United States Department of Labor
Employees' Compensation Appeals Board

C.A., Appellant	)	
and	)	**Docket No. 16-0799**
	)	**Issued: October 11, 2016**
DEPARTMENT OF THE NAVY, NAVAL BRANCH HEALTH CLINIC, Port Hueneme, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 10, 2016 appellant filed a timely appeal from a January 27, 2016 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 met her burden of proof to establish an emotional condition in the performance of duty.

FACTUAL HISTORY

On September 5, 2014 appellant, then a 55-year-old office services assistant, filed an occupational disease claim (Form CA-2) alleging that she sustained a stress-related condition

[1] 5 U.S.C. § 8101 *et seq.*

causally related to factors of her federal employment. She attributed her condition to management failing to accept that she needed a reasonable accommodation due to her diabetes.

In a statement received on September 18, 2014, appellant indicated that her work location did not have a supervisor beginning August 2, 2013. Four of her coworkers assigned her work and they each wanted the work done in a different way. Appellant related that an optometrist in another building was supposed to be her supervisor, but he only gave her disciplinary action and did not monitor her work. She alleged that the employing establishment harassed her even though she was in a clinical study for her insulin-dependent diabetes. On August 24, 2014 the employing establishment requested that appellant submit medical documentation because it did not know if diabetes was covered under the Americans with Disabilities Act (ADA).

Appellant, in an undated statement, related that coworkers blamed her for office problems because there was no on-site supervisor. She noted that her position description stated that a manager should assign her work. Appellant faced retaliation for filing a complaint on July 11, 2014 with the Inspector General's (IG) office. She participated in a research study for insulin-dependent diabetes beginning March 2014. Appellant related that her supervisor, Commander (CDR) Mark Lambrecht, disciplined her based on e-mail messages rather than actual knowledge of events. CDR Lambrecht also disciplined her for informing the IG that a coworker was working without being on the clock. The employing establishment did not allow appellant union representation when she received suspension notices and told her that diabetes might not be a disability under the ADA.

Appellant submitted a copy of her position description indicating that her supervisor was the Head of the Industrial Hygiene Division and that he assigned her work.

In an April 2014 e-mail, appellant advised Barbara J. Hill, a human resource specialist with the employing establishment, that CDR Lambrecht took her into a supply closet to give her disciplinary action and started to close the door. She maintained that she was intimidated and asked to see an occupational physician. In an April 21, 2014 response, Ms. Hill informed appellant that she did not have the right to union representation because it was a reprimand rather than an examination.

In a May 28, 2014 e-mail message, Michael Quaranta, a team leader, related that both appellant and Edward Morkunas raised their voices on May 15 and 16, 2014. Other coworkers heard yelling on those dates.

In an undated IG complaint form, appellant related that Mr. Quaranta worked without clocking in beginning August 2, 2014 and Mr. Morkunas stayed in his office and did not work. She told Mr. Quaranta that he should not be working without pay and sent CDR Lambrecht an e-mail advising that she was notifying command of the issue. CDR Lambrecht e-mailed appellant to meet him in his office and gave her a proposed suspension for events that occurred on May 15 and 16, 2014. In a July 11, 2014 e-mail, appellant advised CDR Lambrecht that she was filing a whistleblower complaint.

Mr. Quaranta, in an e-mail to CDR Lambrecht dated July 11, 2014, related that he came to work on one of his days off because appellant repeatedly accused Mr. Morkunas of failing to

perform his work duties and he believed that "there needed to be [a] third party present in this office at all times due to several outburst[s] that occurred this week." He maintained that she yelled at him for coming into work and told him he had 30 minutes to leave or she would inform his superiors.

On July 14, 2014 appellant related that she told Mr. Quaranta that he should not be working off the clock and informed him that she was going to notify "the command." Mr. Quaranta allegedly asked her if that was a threat. Appellant received a proposed suspension after she filed the IG complaint.

The IG's office advised on July 21, 2014 that appellant had substantiated the allegation against Mr. Quaranta, but not the remaining allegations.

On July 21, 2014 appellant received a proposed suspension notice for disruptive behavior on May 15 and 16, and July 11, 2014 and for failing to follow instructions on July 9, 2014. It noted that she spoke in a raised voice to Mr. Morkunas on May 15, 16, and July 9 and 11, 2014 and did not follow instructions for properly submitting a form on July 9, 2014.

On August 15, 2014 appellant received a proposed suspension notice for disruptive behavior on May 15 and 16, and July 9 and 11, 2014, failing to follow instructions on July 9, 2014 and unprofessional conduct on July 31, 2014. On October 21, 2014 the employing establishment rescinded the August 15, 2014 proposed suspension.

