United States Department of Labor
Employees' Compensation Appeals Board

C.T., Appellant	)	
and	)	**Docket No. 15-0647**
	)	**Issued: August 20, 2015**
DEPARTMENT OF THE AIR FORCE, BUCKLEY AIR FORCE BASE, Aurora, CO, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 23, 2015 appellant filed a timely appeal from a July 31, 2014 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 the 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 March 12, 2014 appellant, then a 55-year-old supply technician, filed a traumatic injury claim alleging that on March 10, 2014 she suffered work-induced depression, anxiety, and

[1] 5 U.S.C. § 8101 *et seq.*

nervous breakdown from hostile working conditions, intimidation, and harassment, which had begun in March 2013. She stopped work on March 10, 2014 and returned to work the following day, March 11, 2014. Appellant stopped work again on March 13, 2014. She returned to full-time full-duty work in a new position as a secretary on May 12, 2014.

With her claim, appellant submitted a January 1, 2014 SF-50, Notification of Personnel Action, a copy of a supply technician position description, and April 2001 classification certification for supply technician position.

In a March 21, 2014 letter, OWCP advised appellant that the evidence submitted was insufficient to support her claim and requested additional factual and medical evidence. Appellant was accorded 30 days in which to submit such information. OWCP advised appellant on April 4, 2014 that her claim would be developed as an occupational disease claim.

In numerous statements dated April 6, 18, 24, and 28 and May 9 and 10, and June 6, 2014 appellant made allegations regarding interactions with coworkers, her supervisor, and upper management, which she stated established a hostile and discriminatory work environment.

Regarding a hostile work environment created by coworkers, appellant alleged that on February 14, 2013 her coworker, L.J., followed and stalked her when she went to the other warehouse. She stated that L.J. told her supervisor that she was performing inventory, which was not true. Appellant alleged that her office mate, R.J., rearranged their shared office and had built a wall around his desk during the time she was out in May 2013 for shoulder surgery. She also alleged that another coworker, R.M., sprayed bathroom spray on her on May 28, 2013 because he did not like the menthol scent of the anti-pain cream she was using on her shoulder/arm for torn rotator cuff and arthritis. Appellant alleged that her supervisor took no action after being told of these incidents, but that upper management offered her a temporary detail. When appellant returned to her regular duty station some weeks later to retrieve food she had left in a refrigerator, she saw that L.J. had written on the dry erase board, next to her name, "gonna move! gonna move! gonna move!. Appellant indicated the dry erase board was near her supervisor's office door and next to the daily safety check sheet.

Appellant also made several allegations of harassment against her supervisor, L.R. On January 6, 2013 she indicated that L.R. came to her while she was preparing labels at her desk and demanded the keys for the two cabinets. Appellant alleged that L.R. snatched both keys for the cabinet out of her hand and stated: "the keys stay in the cabinet" and walked off. She stated that she tried to explain why she had the cabinet keys, but L.R. locked her office door. On January 10, 2013 appellant mentioned to L.R. that she was going to apply for the vacant GS-6 supply technician position in material acquisition when it became available and was told "but I don't have to select you." During a meeting on February 13, 2013, L.R. told attendees that appellant "grunts." In January 2013, L.R. told her verbally and in writing that she needed to bring a doctor's note for the over-the-counter anti-pain cream and suggested that she purchase a different type of anti-pain cream which did not have a menthol scent. Appellant stated that on several occasions, February 6, 22, and 29, 2013, L.R. told her to "find another job if you do not like it."

On February 28, 2013 L.R. directed appellant who she was allowed to speak to or contact regarding SAIC-follow ups, orders, and work-related issues. She also indicated on February 28, 2013 that all outgoing e-mails had to be sent to her first for review and approval before mailing it to the recipient. Appellant alleged that L.R. did not indicate a reason why she had to be first for "review and approval" and that it was a drastic measure considering that she had been performing without any problems for over one year without a supervisor. On March 4, 2013 L.R. reprimanded her for sending an e-mail without prior review and approval. Appellant disagreed with the reprimand. On March 6, 2013 L.R. gave her a letter of admonishment, in front of D.S. from the electrical shop, for having courtesy copied herself on e-mails to and from L.R. Appellant indicated that there was no reason to embarrass her in front of D.S. On March 6, 2013 she also informed L.R. that she was on sick leave due to medical problems arising out of the hostile working situation, but L.R. never addressed her concerns.

