

File Number:  
HR10-D-H

RECEIVED JUN 13 2019

U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS  
PO BOX 8300 DISTRICT 50  
LONDON, KY 40742-8300  
Phone: (202) 693-0045

Date of Injury:  
Employee:

Dear .

This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

A hearing was held on 03/20/2019. As a result of such hearing, it has been determined that the decision issued by the District Office should be vacated and the case remanded to the district office for further action as explained in the enclosed copy of the Hearing Representative's Decision.

Your case file has been returned to the Jacksonville District Office. You may contact that office by writing to our Central Mail Room at the following address:

US DEPARTMENT OF LABOR  
OFFICE OF WORKERS' COMP PROGRAMS  
PO BOX 8300 DISTRICT 6 JAC  
LONDON, KY 40742-8300

Sincerely,

Division of Federal Employees' Compensation

PAUL FELSER, ESQ.  
7393 HODGSON MEMORIAL DRIVE  
SUITE 102  
SAVANNAH, GA 31406

*If you have a disability and are in need of communication assistance (such as alternate formats or sign language interpretation), accommodation(s) and/or modification(s), please contact OWCP.*

Washington DC, June 10, 2019

U.S. DEPARTMENT OF LABOR  
Office of Workers' Compensation Programs

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DECISION OF THE HEARING REPRESENTATIVE

In the matter of the claim for compensation under Title 5, U.S. Code 8101 et. seq. of  
Claimant; Employed by Case No.  
A telephonic hearing was held on 03/20/2019.

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The issue is whether the claimant sustained an emotional condition in the performance of her federal duties.

The claimant, \_\_\_\_\_ born \_\_\_\_\_ is employed by the \_\_\_\_\_ as a customer service supervisor. On August 28, 2017 she filed form CA-2, Notice of occupational disease and claim for compensation contending that her emotional condition is due to factors of her federal employment.

By letter dated October 23, 2017 the claimant was advised to submit detailed factual and medical evidence to support her claim for benefits. She was advised that it is her burden to prove she was exposed to or actually experienced the job stressors at the time, place, and in the manner alleged and that cited job stressors arose out of or in the course of her regular or specially assigned duties. She was also advised that a stress condition can only be diagnosed by a psychiatrist or a licensed clinical psychologist, not a nurse specialist. The claimant was given 30 days to submit additional evidence.

By decision dated January 25, 2018 the office denied the claim for the reason that the evidence of record failed to demonstrate that the claimant sustained an injury in the performance of duty as alleged.

The claimant disagreed with the decision and requested a hearing. Hearings and Review in their decision dated June 1, 2018 remanded the case file back to the District Office for further development.

After further development of the claim the Office by decision dated October 2, 2018 denied the claim for the reason that the evidence of record failed to establish that the claimant sustained an injury in the performance of duty as alleged.

The claimant disagreed with the decision and requested an oral hearing before a representative of the Office of Workers' Compensation Programs.

At the hearing held on March 20, 2019 the claimant was not present but was represented by her attorney, Paul Felser.

Mr. Felser presented the claim noting that he was here to address an emotional condition filed by the claimant. He noted that we are not here to litigate interpersonal relationships between the claimant and Mr. \_\_\_\_\_, one of her employees she supervised, but are here to determine if the claimant suffered an emotional condition that developed as a result of her efforts to perform her duties. He discussed the prior remand order, noting that the office did not make a findings of facts. He noted that page 3 of the remand order pointed out that the postmaster reportedly shared these concerns and so he had Mr. \_\_\_\_\_ removed from the building pending a psychological evaluation to ensure that he was not a threat to himself or others. However the District Manager, \_\_\_\_\_, decided that he was the only person who could remove the employee from work, he brought Mr. \_\_\_\_\_ back to work without medical evaluation. This relates to an investigation, a conference. A personal disciplinary conference that was being held and during the conference Mr. \_\_\_\_\_ made statements that the postmaster deemed to be threatening. Mr. \_\_\_\_\_ turns the facts around a little bit and states them much more favorably to the Agency's point of view.

He stated that Ms. \_\_\_\_\_ gained knowledge of the comment during Mr. \_\_\_\_\_ investigation. The following date, August 18 she raised an issue with Mr. \_\_\_\_\_ and informs him that she can't work with him and Mr. \_\_\_\_\_ is indicating that it was Ms. \_\_\_\_\_ who insisted that Mr. \_\_\_\_\_ be removed from the premises.

He noted that someone just don't walk in one day and make a threat but the claimant brought these set of circumstances and difficulties with Mr. \_\_\_\_\_ to the attention of the \_\_\_\_\_ to the attention of her supervisors early on. One of the earliest dates was June or 2016. He was physically intimidating, standing up, leaning over the desk, pointing at paperwork being presented and yelling, you can't do this, and is openly hostile and confrontational far beyond the form of the meeting. Mr. \_\_\_\_\_ did not want to follow her instructions. He was aggressive, and obnoxious. He sought out to undermine the claimant in her role as his supervisor by trying to solicit damaging statements against her because she was putting pressure on him as a supervisor to do his job.

