

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

C.R., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS BENEFITS ADMINISTRATION,
Washington DC, Employer**

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**Docket No. 15-0844
Issued: September 25, 2015**

Appearances:
Debra Hauser, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On March 4, 2015 appellant, through counsel, filed a timely appeal of an October 27, 2014 merit decision of Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish an emotional condition in the performance of duty.

On appeal counsel argued that appellant had established compensable factors with regard to her claim of a hostile work environment, including a false accusation of sending a locked document, and an unreasonable deadline.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 21, 2014 appellant, then a 47-year-old learning resource officer who worked 100 percent telework, filed an occupational disease claim, Form CA-2, alleging that she experienced loss of consciousness, hyperventilation, headaches, and neck pain due to her employment. She stated that she first became aware of her condition on February 27, 2014 and first related her condition to her employment on March 21, 2014. Appellant noted that she had become increasingly sick over the previous three months. She experienced loss of consciousness and falling which resulted in a contusion to her head, as well as a strained neck and back.

Appellant alleged that her supervisor had harassed her for a long time. She stated that she lost consciousness and hit her head during her workday on March 19, 2014. Appellant stated that the supervisor previously harassed other women and that they ultimately left the employing establishment. She stated that 17 women had left the employing establishment since he assumed the role of deputy director. Appellant alleged that her supervisor made inappropriate racial comments on January 12, 2010, and that he was counseled for these remarks on January 19, 2010. She stated that on February 25, 2010 he would not leave her office and tried to obstruct her doorway.

Appellant began mediation with her supervisor on March 4, 2010 which did not yield satisfactory results. She alleged that he stated that on July 19, 2010 “he raped people.” The supervisor took appellant’s cubicle away on August 19, 2014 and gave her one half of a table, a locker, and an overhead cabinet. On July 9, 2014 he threatened her telework status and instructed her to sit in the conference room with just her smartphone if she came into the office.

Appellant alleged that on January 14, 2014 her supervisor gave her a very detailed assignment with very short deadlines and wrongly accused her of missing a deadline. She stated that on January 16, 2014 he demanded that she come into work to meet with him regarding her performance standards, but he later withdrew the demand. Appellant alleged that her supervisor accused her of sending him a locked document on January 30, 2014 and gave her seven minutes to fix the problem. She asserted that he refused to provide her with the human resources protocol information until she reported him to his supervisor. Appellant provided her 30-day medical certificate on February 6, 2014. On February 7, 2014 her supervisor called to request her leave status and asked if she wanted to use annual leave. Appellant deferred and requested sick leave. She noted that there was a problem with the e-mail system and she was unable to send e-mails from her smartphone. Her supervisor approved her medical leave on February 10, 2014 which delayed her sick leave and made it difficult to schedule medical appointments. On February 11, 2014 appellant was required to undergo an employing establishment interview regarding her allegations. She requested reasonable accommodations on February 28, 2014. Her supervisor requested information regarding her work status on March 6, 2014. He also demanded completion of assignments and provided short deadlines.

Appellant alleged that on March 7, 2014 the stress of returning to her work environment made her sick and she lost consciousness for the first time. On March 10, 2014 her supervisor stated that she had not properly completed her sick leave request and informed her that she was

not on flextime. Appellant asserted that he threatened her telework status, noting that he was beginning to question her ability to complete assignments while working remotely. Her supervisor stated that through her lack of initiative she had not submitted any work since January. Appellant noted that she used leave from January 31 through February 28, 2014. She stated that on March 11, 2014 her supervisor assigned her a three-day task and requested daily updates. The supervisor also sent her a letter informing her that she was not to contact his supervisor. Appellant discovered that there was no laptop for her to pick up. Her supervisor disparaged her work on March 17, 2014 when she was working remotely while the employing establishment was closed. Appellant received an e-mail on March 18, 2014 which requested feedback, but not a negative response if there was no feedback. Her supervisor directed her to respond and state that she had no feedback. Appellant lost consciousness on March 19, 2014 and hit her head. She was admitted to the hospital and discharged on March 21, 2014. Appellant alleged that her supervisor "began hounding" her about how much leave she needed. Her supervisor requested a status update on March 24, 2014 which she could not provide. He directed appellant to give him a day's notice prior to returning to work. On March 25, 2014 appellant's remote access was disabled and her supervisor refused to restore it. Her supervisor requested medical evidence within 15 days of her return to work

Dr. Brenda Mitchell, a Board-certified obstetrician, diagnosed anxiety and post-traumatic stress disorder due to a hostile work environment. She noted that appellant had multiple syncopal episodes resulted in neck and back pain as well as anxiety.