Regarding her interactions with upper management, appellant alleged that on February 12, 2013, she informed B.K. about her fall in the parking lot at work in December 2012, and also informed him that L.R. had an issue with the anti-pain cream she was using. However, B.K. did not respond to her complaints.

On March 1, 2013 appellant alleged that B.K. mockingly waived a copy of her e-mail to him and stated "so you don't like supervisor [L.R.'s] new policy, hmm?" She alleged that L.R. had told B.K. that she was creating excessive e-mail traffic, which was not true. Without even verifying the facts, B.K. stated "all out-going emails go to L.R. first." Appellant told B.K. that she no longer felt comfortable bringing any questions or issues to him because of the way he treated her.

In a December 22, 2013 formal Equal Employment Opportunity (EEO) complaint, appellant alleged disability discrimination, hostile working conditions, and equal pay complaint. She alleged that on January 7, 2013 she became aware that she was being paid as a GS-5 supply technician but was doing GS-6 and GS-7 supply technician work in the Material Acquisition section from April 2011 through January 2013. Appellant was told on October 22, 2013 by B.K. that there was no remedy for her equal pay for equal work situation.

On January 21, 2014 appellant was informed that she was being assigned back to the Material Acquisition section beginning on February 3, 2014. She started having severe anxiety and trouble sleeping. On January 31, 2014 Deputy Director G.L. advised her that she did not have to return to Material Acquisition. Appellant began crying and having a nervous breakdown. She recalled giving G.L. a hug in gratitude for not sending her back to Material Acquisition. On February 19, 2014 appellant received an oral admonishment from G.L. for inappropriate conduct and unwanted physical touching, which she claimed was in direct retaliation for having filed an EEO compliant against management.

On March 4, 2014, appellant was advised to return to work under L.R. again, but from a different location.

Appellant received a proposed suspension on March 13, 2014, which she believed was based on an intentionally fabricated lie that she had threatened Chief of Engineering Operations M.B. on February 4, 2014 and put M.B. in fear of physical harm. She had an anxiety attack

which appellant believed was due to the lies that were made in retaliation of the EEO complaint she filed.

Appellant submitted several e-mails, statements, and other evidence in support of her allegations, along with copies of civilian progress review worksheets for May through November 2011 and civilian ratings of record signed July 13, 2011 and September 9, 2013.

Medical reports and excuse notes from Jae Young Lee, D.O. noted anxiety and depressive disorder exacerbated by work issues and two panic attacks related to work-related stress and anxiety-related work stress. Also received was a March 10, 2014 emergency department report diagnosing weakness, dysphasia, and headaches.

In an April 6, 2014 letter, appellant alleged that M.B. and G.L. intentionally, knowingly, and with malice provided false answers and false statements pertaining to her claim form. In a March 31, 2014 letter, she alleged that she was discriminated against and subjected to hostile working conditions when she had to attend a "feed back" meeting on February 19, 2014 with G.L. Appellant alleged that G.L. did not respond to her e-mails regarding the nature of the meeting and she had no time to bring a personal representative of her choice, but that she was tricked into coming to G.L.'s office for a "feed-back" meeting when instead she was presented with a letter of admonishment for sexual harassment and unwanted touching for giving G.L. a hug and shaking his hand. She indicated that witness statements had been collected which stated she was crying uncontrollably, was traumatized. Allegedly these witness statements also reflected that appellant thanked G.L. for not moving her to Material Acquisition again and that she was giving him a hug in gratitude for not moving her back to Material Acquisition. A copy of her EEO complaints was provided.

The employing establishment controverted the claim on July 22, 2014. In a July 21, 2014 joint response, Captain M.B. and G.L. related the following: since March 2013, appellant had made multiple claims of hostile work environment. The claims appear to have started with minor issues between appellant and two other employees and a supervisor within the Material Acquisition section. These issues have been identified in an EEO complaint and dismissed by the EEO office. G.L. indicated that when appellant raised those issues, each supervisor at all levels in her chain of command looked into the situation and determined a hostile environment was not present.