He noted that a statement from Mr. \_\_\_\_\_ who is now retired wrote that the claimant did have an incident during a grievance meeting in June 2016. She was not comfortable being in a room alone with Mr. \_\_\_\_\_ due to his aggressive behavior. He was known to be difficult to deal with. Mr. \_\_\_\_\_ indicated that Mr. \_\_\_\_\_ is a very strong willed person and can be obnoxious.

Mr. Felser noted that Mr. \_\_\_\_\_ report is a second hand account of his personal assembly of all the little bits and tidbits and pieces of investigations that have been conducted.

Mr. Felser indicated that the facts about Mr. \_\_\_\_\_ are known. He noted that on August 16, 2017 the \_\_\_\_\_ was in the building for improper conduct. He stated that Mr. \_\_\_\_\_ has been intentionally creating a hostile work environment by refusing to comply with instructions given by himself as well as \_\_\_\_\_. He indicated that the back story was that they were implementing a new custodial program. Ms. \_\_\_\_\_ had expressed her concern that this was going to continue to exacerbate contact and blow back in her direction from Mr. \_\_\_\_\_.

Mr. [redacted] is coming up with allegation after allegation to try to cast Ms. [redacted] in the worst possible light that he can. He wants to deflect. He wants to cast blame on her while not answering directly the allegations that are made against him. They wanted to talk about sexual harassment allegations. It deflects and move on to some other issue or some other allegation. He noted that the claimant was having emotional reaction to things that did occur in the work place. Mr. Felser advised that Mr. [redacted] was not being fulsome with his response to the Department of Labor by omitting facts. He stated that Mr. [redacted] would not take direction. Ms. [redacted] is supposed to supervise him and to implement that new custodial plan. That is what she was ordered to do. She had concerns and reservations about doing that. She was told to go do her job. He noted that this is a fact that did occur that Mr. [redacted] would not listen to her. He also noted that he was ordered off the premises because of threatening comments that he made during an investigative interview. Mr. Felser noted that the fact that he is brought back to work because it procedurally did not take place properly, is not proof that it did not occur. These things has contributed to the development of Ms. [redacted] condition.

Mr. Felser talked about the statement from [redacted] a co-worker who works in that facility. She has been an employee for 33 years and have worked in the [redacted] for the last 11 years. [redacted] has worked as a janitor that whole time. [redacted] has presented himself throughout that time as a self-appointed supervisor instead of just the janitor that he is. She was always worried about the facts that he said about other co-workers and she believes that he sabotaged her car when they had a disagreement. She has since made sure that she always had a self-locking gas cap. She has feared him various times through the years because of his temper. He has made announcements that killing was therapeutic for him. When he was having issues with Ms. [redacted] not only did she fear for her but also for herself as they were friends. His attitude towards [redacted] was hateful, violent, and disrespectful of her position. She felt that he did not like taking orders from a women. While [redacted] was on vacation for two weeks he tried to rile up carriers into believing that he was justified in his verbal assault against her. He told everyone that he was going to get [redacted] fired and arrested for falsifying documents and insurance fraud. He talked about having guns, ammunition and killing rag heads all the time. [redacted] was said for years that he has PTSD and can do anything he wants because he has a letter to prove he's crazy. He said he had to defend himself from [redacted] advances in the parking lot. She was there and this was a lie. When [redacted] tried to manage [redacted] on the new custodian program he refused to do it. Mr. Felser noted that the claimant was incapable of doing her job with Mr. [redacted]

Mr. Felser noted that they never did the treat assessment that they were supposed to do.

Subsequent to the hearing the Office received statements from the claimant dated March 20, 2019 and April 18, 2019 describing the employment factors she believes caused her condition. Also received was a medical report from Dr. [redacted] dated February 25, 2019.

I have carefully evaluated all evidence of record to include the argument presented at the hearing and the evidence submitted thereafter. I find that the claimant has submitted sufficient evidence to require further development of the case file by the District Office.

In the instant case, the events listed below are proven factually, but the question is whether there's any EA error or abuse in any of the events. The EEOC's May 23, 2018 remand leaves a question whether there was error in the EA's investigation, and if established, that would be a factor within the performance of duty (POD).