Appellant, in a statement dated August 18, 2014, alleged that the employing establishment discriminated against her based on sex, age, and disability. She contended that CDR Lambrecht retaliated against her for filing a complaint with the IG's office.

On August 22, 2014 appellant completed an Equal Employment Opportunity (EEO) complaint intake form. She advised that she worked for two managers and that one worked over 10 hours a day and on his days off, and the other did not work at all. Appellant filed a complaint on July 11, 2015 that the IG's office investigated. It verified her allegation that a manager worked outside his duty hours. Appellant received written discipline in retaliation for her complaint. Her manager did not believe that she should ask questions as she was a subordinate. Appellant's supervisor did not work in her building. Appellant requested that the employing establishment stop disciplining her as a reasonable accommodation for her diabetes.

On August 22, 2014 appellant requested reasonable accommodation for her diabetes, alleging that she had work stress causing hypoglycemia as she did not have a supervisor in her building and she had been "written up for many, many things since January 2014." In an August 29, 2014 e-mail, she asked to see an occupational health physician as she was in the metabolic study. Appellant later advised that management told her if it was work related to see her own physician.

Ms. Hill related in an August 27, 2014 memorandum that she met with appellant to discuss her reasonable accommodation request and told her that she needed to submit medical information to clarify her work restrictions. Appellant advised that she did not have any limitations. Ms. Hill told her that the employing establishment was "in the process of hiring a

supervisor for her area since this was the accommodation she had requested on the RA [reasonable accommodation] request form."

Appellant, in response to OWCP's request for additional information, submitted a statement dated September 29, 2014. She advised that she did not have a supervisor on site from August 2, 2013 to September 2014. The employing establishment assigned appellant a supervisor who did not work in her building or assign her work. Instead, the supervisor called her to his building and disciplined her six times based on information from other employees. Four employees supervised appellant and each used different work methods. The employing establishment denied her request for reasonable accommodation for her diabetes. Appellant contended that her position description showed that she should have a supervisor. On August 25, 2014 she began experiencing hypoglycemic incidents, crying, and shaking.

On October 21, 2014 the employing establishment requested medical documentation from appellant supporting her request for reasonable accommodation due to her insulin-dependent diabetes.

In a February 3, 2015 letter OWCP requested that CDR Lambrecht discuss whether appellant had a supervisor, how her work was assigned and by whom, the reason for the denial of her request for reasonable accommodation, whether she was disciplined in a supply closet, and whether she was disciplined for reporting that Mr. Quaranta worked off duty.[2]

In a response dated February 17, 2015, CDR Lambrecht advised that Mr. Quaranta, the division team leader, assigned appellant her work duties. Mr. Morkunas assigned her work if Mr. Quaranta was out of the office. CDR Lambrecht asked appellant for medical documentation with her reasonable accommodation request to assist with the process. The request remained open. The employing establishment was in the process of hiring a supervisor for appellant's work location. CDR Lambrecht maintained that he did not have a supply room. He related, "[Appellant] entered the room, and I shut the door for privacy (because my technician was in the hallway outside the door). Upon shutting the door and seeing a paper in my hand, [s]he screamed something at me. I did not get [appellant's] few words as they were delivered in a high, fast, and angry pitch and [she] stormed out of the room." CDR Lambrecht related that he returned to work on July 11, 2014 after being off with the flu. He checked e-mail and acted on the proposed suspension before he knew that appellant had complained that day to the IG's office. CDR Lambrecht submitted a January 22, 2014 e-mail message identifying Mr. Quaranta as his division team leader.

On March 4, 2015 the employing establishment closed appellant's request for reasonable accommodation as she did not provide any medical documentation.

By decision dated March 10, 2015, OWCP denied appellant's emotional condition claim after finding that she had not established a compensable employment factor. Thus, fact of injury in the performance of duty was not established.

[2] Appellant advised OWCP on November 21, 2014 that she had decided not to file a formal EEO complaint.

Appellant, on April 8, 2015, requested an oral hearing before an OWCP hearing representative. In an April 4, 2015 statement, she advised that CDR Lambrecht took her into a room across from his office to give her disciplinary action. Appellant refused it and left the room. She requested reasonable accommodation, but human resources asked for medical documentation from her physician. Appellant could not see the occupational health physician. The employing establishment wrongly failed to provide her with a supervisor in her building. CDR Lambrecht did not properly complete appellant's occupational disease claim. He used information from other parties to discipline appellant.

