United States Department of Labor
Employees' Compensation Appeals Board

L.E., Appellant	)	
and	)	**Docket No. 22-1302**
	)	**Issued: December 26, 2023**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Billings, MT, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On September 7, 2022 appellant filed a timely appeal from a May 26, 2022 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 has met her burden of proof to establish a stress-related condition in the performance of duty.

FACTUAL HISTORY

On November 12, 2018 appellant, then a 58-year-old program analyst, filed an occupational disease claim (Form CA-2) alleging that she experienced a stroke due to hypertension

[1] 5 U.S.C. § 8101 *et seq*.

which was caused by having to work in a hostile work environment. She noted that she first became aware of her condition and realized its relation to her federal employment on July 18, 2017. Appellant stopped work on August 15, 2018.

In an accompanying narrative statement, appellant alleged that H, the Assistant Federal Security Director, whom she noted was not her supervisor, created a hostile work environment through aggressive behavior, intimidation, and retaliation in 2017 and 2018, after she and three other coworkers filed a formal complaint. Appellant alleged that in April, May, and June 2017, several coworkers were told and/or made to sign confidentiality forms to not discuss any workplace topics or issues concerning H with her. She alleged that H revoked her "HR" access to a timekeeping system, and that her supervisor received an e-mail stating that any payroll information she needed could be obtained through the coordination center. Appellant indicated that her supervisor reinstated her privileges and protected her access. She filed a formal complaint on July 26, 2018 regarding H's retaliation and reprisal to D.F., the Federal Security Director , but her complaint was ignored and never forwarded to the anti-harassment department. In August 2017, she alleged public humiliation as she heard H yelling about an e-mail she had sent to H regarding a drug test of an employee. Appellant indicated that she then suffered a stroke on July 18, 2017, after which she kept her office door closed and turned coworkers away when they came to her to seek advice about their own mistreatment by "H." In June 2018, appellant alleged that H accused her of timecard fraud. She indicated that she filed an Equal Employment Opportunity (EEO) complaint, and the investigation report was with the Professional Responsibility office. Appellant alleged that on July 11, 2018 H was overheard using profanity about her two-day-a-week telework schedule as she was the only employee with such a telework schedule. She detailed her medical history and stated that, following her stroke, she started taking Family and Medical Leave Act leave in August 2017 due to continued hostility in the workplace.

In a November 8, 2018 report, Dr. Lisa A. Melody, a Board-certified internist, opined that appellant's elevated blood pressure and acute neurologic symptoms developed in association with increased workplace stress, which appellant indicated was due to difficulties with a supervisor.

In a development letter dated December 11, 2018, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP subsequently received appellant's completed development questionnaire; narrative statements dated July 26, 2017 and November 1, 2018; a copy of appellant's position description; a copy of the April 5, 2017 complaint against H for harassing behavior bearing several signatures; a May 12, 2017 e-mail regarding appellant's request for access to HR computer programs and/or sites; an April 17, 2018 e-mail regarding the employing establishment's EEO policy; and appellant's July 13, 2018 e-mail to H noting her concerns regarding the H's use of obscene language on multiple occasions.

OWCP also received additional evidence regarding appellant's medical treatment from 2014 through 2018.

In a development letter dated February 20, 2019, OWCP requested that the employing establishment respond to appellant's allegations and provide additional information, including comments from a knowledgeable supervisor. It afforded the employing establishment 30 days to respond.

On March 27, 2019 OWCP again requested that appellant provide additional evidence.

Appellant subsequently submitted statements from coworkers, L.B. dated July 31 and December 17, 2018;[2] statements from C.F. dated July 31 and December 12, 2018;[3] statements from R.S. dated August 2, 2018;[4] a statement from K.H. dated December 11, 2018;[5] and a statement from D.F. dated January 30, 2019.[6]

Appellant also submitted a witness statement from her supervisor, K.C., dated December 14, 2018. He acknowledged that a coworker was terrified of being caught by H in appellant's office. K.C. acknowledged that appellant had e-mailed him that H yelled about her, that he reported the incident, and a management inquiry was conducted, but he did not know the results. He also related the actions he took after appellant e-mailed him in May 2017 that H revoked her access to HR computer programs. K.C. indicated that the revocation of the access to HR computer programs occurred because of a glitch in the system and that H did not revoke appellant's access. K.C. also explained that appellant's whereabouts and time and attendance was questioned by H as no one could locate appellant's whereabouts when an issue arose. He advised that the matter was closed when it was learned that appellant was teleworking. K.C. also indicated that he forwarded appellant's accusations regarding H for a management inquiry, but he did not know the results.