Appellant's supervisor controverted her claim on April 22, 2014. He noted that he had directly supervised her since January 13, 2014 and that she worked for six days until January 21, 2014 and then utilized annual leave through January 27, 2014 and then on January 30, 2014 requested 30 days of sick leave due to stress. Appellant returned to work on March 3, 2014, but did not contact her supervisor until March 6, 2014. She worked as a full-time teleworker.

Appellant's supervisor denied harassing her or creating a hostile work environment.

Appellant's supervisor stated that 17 women had left the employing establishment during his 17-year tenure as deputy director, but that these departures were not objective indications of his negative effects on female employees and that none of these women filed complaints against him. He noted that appellant worked directly for him from February 2007 through July 2010 with no complaints filed. The supervisor stated that she also worked through him with a mid-level supervisor from August 2010 through January 10, 2014 without complaint. He denied ever receiving supervisory counseling for racial remarks or any other behavior. The supervisor denied obstructing the door to appellant's office and stated that she shoved the door closed against his shoulder and chest. He reported that when he reopened the door, she forcibly shoved past him. The supervisor stated that mediation in March 2010 was successful and appellant signed the agreement on March 9, 2010. He denied stating that he "raped people."

Appellant's supervisor stated that in August 2013 he reconfigured a single cubicle into two carrels to be used by appellant and two other regularly teleworking employees who had no requirement for office space. He added that on January 9, 2014 he informed her that she was

required to initiate a new telework agreement and provided her detailed instructions on how to do so which she did not follow. They completed the telework agreement on January 9, 2014 prior to the termination of appellant's previous agreement scheduled for January 10, 2014. Appellant's supervisor quoted her telework agreement which noted that unplanned arrivals at the workplace on days scheduled for telework may result in no vacant desk. In such an event, working in a common area with a smartphone might be necessary. Appellant's supervisor denied contacting appellant from August 2010 until January 10, 2014.

Appellant's supervisor continued that on January 13, 2014, the first day as appellant's direct supervisor, she e-mailed him that he had a pattern of hostile behavior towards her and other females. He agreed that on January 13, 2014 he had assigned a task with a 2.25 hour deadline to provide a synopsis of her previously assigned work activities including with each the last action and date, the next two necessary steps and the dates by which these would be completed, and any dependencies on the actions of others listing for whom she was waiting, the action need and when the action was due. The supervisor stated that on January 13, 2014 he also directed appellant to prepare three one to two-page information papers on the three primary projects that she had been working on for one to six years. He asserted that four hours for each short information paper was generous. The supervisor stated that appellant's assignments were simple, directly related to the work she had been performing for multiple years, were not unreasonable, and the time allowed for completion was his prerogative as her manager and was based on her experience in the same job for eight years.

When appellant returned to work on March 6, 2014 after 30 days of sick leave her supervisor provided her assignments to complete within three hours including an e-mail acknowledging receipt of her performance standards, clarification of her sick leave request for the previous 30 days, forwarding e-mails, and a description of her planned activities. She was also to arrange for the ability to send and read encrypted e-mail and provided a date that she could report to the employing establishment to pick up a laptop. The supervisor noted that, if appellant did not select a date he would assign a date that she should report to receive the laptop.

At the end of business on March 6, 2014 the supervisor notified appellant that she had not completed her performance standards, had not forwarded the requested e-mails, had not described her tasks, had not obtained the software for her e-mail, and had not provided him with a date that she would report to pick up her laptop. He allowed her until March 14, 2014 to coordinate her laptop pick up.

Appellant's supervisor provided a copy of appellant's telework agreement which noted that unplanned arrivals at the employing establishment on days scheduled for telework may result in no vacant desk to accomplish normal operations and that operating from a common room such as a conference room with her smartphone may be necessary.

In a letter dated May 8, 2014, OWCP requested additional factual evidence in support of appellant's emotional condition claim. Appellant responded to this request on May 23, 2014. In e-mails dated January 13 and 15, 2014, she alleged that the supervisor told her he hated her, had engaged in hostile behavior toward her and harassment of her and other women, that he had

threatened rape, and that he exhibited racist and misogynistic behavior. Appellant's supervisor e-mailed appellant on January 9, 2014 and stated that she had incorrectly completed her telework safety checklist and failed to verify that her home was safe. In e-mails dated January 16, 2014, he initially requested that she report to the employing establishment to sign her performance standards and coordinate pickup of a laptop. Thereafter, he stated that due to changes in the schedule of activities in which he must participate and unforeseeable difficulty in re-imaging laptops, the supervisor was delaying appellant's appointment on January 27, 2014 and she should work at her alternative worksite.

