

File Number:
HR10-D-H

U.S. DEPARTMENT OF LABOR

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

MAR - 8 2011

RECEIVED MAR 14 2011

Date of Injury: 04/28/2010
Employee:

Dear Ms. :

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 11/15/2010. 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 Washington, D.C. 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 25 WAS
LONDON, KY 40742

Sincerely,



Carol E. Adams
Hearing Representative

DEPARTMENT OF COMMERCE
OFFICE OF THE SECRETARY
C/O CCSI, L.P.-O/S-HEADQUARTERS
PO BOX 542528
DALLAS, TX 75354

PAUL FELSER
ESQ.
P O BOX 10267
SAVANNAH, GA 31412

U.S. DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

DECISION OF THE HEARING REPRESENTATIVE

In the matter of the claim for compensation under Title 5, U.S. Code 8101 et. seq. of
Brown, claimant; Employed by the Department of Commerce; Case number . A
hearing was held on November 15, 2010.

The issue for determination is whether the claimant was injured as the result of her federal employment.

on April 28, 2010, the date of injury, was employed as a Budget Analyst for the Department of Commerce. She filed a traumatic claim, alleging she had an anxiety attack due to work stress and passed out and fell to the floor hitting her head and back.

The Office determined that there was insufficient evidence to support the claim. Therefore, by letter dated June 4, 2010, the claimant was advised of the medical and factual evidence needed to support her claim. She was afforded thirty days to submit evidence.

A statement was received from the claimant on July 19, 2010. The claimant alleged the following events caused her work injury.

On April 28, 2010, she arrived at work at approximately 7:55 a.m. Prior to her fall she was preparing budget-related and performance documentation for presentation to the Director and Deputy Director. The presentation was at 10:30 a.m. that day. The meeting required her to travel from College Park Metro Station to the Federal Triangle downtown Washington D.C. She stated, because of the toxic issues that occurred between the Director and the Deputy Director and her, she expected the threatening, abusive and mob-like behavior from them to continue.

The Office determined that the evidence was insufficient. Therefore, by decision dated July 21, 2010, the Office denied the claim on the basis that she was not injured in the performance of duty.

The claimant disagreed with the decision and requested a hearing before an OWCP representative.

A hearing was held on November 15, 2010. The claimant did not attend but was represented by attorney Paul Felser. At the hearing the attorney requested and was granted additional time to submit evidence.

A copy of the transcript was sent to the employing agency for comment. By two letters dated December 10, 2010, the employer responded to the hearing transcript and certified a copy of the information was sent to the claimant and her attorney. In the letters the managers indicated that it

was not known what caused the claimant to fall to the floor. The Deputy Director, Office of Financial Management, noted in his letter that the claimant was not required to bring any documents to the meeting of April 28, 2010 and that the meeting was scheduled for a quarterly performance review.

A review of the evidence has been conducted.

Since the hearing a new statement dated January 7, 2011 was provided by the claimant in which she outlined what she thought brought on her anxiety that caused her to faint and fall to the floor. She stated,

On April 28, 2010 I was overwhelmed with how I was going to accomplish all the work for that day. I was scheduled to meet the deputy director at 10:30 a.m. which required a roundtrip commute time of approximately 4 hours in addition to the one hour (or more) meeting. The meeting was not solely a quarterly performance review, I was also required to prepare and present budget related materials.

My understanding of what I had to accomplish that day entailed preparation of a SF-132 reapportionment schedule, FY 2010 second quarter SF-133 and SF-132 comparison report, and salaries, and expenses trail sheet.

Preparation of the SF-132 Apportionment/Reapportionment Schedule requires me to coordinate with the program managers regarding their annual spend plans, analyze backup materials such as trend reports, and log data into a spreadsheet. Once the data is compiled and prepared, I meet with the director for approval and provide justification. The information is then prepared and validated in a specialized system (Office Management and Budget) and Commerce's Office of Budget (OB) is notified. OB reviews the SF-132 and will notify me if there are any changes or errors. This task can take one to two days to complete, depending on the availability of all staff members involved. On April 28, 2010, I had one hour to complete before the meeting.

The comparison report requires compilation of materials of several accounts, creation of spreadsheets, and analyzation (sic) of proposed spending versus spending to date. Typically, this task takes four or more hours to complete, depending on competing priorities. On April 28, 2010, I also had to complete this task within the hour prior to the meeting.

The salaries and expenses trail sheet requires coordination with the execution analyst to determine the allocation of funds by office and object class. Based on the budget authority, I will make adjustments to the allocations. This task takes six or more hours to complete.

As stated in her rebuttal, "She would have been performing her normal duties and then was expected to travel to the meeting scheduled for 10:30 a.m. in Washington D.C." I had performed these tasks in the past; however, I had more time, proper supervision and guidance, and free flow of communication. What made the tasks

more difficult on April 28, 2010 is that I had to search a plethora of electronic files to verify the accuracy of the information since I had been isolated from the team and removed from pertinent email distributions.

This led me to being overwhelmed and I knew if I didn't complete all of the tasks or incremental pieces to each assignment, I would be further behind and considered 'late' or 'missing deadline date.' This just got to me and I became nervous.

The Board has held when a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.¹ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.² I find that the claimant has provided an additional statement, since the hearing, to which the employer has not had an opportunity to review and provide substantiation so that the truth of the matter can be determined. Therefore, the case must be remanded to the Office for further development.

On remand of the case, the Office should provide a copy of the claimant's January 7, 2011 statement to the employer. The employer should be asked to respond to the claimant's statement.

After completion of the above development and any other development the Office deems necessary, a new decision should be issued.

Also, since the hearing, the claimant has also provided other statements and evidence surrounding an EEO claim that she filed for harassment. Office procedures provide that in emotional stress cases a new claim should always be required if new incidents are alleged.³ The procedure manual defines an Occupational Disease as a condition which is produced by continued or repeated exposure to elements of the work environment over a period longer than one work day or shift.⁴ The claimant's allegations span more than one work day; therefore, if the claimant wishes to pursue an occupational claim for stress from harassment, she should file a new occupation claim and present her evidence with that claim through her employing agency.

¹ *Dennis J. Balogh*, 52 ECAB 232 (2001).

² *Lori A Facey*, 55 ECAB ___ (Docket No. 03-2015, issued January 6, 2004).

³ *Theresa L. Andrews*, 55 ECAB ___ (Docket No. 04-887, issued September 27, 2004).

⁴ FECA Procedure Manual, 2-0800-2.

In accordance with the above findings, the decision of the Office dated July 21, 2010 is **remanded** for further development.

Date: MAR - 8 2011

Washington, D.C.



Carol Adams
Hearing Representative
for
Director, Office of Workers'
Compensation Programs