By decision dated May 29, 2019, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish an emotional condition in the performance of duty. It noted the incidents alleged which could not be accepted as factual and found that the established events were not compensable factors of employment as they were administrative or operational

[2] L.B. attested to hearing H loudly complain to "J" and that she heard the comment "f***ing schedule." She also reported hearing H say, "F*** you" while exiting a workspace and say," This s*** isn't going to fly," but L.B. indicated that she did not know who the comment was directed towards or what it referred to. L.B. noted that in May 2017 H had her sign a nondisclosure agreement regarding her discussions with appellant about H, but provided no reason. She also verified that H told her that appellant could not be her advocate and that she was not allowed to speak to appellant in appellant's office.

[3] C.F. reported his interactions with H. He indicated that she told him that he needed to be loyal to her and to not talk to appellant about anything other than work items. C.F. indicated that he was once told to report to her office after she observed him coming out of appellant's office and H then questioned why he was speaking to appellant. He indicated that he was also instructed to sign a non-disclosure form.

[4] R.S. described several instances involving H either yelling at him or calling him names.

[5] K.H. verified that on July 11, 2018 she witnessed H state to her first line supervisor, M.J., "He needs to set a f***ing schedule" regarding K.C. permitting appellant to telework a second day a week.

[6] D.F. noted the actions he took regarding appellant's complaint against H. He also noted that while the Office of Professional Responsibility had not issued a decision, the ROI substantiated some of the claims that H was unprofessional.

decisions made by her supervisor, some of which did not directly concern her or did not appear to be related to any function of her job.

On July 1, 2020 appellant requested reconsideration and submitted additional evidence.

In a May 6, 2020 statement, appellant reiterated her description of incidents regarding H. She alleged that H took nearly a month to submit documentation regarding the accusation that appellant had committed timecard fraud, and that the delay was unfounded and stressful. Appellant alleged that she was in the office on July 11, 2018 when H made the comment "she needs to set a f***ing schedule." She indicated that this was witnessed by L.B. and that D.V. confirmed that the comment was made about her. Appellant alleged that as the result of her final complaint on July 13, 2018, management finally took action regarding her complaints pertaining to "H," approximately one year and four months from her original April 5, 2017 complaint. By that time, appellant's stress was extreme, and she was unable to perform at her previous level. Shortly thereafter, she took a leave of absence due to stress and difficulty managing her blood pressure. Appellant indicated that her EEOC complaints were still being adjudicated.

In support of her allegations, appellant submitted copies of TSA Management Directives effective September 3, 2015; a July 23, 2018 WebTA employee summary; her November 21, 2018 EEO complaint with exhibits; and a copy her June 22, 2018 e-mail with 14 pages additional e-mails pertaining to the payroll issue.

In her November 21, 2018 EEO complaint, appellant alleged additional allegations against "H." During her April 21, 2017 mid-year review with C, she indicated that the majority of the three-hour meeting was spent discussing her interactions with H. Appellant related that she felt threatened and felt that C was warning her that the results of continuing to complain would be detrimental. She also felt intimated when she was asked for the notes regarding the meeting. Appellant alleged that on September 5, 2017 C told her that management was deciding who her back-up would be. C indicated that she should be under H and asked whether she liked her. Appellant replied that it was not about liking her, it was about being treated with respect.

OWCP also received a December 19, 2018 witness statement from J.J;[7] a copy of the TSA MD 110.73-3 Handbook: Anti-Harassment Program, revised August 26, 2017; an August 23, 2017 e-mail from F to H; a copy of TSA MD No. 1100.73-5: Employee Responsibilities and Code of conduct; July 23, 2018 a timekeeping system analysis affirmed by appellant; and numerous e-mails from appellant dated July 10, 2018 through February 26, 2019.

By decision dated July 20, 2020, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

[7] J.J. indicated that she did not take action regarding appellant's complaint as she was only copied as a recipient. She also indicated that H was a J-band employee and that complaint investigations must be handed by the Office of Professional Responsibility.

On October 7, 2020 appellant, through counsel, requested reconsideration arguing that appellant's request for reconsideration was timely received by OWCP. Evidence regarding appellant's mail delivery service was provided.

By decision dated January 4, 2021, OWCP denied modification of its May 29, 2019 decision. It also found that the additional events appellant alleged were not compensable employment factors.

Appellant requested reconsideration on December 20, 2021. She indicated that F admitted that H was reprimanded due to a July 2018 incident; and that F admitted that management's inaction of previous complaints allowed continued harassment. In support, appellant submitted a December 15, 2021 statement from M.O.;[8] a December 16, 2021 statement from C.F.;[9] a December 18, 2021 statement from K.H.;[10] and a December 16, 2021 statement from D.F.

