</sup> and that in early September 2008 he wrongly told her that her time and attendance sheet was improperly completed. She asserted that on September 30, 2008 Mr. Hayleck blocked her path three times when she tried to leave the office and she was forced to walk around him. Appellant went to the nurse's office at work on that date and was told to seek medical attention. She alleged that in October and November 2008 Mr. Hayleck mishandled leave matters, including telling her that she would be placed on leave-without-pay status if she did not submit certain forms.

Appellant submitted medical reports discussing her emotional condition, including several of Dr. Martin B. Booth, an attending Board-certified psychiatrist.

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<sup>2</sup> The record contains an August 7, 2008 document in which Mr. Hayleck indicated that he verbally counseled appellant about not following the proper chain of command when she contacted a manager three levels above her regarding a controversial training expense. He also noted that appellant failed to recognize a number of training requests that required further scrutiny.

<sup>3</sup> The record contains documents regarding Mr. Ciango's counseling of appellant.

<sup>4</sup> The record contains an August 29, 2002 e-mail in which Mr. Hayleck advised appellant that she did not have to send him so many e-mails regarding her whereabouts at work because the e-mails were an unnecessary distraction.

In a July 21, 2009 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim.

In an August 21, 2009 letter, appellant described further instances, beginning in December 2008, when Mr. Hayleck improperly failed to accept her medical documents and mishandled her leave requests. She asserted that her concerns about Mr. Hayleck were not adequately addressed by management and that, in March 2009, she received an unwarranted performance evaluation. Appellant also submitted additional reports of Dr. Booth.

In an August 26, 2009 statement, Garland Strawderman, a coworker, stated that on September 30, 2008 he witnessed appellant sitting on the floor at work and crying hysterically. Appellant told him that she had experienced workplace violence by her supervisor and that she could not take it anymore. In an August 26, 2009 statement, Marvin Simpson, an official of the Senate Office Buildings, stated that appellant called him on or about August 6, 2008 and cried on the telephone. Appellant told him that she was frightened of Mr. Hayleck because he yelled at her, waved papers in her face and had her trapped at her desk. Mr. Simpson had counseled appellant during the prior year and she had stated that she feared Mr. Hayleck might physically harm her.

In an August 19, 2009 statement, Normandie Peterson, a retired program manager, indicated that appellant told her in July 2008 that Mr. Hayleck had been harassing her by yelling and throwing papers across her desk. She stated that on August 6, 2008 she spoke to appellant on the telephone. Appellant indicated that while crying Mr. Hayleck had screamed at her, threatened her and cornered her at her desk so that she could not leave. She stated that Mr. Hayleck might hit her. Ms. Peterson stated that on September 30, 2008 she saw that appellant was crying and was informed that Mr. Hayleck had just threatened her with violence. Appellant advised that Mr. Hayleck had stepped in front of her, close to her body, and obstructed her movement and noted that, every time she tried to move, he moved closer towards her and would not let her leave.

In a January 8, 2010 decision, OWCP denied appellant's emotional condition claim finding that she had not established any compensable work factors, including the claimed threatening acts of Mr. Hayleck. It noted that appellant had stated that a witness was present during the claimed August 6, 2008 incident, but that she did not submit a statement from this individual.

Appellant requested a hearing before an OWCP hearing representative. At the April 28, 2010 hearing, she described the incidents and conditions at work which she believed caused her emotional condition. Appellant testified that on three occasions on September 30, 2008, Mr. Hayleck stepped close to the only exit from her office, thereby forcing her to walk around him in order to leave.

Appellant submitted an e-mail sent to her on August 7, 2008 by Ms. Miller which stated, "Has Steve been quiet today or in a mad rage again?" In another e-mail sent to appellant on August 7, 2008, Ms. Miller noted, "I was considering coming in but I took this medicine to get rid of my headache and fell back asleep. [B]esides my back is still killing me. Sorry to leave you stuck with him by yourself." In an undated statement, Audrey Swann, a coworker, noted

that she saw appellant crying on September 30, 2008 and that appellant asked her why Mr. Hayleck was “treating me that way.” She called Mr. Hayleck to inform him that appellant was not feeling well and he responded, “What’s her problem now? What is she up there for?”