G.L. affirmed that two incidents had occurred of a coworker spraying of air freshener to negate a very aromatic medical cream appellant was using and writing "Gonna move! Gonna move! Gonna move!" Appellant was temporarily detailed to a different section and the individuals involved were verbally counseled by the immediate supervisor, which was felt to be an appropriate form of discipline by the unit's leadership. However, each time a supervisor refused to take the issue any further, appellant then claimed that the supervisors were creating a hostile work environment. G.L. noted that when the allegations were turned over to him and the commander (after they both thoroughly looked into all of her claims and found no grounds for discrimination or a hostile work environment), appellant began claiming health issues related to a hostile work environment and began filing Family Medical Leave Act (FMLA) claims.

G.L. stated that appellant was reassigned outside the squadron after everything within management's power was done to provide her with reasonable accommodations and try to reduce her reported stress levels.

M.B. and G.L. indicated that appellant had alleged 24 incidents involving her coworkers and supervisors in the Material Acquisition section and had filed EEO complaints regarding these incidents. Of the 24 alleged incidents, 23 were dismissed. The rate of pay issue was being investigated by an outside agency. M.B. and G.L. noted that appellant had had issues with eight of her nine supervisors (leadership) in her chain of command since being hired to work. The one exception was a civilian supervisor from November 7, 2013 to February 14, 2014, who was recently dismissed for poor performance.

An excerpt from a document from the Chief of Civilian Personnel noted that appellant was reasonably accommodated four months after she was hired in November 2010 until the present and noted various positions appellant held as a reasonable accommodation.

M.B. and G.L. indicated that from March 31, 2013 to the present, there were no staffing shortages which affected appellant's work load. They noted that, as of June 3, 2013, appellant had been detailed as part of her request for reasonable accommodation. Appellant was able to perform all duties as assigned while detailed. However, after both reasonable accommodation details were complete, appellant filed for FMLA for stress when asked to return to her normal duties, even though reasonable accommodations were made to provide her with an alternate work location. They noted that appellant had documented poor performance while assigned to Housing Element operation and took 3 months to complete a task which was expected to take approximately 30 days to complete. They noted that appellant was given an oral admonishment for inappropriate conduct (for unwanted physical touching) on February 19, 2014, a letter of counseling for disruptive conductive (for engaging coworkers in time consuming conversations about complaints over working in Material Acquisition) on February 19, 2014, and a notice of proposed suspension (for threatening behavior towards her supervisors, discourteousness, insubordination, and disruptive behavior) on March 13, 2014. A copy of all documents were submitted along with supporting documentation.

In a May 13, 2014 letter, Win Winsor, M.A., L.P.C. indicated that appellant had anxious arousal, depression, intrusive experiences, defensive avoidance and dissociation, and was experiencing acute trauma related in part to the work environment in which she was subjected to emotional, physical, and mental abuse.

By decision dated July 31, 2014, OWCP denied appellant's claim, finding that she had not identified any compensable factors of employment.

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.[2]

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.[3] Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.[4]

An employee's emotional reaction to administrative or personnel matters generally falls outside the scope of FECA.[5] 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.[6] 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.[7]

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 his or her allegations with probative and reliable evidence.[8] 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.[9]

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 his or her employment.[10] Nether the fact that a disease or condition manifests itself during a period of

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

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

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

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

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

[7] *Id.*

[8] *See supra* note 2.

[9] *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).

[10] *See Charles D. Edwards,* 55 ECAB 258 (2004).

employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[11]

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. OWCP denied her emotional condition claim because she had failed to establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered 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 *Cutler*.[12] Rather, appellant has alleged error and abuse in administrative matters and harassment and discrimination on the part of her supervisors.

