

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

M.M., Appellant)	
)	
and)	Docket No. 18-1797
)	Issued: September 22, 2020
DEPARTMENT OF THE ARMY, U.S. ARMY)	
MEDICAL COMMAND, RAYMOND W. BLISS)	
ARMY HEALTH CENTER, Fort Huachuca, AZ,)	
Employer)	
)	

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On September 24, 2018 appellant filed a timely appeal from a July 27, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 18-1797.

On October 10, 2017 appellant, a then 35-year-old pharmacy technician, filed a notice of traumatic injury (Form CA-1) alleging that she developed a psychological injury to her brain on September 21, 2017 due to a hostile work environment.¹ In a narrative statement dated October 8, 2017, she indicated that, on September 21, 2017, while training at Window 5 at 11:15 a.m., she experienced a psychological and emotional injury to her psyche due to a hostile work environment and was taken off work initially for seven days. Appellant returned to work on September 29, 2017, hoping things would be better in the workplace. She related that she had reported this workplace environment to several persons in management, yet no one stopped the "mob bullying."

¹ By letter dated February 7, 2018, OWCP informed appellant that it had created duplicate claim files for the same injury, OWCP File Nos. xxxxxx809 xxxxxx832. It had, therefore, deleted File No. xxxxxx809 and moved the documents from that claim into the current claim, File No. xxxxxx832.

By decision dated December 11, 2017, OWCP denied appellant's claim, finding that the factual evidence of record was insufficient to establish fact of injury as appellant had only provided vague and general information regarding her claim without supporting evidence or specific examples of a hostile work environment.

On January 10, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant submitted a September 25, 2017 memorandum from the employing establishment which documented that on September 22, 2017 appellant reported that "not one but two of her coworkers made comments referencing 'Uncle Tom' and that she felt the comments were inappropriate and offensive." The employing establishment noted that she had reported the comments to her supervisor, M.R. and that M.R. addressed the behavior with her staff and also offered appellant reasonable accommodations. It also indicated that appellant alleged that she was not being properly trained by the staff. The employing establishment noted that she did not wish to file any form of complaint at that time.

Appellant subsequently filed a formal complaint of discrimination and submitted documentation related to her Equal Employment Opportunity (EEO) claim dated November 29 and December 28, 2017.

Following completion of a preliminary review, by decision dated April 10, 2018, an OWCP hearing representative found that the case was not in posture for a hearing and vacated the prior decision. She found that due to appellant's detailed list of events on specific dates that additional information was required from the employing establishment to determine whether the alleged employment factors of racial slurs, training, and a hostile work environment actually existed/occurred, and "to distinguish between those workplace activities and circumstances which are factors of employment and those which are outside the scope of employment for purposes of compensation." The hearing representative remanded the case for further development and a *de novo* decision on the merits.

By decision dated July 27, 2018, OWCP found that appellant had not established a compensable factor of employment and denied the claim because the evidence of record was insufficient to establish an injury in the performance of duty.

The Board notes, however, that OWCP failed to further develop the case record in accordance with the April 10, 2018 hearing representative's decision. OWCP's hearing representative remanded the case for the specific purpose of obtaining information from the employing establishment regarding the alleged employment factors. There was no such attempt to obtain information. OWCP issued its July 27, 2018 decision without complying with the specific directive of the hearing representative. The Board therefore finds, that for full and fair adjudication, the case must be remanded to OWCP for further development of the claim as instructed by the hearing representative in her April 10, 2018 decision. Following this and other such further development as OWCP deems necessary, it shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the July 27, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: September 22, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board