In an e-mail dated January 30, 2014 at 1:33 pm, the supervisor stated that the document appellant sent at 11:59 a.m. was locked from editing and password protected. He asked that she provide him with the password by 1:40 p.m. In a separate e-mail dated January 30, 2014 at 2:01 p.m., the supervisor stated that the spreadsheet that appellant forwarded was password protected and he was unable to review it. He stated, "How it got locked is not my concern. I need you to take the initiative and immediate action to correct the problem with your submission..." Appellant contacted technical support and received an e-mail that the spreadsheet was not password protected. She resent the document and her supervisor was able to open it on January 30, 2014.

Appellant submitted witness statements from two former female coworkers detailing the coworkers' difficulties with the supervisor. She submitted an e-mail from the supervisor dated February 5, 2014 approving her request for sick leave and stating that they should discuss her need to coordinate with human resources. In an e-mail dated February 6, 2014, the supervisor requested that appellant return her signed performance standards. Appellant also submitted e-mails from him dated March 6, 2014 stating that he was beginning to question her ability to complete assignments while working remotely. She also provided March 10, 2014 e-mails regarding a document which the supervisor requested in Microsoft Word rather than in an e-mail.

In an e-mail dated March 10, 2014, the employing establishment's technical support informed appellant that there was no laptop currently available for her. On March 17, 2014 the supervisor asked that appellant revise and resubmit her draft work product by 3:45 p.m. March 19, 2014.

By decision dated October 27, 2014, OWCP denied appellant's claim for an emotional condition finding that she had not substantiated a compensable factor of employment. It accepted as factual that her supervisor informed her that she would have to sit in a conference room with her smartphone if she came to the employing establishment on a day that was not scheduled under her telework agreement, that on January 13, 2014 he gave her an assignment with a short deadline which she completed, that he instructed her to meet at the employing establishment to discuss her performance standards, that on January 30, 2014 he stated that she had sent him a locked document, that on March 17, 2014 he disparaged her work, and that her employing establishment cubicle was reduced to a carrel.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,² the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.³ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.⁴ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁵ In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of FECA. Thus, disability is not covered when it results from an employee's fear of a reduction-in-force, nor is disability covered when it results from such factors as an employee's frustration in not being permitted to work in a particular environment or to hold a particular position.⁶

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.⁷ Where 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.⁸ A claimant must support his or her allegations with probative and reliable evidence. As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under FECA, but error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively,

² 28 ECAB 125 (1976).

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Robert W. Johns*, 51 ECAB 136 (1999).

⁵ *Supra* note 2.

⁶ *Id.*

⁷ *Charles D. Edwards*, 55 ECAB 258 (2004).

⁸ *Kim Nguyen*, 53 ECAB 127 (2001). See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

the Board has examined whether the employing establishment acted reasonably.⁹ Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹⁰

ANALYSIS

The Board finds that appellant has failed to substantiate a compensable factor of employment and has therefore failed in her burden of proof to establish her claim for an emotional condition sustained in the performance of duty. Appellant has not attributed her emotional condition to her specific or specially assigned work duties under *Cutler*.¹¹ For instance, she has not alleged that she was unable to complete the work assigned by her supervisor within the allotted time. Instead, appellant has alleged in part that her emotional condition was the result of error or abuse on the part of her supervisor in making specific work assignments and scheduling specific deadlines.

The Board finds that appellant's allegations regarding the supervisor's requests for specific work products at specific times are appropriately categorized as disagreement with or dislike of actions taken by the supervisor. The Board has held that a manager or supervisor must be allowed to perform his or her duties and that the employees will disagree with actions taken. Mere disagreement or dislike of actions taken by a supervisor will not be compensable absent evidence establishing error or abuse.¹² An employee's reaction to an administrative or personnel matter is not covered under FECA, unless there is evidence that the employing establishment acted unreasonably.¹³ Because appellant has only offered generalized allegations and has not presented sufficient evidence to establish that her supervisor acted unreasonably or engaged in error or abuse in the assignment of tasks, the evaluation of work product and the assignment of deadlines, she has failed to identify a compensable work factor in regard to these allegations.