In a May 18, 2010 statement, appellant noted that she discussed the funding of a prayer breakfast with Mr. Hayleck on August 6, 2008 and that Ms. Miller, with whom she shared an office, witnessed Mr. Hayleck’s violent actions on that date. She also asserted that Mr. Hayleck blocked her exit from her desk on three occasions on September 30, 2008. During these incidents, Mr. Hayleck folded his arms in front of her and stared at her in a menacing manner.

In a November 16, 2010 decision, OWCP’s hearing representative affirmed the January 8, 2010 decision denying appellant’s emotional condition claim. She found that appellant had not established that Mr. Hayleck subjected her to harassment or committed error or abuse with respect to any administrative or personnel matters.

In a November 12, 2011 memorandum, appellant, through counsel, requested reconsideration of her claim. Counsel discussed the witness statements of record and asserted that they supported a finding that Mr. Hayleck subjected appellant to harassment.

In an undated statement, Mr. Ciango indicated that he provided counseling to appellant both before and after August 6, 2008. After August 6, 2008, appellant exhibited emotional outbursts (including crying and hypervigilance) during their sessions that she had not previously exhibited.

In a February 9, 2012 decision, OWCP affirmed the November 16, 2010 decision denying appellant’s emotional condition claim, finding that she had not established any compensable work factors.

### **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 or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.<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 or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>6</sup>

To the extent that disputes and incidents alleged as constituting harassment or discrimination by supervisors and coworkers are established as occurring and arising from

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<sup>5</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

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

appellant's performance of her regular duties, these could constitute employment factors.<sup>7</sup> However, for harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under FECA.<sup>8</sup>

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA.<sup>9</sup> However, the Board has held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.<sup>10</sup> In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.<sup>11</sup>

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.<sup>12</sup> This burden includes the submission of a detailed description of the employment factors or conditions which she believes caused or adversely affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.<sup>13</sup>

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 a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>14</sup> 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 record establishes the truth of the matter asserted, it must base its decision on an analysis of the medical evidence.<sup>15</sup>

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<sup>7</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>8</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>9</sup> *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>10</sup> *William H. Fortner*, 49 ECAB 324 (1998).

<sup>11</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>12</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>13</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

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

<sup>15</sup> *Id.*

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete and accurate factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>16</sup>

### ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of various employment incidents and conditions at work. OWCP denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must review whether the alleged incidents and conditions of employment are established as compensable employment factors under the terms of FECA. The Board notes that appellant's allegations do not pertain to her regular or specially assigned duties under *Culter*.<sup>17</sup> Rather, she alleged error and abuse in administrative matters and harassment on the part of a supervisor.

Appellant alleged that on August 6, 2008 Mr. Hayleck subjected her to physical threats and violence.<sup>18</sup> She claimed that Mr. Hayleck came to her desk, screaming and waving a piece of paper in her face which concerned an e-mail sent to a jurisdiction head regarding approval of attendance at a prayer breakfast for a coworker. Appellant stated that she tried to explain the e-mail, but Mr. Hayleck kept screaming while his face was getting very red and his jaw was tightening. She alleged that Mr. Hayleck blocked her at her desk and that she was afraid that Mr. Hayleck was going to physically hurt her. Appellant asserted that on September 30, 2008 Mr. Hayleck harassed her by blocking her path three times when she tried to leave the office. She claimed that, during these incidents, Mr. Hayleck folded his arms in front of him, stared at her in a menacing manner and moved closer to the exit, thereby forcing her to walk around him to leave.

Appellant has not submitted sufficient evidence to establish that she was harassed by Mr. Hayleck in the manner alleged.<sup>19</sup> She claimed that Mr. Hayleck screamed and engaged in actions which she believed constituted harassment and discrimination, but she provided insufficient evidence, such as probative witness statements, to establish that the statements actually were made or that the actions actually occurred.<sup>20</sup> Appellant indicated that a coworker,

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<sup>16</sup> *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

<sup>17</sup> *See Cutler* note 5.

<sup>18</sup> Appellant alleged that Mr. Hayleck had acted aggressively towards her since March 2008 but she did not describe any specific episodes prior to the claimed August 6, 2008 incident.

<sup>19</sup> *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

<sup>20</sup> *See William P. George*, 43 ECAB 1159, 1167 (1992).