- In June 2016, during a grievance meeting, the claimant advised former [redacted] that she wasn't comfortable being in a room alone with Mr. [redacted] a representative of the union, due to his aggressive behavior, so [redacted] took over all subsequent grievance meetings until September 2016, when he took another position.
- March 4, 2017, the claimant gives a public announcement on the workroom floor regarding complaints about policy/procedure which would result in past practices having to stop. The claimant names Mr. [redacted] in this meeting, which led to Mr. [redacted] complaint about procedures being violated. The claimant subsequently advises [redacted] management that Mr. [redacted] has been harassing and threatening her, and she alleges that she had many witnesses and persons who warned her that Mr. [redacted] was out to get her.
- March 9, 2017, [redacted] requested an investigation of Mr. [redacted] allegations against the claimant, and [redacted] and Ms. [redacted] are called in to investigate.
- March 15, 2017, the claimant reports to Ms. [redacted] her allegation that Mr. [redacted] left a bumper sticker under her keyboard as a threat.
- March 30, 2017, the claimant signs a Letter of Warning for her Conduct Unbecoming of the [redacted]
- May 9, 2017, Mr. [redacted] files an EEO complaint.
- July 11, 2018, Mr. [redacted] notes that when he interviewed the claimant, she brought up two specific concerns, but in no way eluded that she felt threatened by Mr. [redacted] she alleged Mr. [redacted] would go in her office to snoop, which Mr. [redacted] noted was a janitorial function to enter offices, but he advised she could consider locking her door; and that Mr. [redacted] accused her of insurance fraud, which Mr. [redacted] advised would not be a [redacted] matter. Mr. [redacted] concluded that three of the four accusations against the claimant were not unfounded, and the fourth accusation was not within the scope of their investigation. He noted while the claimant alleged on April 17, that Mr. [redacted] as out to have her fired, their interview with Mr. [redacted] indicated he reiterated several times that he simply wants management to adhere to written policies and procedures, and that he in no way eluded that he wished the claimant to be fired. Mr. [redacted] refuted the claimant's allegations that he and Ms. [redacted] were taken back by Mr. [redacted] actions. He concluded that they thoroughly addressed each complaint brought to their attention by both involved parties, and the claimant did not offer any additional information which would've caused them to believe a subsequent investigation was warranted.
- July 14, 2017, the claimant files a police report, alleging her dog was poisoned by Mr. [redacted]

even though she stated she couldn't prove it.

- July 17 and 25, 2017, the claimant emails requesting a hostile work environment investigation due to Mr.
- July 25, 2017, offers the claimant work in an office an hour away, the claimant refuses due to child care issues.
- August 2, 2017 email from Ms. in response to email about the investigation request, noting that no one had contacted him about any issue, and the last and the last both stated they never witnessed any violent behavior and the supervisor had never brought anything to their attention. Ms. responded send and a female.
- August 5, 2017, the claimant has to give instructions to Mr. regarding new custodian duties, but Mr. refuses and as a result, scheduled for a pre-disciplinary investigation with on August 15, 2017.
- August 15, 2017, as a result of the service talk in conjunction with the pre-disciplinary investigation, some of the employees expressed their concerns about the claimant, and as a result was sent on August 17, 2017 to investigate the office climate. This resulted in management training. During the investigation, Mr. accused the claimant of sexually harassing him, and the claimant gained knowledge of Mr. alleged comment that he was afraid of waking up in the hospital [and] them telling him horrible things. When the claimant alleged that comment was a threat against her, Mr. later denied to the investigators that he made the comment.
- August 28, 2017, the claimant filed her claim for compensation.
- August 29, 2017, during the claimant's investigation interview with an outside team, she did not bring up any additional incidences with Mr. other than the one that occurred on March 4, 2017.
- The claimant is issued a 7 day suspension.
- December 29, 2017, the claimant files a formal complaint, alleging she was subjected to discrimination based on sex and retaliation in reference to her allegations of harassment from Mr. and being named in his complaints.
- January 19, 2018, the employing agency dismisses the claimant's formal complaint.
- May 23, 2018, the affirmed the employing agency's January 19, 2018 complaint in part, finding that she cannot state a valid claim of unlawful retaliation on the basis she was named as the responsible management official in employee's EEO complaint. The EEOC remanded her claim of sex discrimination, and the agency was ordered to process the remanded claim regarding the allegation of failure to investigate threats because of her sex.

Futher development of the claim is warranted. On remand the office should have the employing agency address the claimant's 14 page statement provided post-hearing, as well as to address the outcome of the EEOC's May 23, 2017 remand. Also ask the agency the date the claimant received the 7 day suspension so that the office can have an accurate timeline. The office should then determine whether these factors arose in the performance of duty.

The decision of the District Office dated October 2, 2018 is hereby set aside and the case remanded for the actions listed above. Upon completion of the recommended action and any further development as deemed necessary, the Office should issue a de novo decision.

Issued:  
Washington, D.C.

Hearing Representative  
Branch of Hearings and Review  
for  
Director, Office of Workers'  
Compensation Programs