On November 24, 2015 appellant submitted a timeline of events.[3]

At the telephone hearing, held on November 12, 2014, appellant noted that CDR Lambrecht managed her department without knowledge of the work done or physical presence at their work location. She began receiving assignments from multiple individuals and no longer had a supervisor. Appellant's work stress worsened her diabetes. She advised that on April 18, 2014 CDR Lambrecht took her into a dark supply or storage room for discipline without another party in the room. The employing establishment ignored her request for reasonable accommodation even after receiving documentation from a physician. CDR Lambrecht disciplined appellant based on e-mails from coworkers rather than actual knowledge. His lack of competence in his position denied her due process. Appellant maintained that e-mails she sent established that she acted "in good faith." She received discipline on May 15 and 16, 2014 even though she had a satisfactory performance rating. Mr. Morkunas disciplined appellant for not sending an electronic copy of a report without telling her how to do the report that way. Management harassed and intimidated her. Appellant maintained that Mr. Quaranta yelled at her on July 11, 2014 and asked if she was threatening him.[4]

By decision dated January 27, 2016, OWCP's hearing representative affirmed the March 9, 2015 decision. She found that appellant had not established any compensable work factors.

On appeal appellant argues that CDR Lambrecht acknowledged taking her into a room across from his office for privacy which violated the law. She also maintains that he did not respond to all of OWCP's questions and that the hearing representative failed to mention that she qualified as a disabled employee.

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

[3] Appellant retired from the employing establishment effective May 26, 2015.

[4] The employing establishment, in a statement dated January 5, 2016, reviewed the hearing transcript and maintained that the allegations were duplicative. Appellant challenged the employing establishment's statement on January 14, 2016. She alleged that the employing establishment erred in its handling of her workers' compensation claim. Appellant contended that the e-mails she submitted supported her claim.

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.[5] 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.[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] 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.[8] 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.[9]

For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.[10] A claimant must establish a factual basis for her allegations with probative and reliable evidence. Grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.[11] The issue is whether the claimant has submitted sufficient evidence under FECA to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[12] The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by OWCP and the Board.[13]

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[5] *Supra* note 1; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

[6] *Gregorio E. Conde*, 52 ECAB 410 (2001).

[7] *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 556 (1991).

[8] *See William H. Fortner*, 49 ECAB 324 (1998).

[9] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[10] *See Michael Ewanichak*, 48 ECAB 364 (1997).

[11] *See Charles D. Edwards*, 55 ECAB 258 (2004); *Parley A. Clement*, 48 ECAB 302 (1997).

[12] *See James E. Norris*, 52 ECAB 93 (2000).

[13] *Beverly R. Jones*, 55 ECAB 411 (2004).

ANALYSIS

Appellant has not attributed her emotional condition to the performance of her job duties under *Cutler*.[14] Instead, she alleged that she experienced stress due to error by the employing establishment in administrative actions and harassment by her supervisors.

In *Thomas D. McEuen*,[15] the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA as such matters pertain to procedures and requirements of the employing establishment and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under FECA would attach if the facts surrounding the administrative or personnel action established error or abuse by employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[16]

Appellant alleged that the employing establishment wrongfully failed to provide her with a supervisor at her work location. She maintained that her supervisor, CDR Lambrecht, worked in a separate building and only visited her work area one time. Appellant, however, has not factually established her allegation that she worked without supervision. CDR Lambrecht informed OWCP that Mr. Quaranta, a team leader, assigned appellant her duties. Appellant has not factually established her contention that she had no supervisor as the evidence supports that she had CDR Lambrecht as a division head and Mr. Quaranta as a team leader.

Appellant further alleged that CDR Lambrecht relied upon e-mails from coworkers in issuing her discipline and was not involved with her work assignments. Complaints about the manner in which a supervisor performs his duties or the manner in which a supervisor exercises his discretion fall, as a rule, outside the scope of coverage provided by FECA.[17] This principle recognizes that a supervisor or manager in general must be allowed to perform his duties and employees will, at times, dislike the actions taken. Mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent evidence of error or abuse.[18] Additionally, disciplinary actions are administrative functions of the employing establishment and not duties of the employee and, unless the evidence discloses error or abuse on the part of the employing establishment, not compensable employment factors.[19] Appellant has not submitted evidence supporting that CDR Lambrecht erred in supervisory matters or in issues of discipline. On July 21, 2014 she received a notice of proposed suspension for disruptive behavior on May 15

[14] *See Lillian Cutler*, *supra* note 5.

[15] *See Thomas D. McEuen*, *supra* note 7.

[16] *See G.C.*, Docket No. 15-1231 (issued February 2, 2016); *Richard J. Dube*, 42 ECAB 916 (1991).

[17] *See R.A.*, Docket No. 14-1438 (issued September 16, 2015); *Judy L. Kahn*, 53 ECAB 321 (2002).

[18] *Id*.