Appellant made several allegations pertaining to managerial action, which she supported in numerous e-mails of record, which she believed were harassing or discriminatory in nature. These included that L.R. had instructed her on December 13, 2013 to bring in a doctor's note for her over-the-counter anti-pain cream and suggested that she purchase one that did not have such a strong menthol scent; that on February 14, 2013 she was told by L.R. that she was not among the staff members chosen to perform inventory after she was followed to the warehouse by a coworker; that on February 28, 2013 L.R. instructed her on who she was allowed to speak to and contact regarding work-related issues and directed her to send all outgoing e-mails for prior approval before e-mailing the recipients; that on March 4, 2013 L.R. reminded her not to send e-mails without her prior review and approval; on March 6, 2013 L.R. issued a letter of admonishment in front of D.S.; and that on March 21, 2013 L.R. instructed her to cease performing tasks she had previously directed her to perform. The record also reflects that on January 21, 2014 appellant was informed that she was being transferred but she was notified on March 4, 2014 that she would return to work under the supervision of L.R., but from a different location. Appellant alleged a stress reaction to this news.

The assignment of work and monitoring of performance are administrative functions of a supervisor.[13] The manner in which a supervisor exercises his or her 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.[14] While appellant may not have liked changes to her work assignments, unit assignments, or work flow; or direction from her supervisor regarding her use of over-the-counter anti-pain cream, there is no evidence of any error or abuse on management's part.

[11] *See Ronald K. Jablanski*, 56 ECAB 616 (2005); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[12] *Supra* note 4.

[13] *Donney T. Drennon-Gala*, 56 ECAB 469, 475 (2005); *Beverly R. Jones*, 55 ECAB 411, 416 (2004*); supra* note 10 at 270 (2004).

[14] *Linda J. Edwards-Delgado*, 55 ECAB 401, 405 (2004).

Appellant submitted various e-mails and letters in which she provided additional details about her claims of employing establishment wrongdoing in administrative and personnel matters, but she did not submit corroborating evidence to support the assertions contained in these documents. Furthermore, the employing establishment indicated that it had thoroughly investigated all of appellant's claims and found no grounds for discrimination or a hostile work environment. Appellant has not submitted any evidence or arguments to suggest that the employing establishment's investigation or actions were unreasonable or in error. Thus, these allegations are not compensable.[15]

The remaining alleged employment incidents are also administrative in nature. As such, appellant must demonstrate error or abuse on the part of her employing establishment in order for those administrative matters to be compensable under FECA.[16]

Appellant asserted that she had notified B.K. on February 12, 2013 of her fall in the parking lot at work and mentioned that L.R. had an issue with the anti-pain cream she was using; however, B.K. did not respond. She also asserted that she informed L.R. and B.K. that she was out on sick leave due to hostile working conditions, but her concerns were not addressed. An employee's frustration from not being permitted to work in a particular environment is not compensable.[17] While appellant may have desired a response from management, she has not submitted any evidence of error or abuse on management's part in not responding. Thus, she has not established a compensable work factor.

Appellant felt it was hostile of her coworker and office mate, R.J., to have built a wall around his desk in their two-person office while she was off work for shoulder surgery. The employing establishment indicated that the minor issues appellant had with other employees and her supervisor within the Material Acquisition section were identified in an EEO complaint and subsequently dismissed by the EEO office. Appellant has presented no evidence showing error or abuse on management's part. While she may not have been happy with her coworker's action, any stress or anxiety she may have experienced is considered self-generated and not compensable.

The record indicates that on May 28, 2014 R.M. sprayed their work area with aerosol (bathroom) spray because of the menthol scent of her anti-pain cream. The employing establishment indicated in their July 21, 2014 response that the responsible individual was verbally counseled by their immediate supervisor, which was felt to be an appropriate form of discipline by the unit's leadership. While appellant may have desired a different outcome, she has presented no evidence showing error or abuse on management's part. Thus, any stress or anxiety she may have experienced is considered self-generated and not compensable.

Appellant asserted at the end of May/June 2013, L.J. had written the words: "Gonna move! Gonna move! Gonna move!" on a dry erase board next to her name. While the employing

[15] *See D.F.*, Docket No. 13-2036 (issued February 26, 2014).

[16] *Supra* note 6 at 268 (2005).