In his December 16, 2021 statement, D.F. acknowledged that the investigator concluded that H used profane, demeaning, and abusive language in the workplace pertaining to the July 13, 2018 complaint and that was not a one-time incident in July 2018. He indicated that in 2019 H was reprimanded by the Office of Professional Responsibility for policy violations pertaining to the July 2018 investigation and conduct towards appellant. D.F. also stated that he was subjected on numerous occasions to H's outbursts and abusive behavior which he reported without resolve. He acknowledged that appellant submitted complaints pertaining to H's alleged harassment and misconduct on April 5 and July 26, 2017 and July 13, 2018, but he did not report or complete an incident report pertaining to the alleged harassment in those complaints, in accordance with the employing establishment's Anti-Harassment Policy Management Directives. D.F. noted that appellant was provided a "notice to affected person" per policy pertaining to her July 13, 2018 complaint letter. He admitted that he had violated the employing establishment's Anti-Harassment Policy Management Directives and that no management inquiry was conducted with regard to appellant's complaints about H yelling on April 15, 2017, and appellant's June 22, 2018 timecard fraud accusations against H. D.F. noted that H's behavior and treatment of appellant took place over a span of 14 months and that her work performance and demeanor declined. He provided his opinions regarding management's handling of appellant's 2017 complaints and his belief that the revocation of appellant's access to HR computer programs was a form of retaliation. D.F. also acknowledged that shortly after the April 5, 2017 complaint C.F. and L.B. were made to sign confidentiality agreements, which was not required by management.

[8] M.O. reiterated appellant's conversations concerning H and described appellant's reactions. She denied knowing the results of any complaints submitted.

[9] C.F. stated that H displayed demeaning and/or hostile behavior towards him and that he had signed the April 5, 2017 complaint letter against H. He agreed with appellant that H's behavior worsened and was in retaliation and intimidation after the complaint was filed. C.F. opined that H had it out for appellant, noting that she tried to limit her access to certain programs and had fabricated timecard fraud. He also stated that he saw appellant emotional at work.

[10] K.H. indicated that H displayed inappropriate, harassing behavior towards her and other employees both publicly and privately. She also stated that she had witnessed that H mistreated appellant, but provided only general examples without specifics.

By decision dated March 1, 2022, OWCP denied modification of its prior decision. It found that the statements from coworkers were hearsay opinions regarding H. OWCP further noted that while the statement from F indicated that not all of appellant's complaints were submitted and that H was reprimanded in 2019, there was no evidence or decision in the record to substantiate error or abuse by management in the handling of the complaints against H.

Appellant requested reconsideration on May 4, 2022.

In an October 7, 2019 response to a grievance letter, M.S., indicated that H had a May 8, 2019 Letter of Reprimand issued for failing to comply with a management directive for using condescending language to employees, using profanity and derogatory language in the workplace on several occasions. She outlined the process regarding the grievance as well as H's statements made during their September 6, 2019 discussion, including that she had admitted to using profanity in the workplace when speaking with her peers in confidence. It was determined that a Letter of Counseling was the appropriate penalty. The decision was noted to be final and concluded the grievance process. H signed and acknowledged receipt on October 7, 2019.

By decision dated May 26, 2022, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[11] has the burden of proof to establish the essential elements of his or her claim,[12] including that he or she sustained an injury in the performance of duty, and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[13] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[14]

To establish an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or contributed to his or her claimed emotional condition; (2) medical evidence establishing that he or she has a diagnosed emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.[15]

[11] *Supra* note 1.

[12] *M.J.*, Docket No. 20-0953 (issued December 8, 2021); *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[13] *M.J., id.*; *O.G., id.*; *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[14] 20 C.F.R. § 10.115; *R.D.*, Docket No. 21-0050 (issued February 25, 2022); *Michael E. Smith*, 50 ECAB 313 (1999); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989); *Elaine Pendleton, id.*

[15] *See C.C.*, Docket No. 21-0283 (issued July 11, 2022); *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

Workers' compensation law does not apply to each and every injury or illness that is somehow related to a claimant'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.[16] However, disability is not compensable 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 to hold a particular position.[17]

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.[18] Where, however, 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.[19]

Mere perceptions of harassment or discrimination are not compensable under FECA.[20] A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.[21] Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.[22]

Additionally, verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute compensable factors of employment. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.[23]

[16] *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[17] *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

[18] *See R.M.*, Docket No. 19-1088 (issued November 17, 2020); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 556 (1991).

[19] *See C.J.*, Docket No. 19-1722 (issued February 19, 2021); *M.A.*, Docket No. 19-1017 (issued December 4, 2019).

[20] *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

[21] *R.D.*, Docket No. 21-0050 (issued February 5, 2021); *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, 57 ECAB 622 (2006).

[22] *T.Y.*, Docket No. 19-0654 (issued November 5, 2019); *G.S.*, Docket No. 09-0764 (issued December 18, 2009); *Ronald K. Jablanski*, 56 ECAB 616 (2005); *Penelope C. Owens*, 54 ECAB 684 (2003).

