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

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| **BETTY J. CROSBY, Appellant** | ) | |
| **and** | ) | **Docket No. 04-798** |
| | ) | **Issued: June 25, 2004** |
| **DEPARTMENT OF EDUCATION, FEDERAL STUDENT AID, Chicago, IL, Employer** | ) | |

*Appearances:*
*Betty J. Crosby, pro se*
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

### *JURISDICTION*

On February 5, 2004 appellant filed a timely appeal of the merit decisions of the Office of Workers' Compensation Programs dated October 29 and February 12, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### *ISSUE*

The issue on appeal is whether appellant has established that she developed an emotional condition and hypertension in the performance of duty.

### *FACTUAL HISTORY*

On July 27, 2002 appellant, then a 58-year-old loan analyst, filed an occupational disease claim alleging that on July 2, 2002 she first realized that her hypertension which required hospitalization was caused by stressful conditions in the workplace. Appellant stopped work on July 2, 2002. Her date of return to work was not indicated in the record.

Appellant submitted medical evidence in support of the claim along with a September 3, 2002 narrative statement which alleged that on or about July 2001 her place of employment

became very stressful. She alleged that she was hired as a GS-7 and was never told during the hiring process or by the supervisor that a "Proficiency of Core" notebook was necessary in order to obtain a promotion. Appellant alleged that she began compiling the information necessary for the promotion in addition to learning her new job and she became overwhelmingly stressed. Appellant alleged that in February 2002 she joined the employing establishment fitness club in an effort to relieve stress and that her supervisor, Juanita Ford, approved her use of the gym during the lunch hour within her specified stipulations. Appellant alleged that Ms. Ford stipulated that any time spent at the fitness club beyond her lunch hour should be made up through work performed before or after her official start time, or through the usage of annual leave or credit time. She alleged that, although she complied with her supervisor's provisions and documented her time spent on time sheets, Ms. Ford informed her that the "issue was not resolved" and harassed her by stringently monitoring her fitness center attendance. Appellant alleged that Ms. Ford harassed and drilled her by asking when she left for the center and returned, even on days that she did not attend the club. She further stated that there were times that she felt afraid to use the club due to the harassment and that she felt her livelihood and health were threatened. Appellant alleged that she was eventually forced to get union representation so that her fitness center attendance would be monitored. In a separate issue, appellant further alleged that on May 2, 2002 she was facing the elevator on her way to lunch and her supervisor was standing nearby when appellant stated aloud, "I know that you are watching me." Appellant asserted that when she returned she received a memorandum charging her with insubordination and threatening disciplinary action for her comment. She stated that, on the following Monday, appellant was informed by Frank Phillips, a union representative, that Ms. Ford had threatened to bring a gun to work if appellant was not removed from under Ms. Ford's supervision. Appellant alleged that the statement was corroborated by other employees and that a safety and health official from Washington, DC who was notified by Mr. Phillips who sat down with her and advised her that he was aware of the situation. She stated that her stress was unbearable and not only did she feel that her job was at stake, she also felt that her life was in danger. Appellant stated that, in an attempt to resolve the problem, she attempted to change supervisors through reassignment but was denied. She also stated that on June 3, 2002 she requested a flexiplace work agreement to resolve her "stressful, threatening, depressing and hostile environmental situation" however this request was also denied.

In a letter dated September 24, 2002, the Office advised appellant that her claim form, statement and medical records were insufficient without additional evidence to establish that she actually experienced the alleged employment factors felt to have caused the condition. The Office requested additional evidence within 30 days.

In a letter dated October 16, 2002, Diane Spadoni, a representative of the employing establishment, responded to appellant's September 3, 2002 statement. Regarding appellant's allegation that she was never advised about the requirements for promotion, Ms. Spadoni stated that appellant and all other employees were advised during the application process and initial orientation sessions upon being hired that, they must undergo a proficiency evaluation in order to move to the next level, which had been departmental policy since 1995. Regarding appellant's desire to attend the fitness center during work hours, Ms. Spadoni indicated that Ms. Ford advised appellant that she could earn credit hours either before or after work and utilize her lunch hour for gym usage. She related that Ms. Ford made this accommodation for appellant even though a union agreement on usage of the fitness center during work hours had not been