[17] *Supra* note 4.

establishment validated this occurrence in their July 21, 2014 statement, L.J. stated in his EEO response that he did not write this to intimidate appellant. The employing establishment indicated that the responsible individual was verbally counseled by their immediate supervisor, which was felt to be an appropriate form of discipline by the unit's leadership. The employing establishment also noted that this incident was alleged in the EEO complaint, which was dismissed except for the pay rate issue. Verbal altercations and difficult relationships with supervisors/managers/coworkers, when sufficiently detailed and supported by the record, may constitute compensable factors of employment.[18] However, this does not imply that every ostensibly abusive or threatening statement uttered in the workplace will give rise to coverage under FECA.[19] For appellant to prevail on her claim, she must support her allegations with probative and reliable evidence.[20] Appellant however did not submit sufficient evidence to show that management acted in an abusive, erroneous, or improper manner in dealing with L.J. Thus, any stress or anxiety she may have experienced is considered self-generated and not compensable.

Appellant also alleged a pattern of harassment and discrimination, and that the above-accepted incidents constituted discrimination on the basis of race or disability. For harassment or discrimination to give rise to a compensable disability under FECA, there must be probative and reliable evidence that harassment or discrimination did in fact occur.[21] Mere perceptions of harassment, retaliation, or discrimination are not compensable under FECA.[22] While OWCP accepted the pain crème and dry erase board incidents as having occurred, there is insufficient evidence that those incidents rose to such a level to constitute discrimination or a pattern of harassment. Therefore, the Board finds that appellant did not establish her allegations of harassment and discrimination as factual.

Appellant also claimed several other incidents which OWCP found did not occur. These include allegations that L.R. told her she did not have to select appellant for a vacant GS-6 supply technician position when it became available; that appellant was not being paid for doing above-grade work from April 2011 to January 2013; that on February 6, 2013 L.R. demanded and snatched cabinet keys from appellant; that on February 13, 2013 L.R. belittled appellant by saying she "grunts" in a meeting; that L.R. told appellant on February 6, 22, and 29, 2013 to "find another job if you don't' like it here," that the February 29, 2014 oral admonishment from G.L. for inappropriate conduct and unwanted physical touching was retaliation for having filed an EEO complaint against management; that the proposed suspension on March 13, 2014 was an intentionally fabricated lie; and that G.L. and M.B. intentionally, knowingly and with malice provided false answers and false statements pertaining to her work injury claim.

[18] *Marguerite J. Toland*, 52 ECAB 294, 298 (2001).

[19] *Fred Faber*, 52 ECAB 107, 109 (2000).

[20] *Supra* note 2.

[21] *Marlon Vera*, 54 ECAB 834 (2003).

[22] *Kim Nguyen*, 53 ECAB 127 (2001).

The Board finds that appellant did not submit sufficient evidence to establish that she was harassed or discriminated against by her supervisors. While appellant's statements and e-mails supported her allegations, she provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.[23] The employing establishment noted that there was an ongoing EEO investigation on the subject of appellant's pay, but all other allegations were dismissed. It also stated that it had thoroughly investigated appellant's claims and found no grounds for discrimination, a hostile work environment, etc. The employing establishment provided a detailed history of the counseling/conduct actions taken and the basis for those actions. It noted that appellant's emotional breakdowns appeared to coincide with appropriate corrective actions. There is insufficient evidence to support these allegations occurred or any other evidence to collaborate appellant's allegations that the events occurred as alleged. Although appellant sought redress from the EEO Commission, she produced no final decision or finding by that body that would lend support to her charges of harassment, retaliation, discrimination, or any error or abuse pertaining to administrative or personnel matters.[24] Thus, appellant has not established a compensable factor in this regard.

Because appellant failed to establish a compensable factor of employment, OWCP properly denied the claim without addressing the medical evidence of record.[25]

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision.[26]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

[23] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *supra* note 2; *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[24] *See R.B.*, Docket No. 15-257 (issued May 7, 2015).

[25] *Garry M. Carlo, supra* note 9.

[26] *See* 5 U.S.C. § 8128(a); 20 C.F.R. §§ 10.605-10.607.

ORDER

IT IS HEREBY ORDERED THAT the July 31, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 20, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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