[23] *R.B.*, Docket No. 19-1256 (issued July 28, 2020); *Y.B.*, Docket No. 16-0193 (issued July 23, 2018); *Marguerite J. Toland*, 52 ECAB 294 (2001).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a stress-related condition in the performance of duty.

The Board initially notes that appellant did not attribute her stress to the performance of her regular employment duties under *Cutler*.[24]

Appellant attributed her emotional condition to administrative and personnel actions on the part of management. The Board has previously found that absent evidence establishing error or abuse, a claimant's disagreement or dislike of a managerial action is not a compensable factor of employment.[25]

Appellant submitted statements from several coworkers, which indicated that they were only allowed to talk to her about work topics, not discuss matters pertaining to issues concerning H with her, and that she could not be an advocate for her coworkers. The coworkers also had to sign nondisclosure agreements/confidentiality forms, not a common practice at the employing establishment. The Board notes, however, that H was not appellant's supervisor and the statements from the coworkers, which were general in nature, failed to fully explain why they were only allowed to discuss work topics with appellant. The record also indicates that when the employing establishment learned of these allegations C informed H that she could not place such restrictions on employees. Appellant has not submitted the necessary corroborating evidence to establish error or abuse by management in these administrative and personnel matters.[26]

Appellant also alleged that H revoked her necessary computer access in an act of retaliation which interfered with her operational duties. While H appeared to have some authority over the access to HR computer programs, C indicated that H told him the removal of appellant's access was a glitch and it was soon restored. C further indicated that appellant's access to HR computer programs was never revoked. There is no evidence of record to support that the removal of appellant's access was done purposefully, or that it was abusive. Although appellant expressed dissatisfaction with the actions of H regarding this matter, the Board has held that mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor.[27]

Appellant alleged that she was "in essence" being accused of timecard fraud when H questioned her whereabouts and time and attendance entries. The evidence reflects that appellant was teleworking when H questioned appellant's whereabouts. Furthermore, C indicated that he requested, and appellant made corrections to her timekeeping system entries. There is no evidence

[24] *Lillian Cutler, supra* note 16.

[25] *Id.*

[26] *R.V.*, Docket No. 18-0268 (issued October 17, 2018).

[27] *T.C.*, Docket No. 16-0755 (issued December 13, 2016).

of record to support any error or abuse regarding the monitoring of appellant's whereabout or her time and attendance entries.[28]

Appellant also described her feelings during her April 21, 2017 mid-year review with C, noting that she felt as if C was warning her that continued complaints would be detrimental and that she felt intimidated when C asked for a copy of the meeting notes. Appellant also indicated that C approached her on September 5, 2017 about a decision to make H her back-up, and asked whether appellant liked H, appellant indicated it was about being treated with respect. Appellant alleged that she felt intimidated by these events. However, personal perceptions alone are insufficient to establish an employment-related emotional condition.[29]

Appellant alleged error by management in failing to follow its procedures after she filed her April 5 and July 26, 2017 complaints, noting that its failure to timely follow through on the complaint. However, appellant's allegation in this regard was general in nature, and did not factually substantiate error or abuse by the employing establishment. Appellant has not submitted evidence to factually corroborate these allegations.[30]

The Response to Grievance Memo acknowledges that H used profanity in the workplace and OWCP accepted that H used profanity when discussing appellant's schedule. However, there is no showing that any of the profanity used when discussing appellant's schedule was directed at appellant.[31] The record also establishes that the initial reprimand issued to H in this regard was reduced to a letter of counseling, based on H's explanation that the inappropriate remarks were made in a confidential setting.

Appellant also attributed her emotional condition to harassment by H after she filed the initial April 5, 2017 complaint. The Board has held that the filing of such complaints or grievances, by themselves, does not establish that workplace harassment or unfair treatment occurred.[32] Although appellant did provide statements from coworkers, these statements did not establish that the incidents complained of constituted harassment.[33] Appellant has not established a compensable work factor with respect to the claimed harassment.

As the Board finds that appellant has not established a compensable employment factor, it is not necessary to consider the medical evidence of record.[34]

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[28] *See R.L.*, Docket No. 17-0883 (issued May 21, 2018); *L.R.*, Docket No. 14-1990 (issued January 27, 2015).

[29] *A.S.*, Docket No. 23-007 (issued August 16, 2023).

[30] *See L.S.*, Docket No. 18-1471 (issued February 26, 2020).

[31] *R.B.*, Docket No. 19-1256 (issued July 28, 2020); *C.B.*, Docket No. 19-1351 (issued March 25, 2020); *Charles D. Edwards*, 55 ECAB 258 (2004).

[32] *B.O.*, Docket No. 17-1986 (issued January 18, 2019); *James E. Norris*, 52 ECAB 93 (2000).

[33] *See William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

[34] *See B.O., supra* note 32; *see also Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992)

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 a stress-related condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the May 26, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 26, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board