finalized. Ms. Ford requested a schedule from appellant as to when she would attend the center and return to the workplace and asked for specific times on April 29, 2002 in order to account for her staff member's time; however, appellant never responded to the requests. Ms. Spadoni asserted that on May 2, 2002 Ms. Ford wrote appellant a counseling memorandum for insubordination because she yelled out in open forum "I know that you are watching me!" She indicated that on that same date Ms. Ford provided the union official with a copy of the memorandum for his records and stated, "You know I love my good government job, but sometimes its murder" and walked away. Ms. Spadoni explained that the union official reported the incident to an official in Washington, DC, alleging that employees came to him claiming that Ms. Ford threatened to bring in a gun and shoot an employee. She asserted that during her interviews with numerous staff members as well as appellant and the union official she did not find corroboration that Ms. Ford actually threatened appellant directly and concluded that it was simply rumor. Ms. Spadoni noted that during a subsequent dispute resolution session appellant admitted that "I will not lie on her, she did not directly threaten me" and stated that she only heard those remarks from other employees. The employing establishment representative then responded to appellant's claim regarding flexiplace and asserted that appellant had requested to work flexiplace; however, she was advised that it could not be accomplished because her duties required her to be in the office. When appellant inquired why another employee in the unit was able to work flexiplace Ms. Spadoni indicated that the employee was accommodated for health reasons. The representative then indicated that appellant subsequently requested reassignment during the open season process; however, appellant's request was denied, along with another employee because their requests were to work in a unit where staffing levels were already too high. Ms. Spadoni indicated that she first advised appellant subsequent to her departure in July that she was willing to reassign appellant to her second request and appellant responded "I'll have to think about it." She indicated that she advised appellant again during a dispute resolution session in July that she was willing to reassign her and that appellant indicated that reassignment was satisfactory so she made the action effective September 22, 2002. Ms. Spadoni maintained that Ms. Ford treated all her employees fairly and equitably.

Appellant submitted additional evidence in support of the claim including email correspondence primarily related to the fitness center. Mr. Phillips, chief steward for the union, submitted a letter dated October 18, 2002 in support of appellant's allegation that Ms. Ford verbally threatened her. Mr. Phillips stated:

> "On or around May 3, 2003 I became an inadvertent witness to a verbal threat which was directed by supervisor Juanita (Ford) Foster towards [appellant]. The threat was overheard by two other known employees also. When this was brought to my attention (that other people overheard these threats) I elected to call the federal police and inform my supervisors … in Washington DC…."

By decision dated February 12, 2003, the Office denied appellant's claim on the grounds that the evidence of record was insufficient to establish that she suffered from an emotional condition and hypertension causally related to compensable factors of employment. The Office found that none of the incidents identified by appellant were found to have occurred as alleged and within the performance of duty.

In a letter dated February 20, 2003, appellant requested an oral hearing and submitted additional medical evidence and an equal employment opportunity (EEO) documentation previously submitted to the employing establishment. A hearing was held with the Branch of Hearings and Review on September 9, 2003 and appellant testified as to the alleged incidents which she believed caused her diagnosed hypertension and emotional condition. She further testified regarding grievances she filed and dispute resolution sessions attended.

By decision dated October 29, 2003, the Office hearing representative affirmed the prior decision on the grounds that appellant failed to establish a factual basis for any compensable factors of employment and therefore had not met her burden in establishing that she sustained an emotional condition in the performance of duty.

## ***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 illness has some connection with the employment, but nevertheless does not come within the coverage of the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.[1]

Perceptions and feelings alone are not compensable. Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.[2] To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.[3]

## ***ANALYSIS***

Appellant has alleged that several work incidents caused her emotional condition and hypertension. She claimed that she was harassed by her supervisor, Ms. Ford, regarding her use of the employing establishment fitness center. Appellant alleged that, although Ms. Ford approved her use of the fitness center during the lunch hour and although she complied with her

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

[2] *Pamela R. Rice*, 38 ECAB 838 (1987).

[3] *Donna Faye Cardwell*, 41 ECAB 730 (1990).