Ms. Miller, was present during the claimed August 6, 2008 event; but she did not submit a probative witness statement from Ms. Miller or any individual who witnessed the claimed actions of Mr. Hayleck. Appellant submitted an e-mail sent to her on August 7, 2008 by Ms. Miller which stated, "Has Steve been quiet today or in a mad rage again?" Although Ms. Miller used the phrase "mad rage," she did not state that she witnessed the actions of Mr. Hayleck as alleged by appellant in this claim. She did not provide a detailed statement describing the claimed incidents of August 6, 2008 or any other date.<sup>21</sup>

The record contains several witness statements in which coworkers and other individuals indicated that they saw appellant crying on August 6 or September 30, 2008. Appellant told them that Mr. Hayleck acted in a violent and threatening manner towards her on these dates.<sup>22</sup> These individuals engaged with her around the time of the claimed August 6 or September 30, 2008 incidents and she told them that Mr. Hayleck had harassed her. None of the statements, however, support the allegations made pertaining to Mr. Hayleck. Allegations of harassment must be supported by probative evidence and appellant has not submitted such evidence in the present case.<sup>23</sup> Therefore, she has not established any compensable work factors with respect to the claimed harassment by Mr. Hayleck.

Appellant claimed a number of work factors with regard to administrative or personnel matters. She claimed that Mr. Hayleck unfairly criticized her work performance, including an instance on August 6, 2008 when he criticized her for not following the chain of command. Appellant alleged that, in late August 2008, Mr. Hayleck told her that the e-mails she sent him about her whereabouts were an unnecessary distraction and that in early September 2008 Mr. Hayleck wrongly told her that her time and attendance sheet was improperly completed. She asserted that, beginning in October 2008, Mr. Hayleck mishandled leave matters, including telling her that she would be placed on leave-without-pay status if she did not submit certain forms. Appellant claimed that in March 2009 she received an unwarranted performance evaluation and also suggested that management mishandled her attempts to rectify her problems with Mr. Hayleck.

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<sup>21</sup> In another e-mail sent to appellant on August 7, 2008, Ms. Miller noted, "I was considering coming in but I took this medicine to get rid of my headache and fell back asleep. [B]esides my back is still killing me. Sorry to leave you stuck with him by yourself." This e-mail is vague in nature and does not establish harassment by Mr. Hayleck.

<sup>22</sup> For example, Mr. Strawderman stated that on September 30, 2008 he witnessed appellant sitting on the floor at work and crying hysterically and that appellant told him that she had experienced workplace violence by her supervisor. Mr. Simpson stated that appellant called him on or about August 6, 2008 and told him that she was frightened of Mr. Hayleck because he yelled at her, waved papers in her face and had her trapped at her desk. Ms. Peterson indicated that appellant told her in July 2008 that Mr. Hayleck had been harassing her by yelling and throwing papers across her desk and that on August 6, 2008 she spoke to appellant on the telephone and she indicated that Mr. Hayleck had screamed at her, threatened her and cornered her at her desk so that she could not leave. Ms. Peterson stated that on September 30, 2008 she saw that appellant was crying and that appellant informed her that Mr. Hayleck had just threatened her with violence and blocked her exit.

<sup>23</sup> On appeal, counsel argued that the claimed harassment by Mr. Hayleck was supported by the witness statements of record. However, for the reasons explained above, these statements are of limited probative value.

The Board notes that administrative and personnel matters are considered work factors if it is established that a manager or supervisor committed error or abuse with respect to these matters.<sup>24</sup> Appellant has not submitted sufficient evidence to establish that Mr. Hayleck committed error or abuse with respect to administrative or personnel matters. She has not submitted the findings of any grievance that might have been filed with respect to such matters. In the absence of such evidence, it appears that the actions described by appellant were within the range of actions commonly taken by supervisors, such as evaluating work performance, managing work tasks and handling leave matters. For these reasons, she has not established any compensable work factors with respect to administrative and personnel matters.

The Board finds that appellant has not established any compensable employment factors under FECA. She has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.<sup>25</sup>

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 did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

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<sup>24</sup> See *supra* note 10.

<sup>25</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).



**ORDER**

**IT IS HEREBY ORDERED THAT** the February 9, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 7, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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