[19] *See Lori A. Facey*, 55 ECAB 217 (2004).

and 16, 2013 and July 11, 2014, and for failing to follow instructions on July 9, 2014. Appellant also received a proposed suspension on August 15, 2014, which was later rescinded. The mere fact that the employing establishment lessens or reduces a disciplinary action does not, in and of itself, establish error or abuse.[20] There is no admission or acknowledgment of error by the employing establishment or any final decision showing that it erred in issuing disciplinary action on August 15, 2014. Appellant further has not submitted any evidence showing that the employing establishment erred in the July 21, 2014 disciplinary action. Thus, she has not established a compensable work factor.

With regard to appellant's allegation that she received work assignments from individuals who each used a different work method, the Board finds that she has not submitted any evidence supporting error or abuse in this administrative matter.[21] Appellant also generally maintained that the employing establishment erred in handling her workers' compensation claim and denied her request to see an occupational physician; however, matters relating to the handling of a workers' compensation claim are administrative in nature and do not arise in the performance of duty absent error or abuse.[22] She submitted no evidence in support of her allegation and thus has not established a compensable work factor.

Appellant additionally contended that the employing establishment wrongly requested that she submit medical evidence in support of her request for reasonable accommodation. She advised that she was participating in a clinical trial for insulin-dependent diabetes, but the employing establishment questioned whether diabetes was covered under the ADA. Matters involving a request for reasonable accommodation are administrative and not compensable absent a showing of error or abuse on the part of the employing establishment.[23] Ms. Hill, a human resource specialist, related that she advised appellant that the employing establishment needed medical documentation to support her reasonable accommodation request in order to understand her diabetes-related work restrictions. Appellant has not submitted any evidence showing that the employing establishment committed error or abuse by requesting medical evidence in support of her reasonable accommodation request; consequently, she has not established a compensable work factor.[24]

Appellant additionally contended that she experienced harassment and discrimination by the employing establishment. Harassment and discrimination by supervisors and coworkers, if established as occurring and arising from the performance of work duties, can constitute a compensable work factor.[25] A claimant, however, must substantiate allegations of harassment and discrimination with probative and reliable evidence.[26] Appellant argued that

[20] *See Linda K. Mitchell*, 54 ECAB 748 (2003).

[21] *See D.F.*, Docket No. 15-1057 (issued December 7, 2015); *Jeral R. Gray*, 57 ECAB 611 (2006).

[22] *See W.D.*, Docket No. 12-0860 (issued November 5, 2012); *Bettina M. Graf*, 47 ECAB 687 (1996).

[23] *See K.M.*, Docket No. 14-1860 (issued June 2, 2015).

[24] *Id*.

[25] *T.G.*, 58 ECAB 189 (2006); *Doretha M. Belnavis*, 57 ECAB 311 (2006).

[26] *C.W.*, 58 ECAB 137 (2006); *Robert Breeden*, 57 ECAB 622 (2006).

CDR Lambrecht took her into a dark supply closet to give her a disciplinary letter. She advised that she did not accept the letter, but instead immediately left the room. CDR Lambrecht related that he did not have a supply room, but instead shut the door when appellant entered a room for privacy, as another person was nearby, at which point she screamed at him and left. Appellant has not submitted any evidence supporting her contention that CDR Lambrecht harassed and intimidated her when he tried to give her disciplinary action. The Board has held that a mere allegation of harassment, in the absence of factual corroboration, is insufficient to meet a claimant's burden of proof.[27]

Appellant further contended that CDR Lambrecht issued her disciplinary action on July 11, 2014 in retaliation for her filing a complaint with the IG's office. She maintained that she reported that Mr. Quaranta was working off the clock on that date. Appellant e-mailed CDR Lambrecht and advised that she was informing command of Mr. Quaranta's actions. CDR Lambrecht related that he resumed work on July 11, 2014 after being off work sick and acted on the notice of proposed suspension before reading her e-mail about her IG complaint. Appellant has not submitted any evidence corroborating that he issued her disciplinary action on July 11, 2014 because she informed the IG's office that Mr. Quaranta was working off the clock; consequently, she has not established a compensable work factor.

On appeal appellant argues that CDR Lambrecht violated the law by taking her into a room across from his office. As discussed, however, she has not submitted sufficient evidence supporting this assertion. Appellant further contends that CDR Lambrecht did not fully respond to OWCP's request for information, however, his February 17, 2015 statement addressed her allegations. She also notes that the hearing representative did not discuss that she was a disabled employee. However, the issue is whether appellant established an emotional condition in the performance of duty.

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 and 20 C.F.R. §§ 10.605 through 10.607.[28]

CONCLUSION

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

[27] *See T.M.*, Docket No. 15-1774 (issued January 20, 2016); *Bonnie Goodman*, 50 ECAB 139 (1998).

[28] As appellant has not substantiated a compensable employment factor, the Board will not address the medical evidence. *See Karen K. Levene*, 54 ECAB 671 (2003).

ORDER

IT IS HEREBY ORDERED THAT the January 27, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 11, 2016
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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