supervisor's provisions and documented her time spent on time sheets, Ms. Ford stringently monitored her fitness center attendance to the point where she felt her livelihood and health were threatened. Issues pertaining to time and attendance often fall within the realm of administrative and personnel matters.[4] As a general rule, an employee's reaction to administrative or personnel matters falls outside the scope of the Act because it is not considered to arise out of and in the course of employment.[5] Such matters are generally considered to be unrelated to the employee's regular or specially assigned work duties. In the instant case, appellant's supervisor monitored the activities of appellant, her assigned subordinate. The Board has held that, where the evidence demonstrates that the employing establishment either erred or acted abusively in the handling of administrative matters, coverage may be afforded.[6] Appellant has not submitted any evidence establishing that Ms. Ford, a representative of the employing establishment, was unreasonable in requesting exactly when appellant planned to utilize the fitness center or committed error or abuse in handling this administrative matter. Any emotional reaction appellant experienced as a result of Ms. Ford investigating and monitoring her use of the fitness center during working hours is not compensable under the Act. Appellant also contended that, when she was hired as a GS-7, she was never told during the hiring process or by the supervisor the prerequisites for a promotion and that, when she began compiling the requisite information in addition to learning her new job, she became overwhelmingly stressed. The Board has held that an employee's frustration over not working in a particular environment, holding a particular position or securing a promotion is not compensable.[7] Moreover, there is no evidence that the employing establishment committed error or abuse in the administrative function of applying the appropriate standards for promotion.

Appellant further alleged that on May 2, 2002 she received a memorandum charging her with insubordination and threatening disciplinary action after she made an indirect statement out loud regarding her supervisor watching her. Appellant further stated that, in an attempt to resolve the problems with her supervisor, she requested reassignment but was denied and that she also requested a flexiplace work agreement to resolve her stressful situation however she was further denied. The Board has held that issues regarding the issuance of a letter of admonishment by the employing establishment for being insubordinate,[8] assignment of work duties[9] and denial of flexiplace[10] are an administrative or personnel matters. Appellant has not shown that Ms. Ford's actions were inappropriate in any way with regard to the above matters.

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[4] *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997).

[5] To the extent that 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. *Kimber A. Stokke*, 48 ECAB 510, 512 (1997); *Dinna M. Ramirez*, *supra* note 4.

[6] *James W. Griffin*, 45 ECAB 774 (1994).

[7] *Marie Boylan*, 45 ECAB 338 (1994); *Lillian Cutler*, *supra* note 1.

[8] *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

[9] *James W. Griffin*, *supra* note 6.

[10] *See Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

It was noted that Ms. Ford admonished appellant because she yelled out in an open forum. The record supports that the supervisor also denied appellant reassignment along with another employee because their first choice was in a unit where staffing levels were already too high and that appellant was subsequently offered her second choice at reassignment. It was further noted that appellant was denied flexiplace because her work duties required her to be in the office and that the only other employee in the unit who worked flexiplace did so due to a health accommodation. Again, appellant has not submitted any evidence establishing that the employing establishment committed error or abuse in handling the above administrative matters.

Appellant also alleged that she was informed by Mr. Phillips, a union representative, that Ms. Ford had threatened to bring a gun to work if she was not removed from under Ms. Ford's supervision. Appellant alleged that the statement was further corroborated by other employees. She stated that her stress was unbearable and not only did she feel that her job was at stake, she also felt that her life was in danger. The Board has held that actions of an employee's supervisor or coworker, which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. For harassment to give rise to a compensable disability there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment are not compensable.[11] Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment occurred.[12] The Board finds that appellant has not established a compensable employment factor under the Act with respect to the claimed harassment. The employing establishment addressed this allegation in its challenge of appellant's claim and acknowledged that, while Ms. Ford did make a comment to the union official following appellant's admonishment for her outburst, she did not directly threaten appellant. The employing establishment asserted that the matter was investigated through interviews with numerous staff members as well as appellant and the union official and it did not find any corroboration. Moreover, it was noted that during a subsequent dispute resolution session appellant admitted that Ms. Ford had not directly threaten her and stated that she only heard those remarks from other employees. While Mr. Phillip's letter of record attempts to corroborate appellant's claim, his letter is insufficient to support appellant's allegation as he failed to specify exactly how Ms. Ford allegedly threatened appellant or provide any other specific incidents of harassment by appellant's supervisor that was responsible for appellant's emotional condition and hypertension.[13]

As appellant has not submitted the necessary evidence to substantiate a compensable factor of employment under the Act, the medical evidence of record need not be addressed.[14]

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[11] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[12] *William E. Seare*, 47 ECAB 663 (1996).

[13] *See Merriett J. Kauffmann*, 45 ECAB 696 (1994). It should be noted that appellant filed several grievances in connection with some of her claimed employment factors, but the record does not contain any decisions reached as a result of these grievances.

[14] *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

## ***CONCLUSION***

The Board finds that appellant has failed to establish that she sustained an emotional condition or hypertension causally related to her federal employment.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated October 29 and February 12, 2003 are affirmed.

Issued: June 25, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member