Appellant also alleged that her supervisor improperly reduced her work space at the employing establishment, improperly required her to complete her telework agreement, improperly required her to sign her performance standards, improperly required her to arrange for a new laptop, improperly required her to schedule a day at the employing establishment to complete these tasks, improperly required her to work in a conference room if no other space was available at the employing establishment, and improperly required her to provide documentation regarding her leave requests. She further stated that he disparaged her work and

⁹ *Martha L. Watson*, 46 ECAB 407 (1995).

¹⁰ *Roger Williams*, 52 ECAB 468 (2001).

¹¹ *Supra* note 2.

¹² *T.S.*, Docket No. 14-0807 (issued June 10, 2015); *Linda Edwards-Delgado*, 55 ECAB 401 (2004).

¹³ *See Alfred Arts*, 45 ECAB 530 (1994).

threatened her telework status. The Board finds that these actions are also administrative actions and that appellant has not established error or abuse by the supervisor in any of these requests.¹⁴

Appellant has not provided any specific witness statements or other evidence that these requirements made by her supervisor were abusive or erroneous. To the contrary, her supervisor has stated that these actions were in accordance with his duties or the employing establishment's policy and that appellant's telework agreement specifically noted that if she reports to the employing establishment on an unscheduled day, she may be required to work in a conference room from her smartphone. Furthermore, as noted above it is within the supervisor's discretion to assign work, to evaluate appellant's work product and to offer his assessment of her ability to work independently within her telework agreement. The Board finds that appellant has not established these allegations as compensable factors of employment.

Appellant has established that in an e-mail dated January 30, 2014 at 1:33 p.m., her supervisor stated that the document she sent at 11:59 a.m. was locked from editing and password protected and asked that she provide him with the password by 1:40 p.m. She contacted technical support and received an e-mail that the spreadsheet was not password protected. Appellant resent the document and her supervisor was able to open it. The Board finds that she has not established error or abuse in this interaction. Her supervisor indicated that he had difficulty opening a document and asked that appellant resolve this issue. Appellant was able to do so with no consequences or further repercussions. While she alleged that it was her supervisor's error or technical difficulties that prevented him from opening the document initially, she has submitted no evidence substantiating this allegation. There is no evidence of record supporting that her supervisor's requests were unreasonable or constituted error or abuse.

Appellant further alleged that the initial request for the password for the document was made on an unreasonable deadline, in that she was allowed only seven minutes to produce this information. Contrary to counsel's arguments on appeal, the Board finds that she has not submitted evidence that a requested return e-mail with a simple response such as a password within a short period of time is unreasonable¹⁵ or that her supervisor's assumption that the document was password protected constitutes a false allegation¹⁶ and thus a compensable factor.

Appellant has also alleged that the supervisor harassed her and created a hostile work environment through the above-described actions and others. She alleged that he stated that he raped people, that he forced out 17 other female employees, that he was reprimanded for racial slurs, that he trapped her in her office, that he stated that he hated her, and that he was a misogynist. The supervisor denied these allegations. For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment or

¹⁴ *P.W.*, Docket No. 15-0605 (issued June 1, 2015).

¹⁵ *P.M.*, Docket No. 13-1182 (issued September 26, 2013).

¹⁶ *Gary Browning*, Docket No. 04-0535 (issued August 30, 2004) (finding that a false accusation is one which is "intended to damage appellant's credibility or reputation in the employing establishment.")

discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under FECA. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹⁷ Appellant has submitted no evidence in support of her allegations of racial or sexual harassment by the supervisor, nor of a hostile work environment. Although she has submitted witness statements that the supervisor acted in ways that the witnesses believed were objectionable, her witnesses did not implicate any inappropriate behavior by the supervisor directed at her. The Board finds that these statements lack the necessary specificity to establish appellant's claim of harassment or a hostile work environment.¹⁸

The Board finds that appellant has not substantiated a compensable factor of employment. Counsel's arguments regarding compensable factors including a hostile work environment, a false accusation of sending a locked document, and unreasonable deadline are not substantiated by the record for the reasons listed above. Where a claimant has not established any compensable employment factors, the Board need not consider the medical evidence of record.¹⁹

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 not met her burden of proof to establish that she developed an emotional condition in the performance of duty.

¹⁷ *Alice M. Washington*, 46 ECAB 382 (1994).

¹⁸ *Supra* note 14.

¹⁹ *A.K.*, 58 ECAB 119 (2006).

ORDER

IT IS HEREBY ORDERED THAT the October 27, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 25, 2015
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board