U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY J. STAUNER and DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT, Reno, NV

Docket No. 01-236; Submitted on the Record;
Issued January 23, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On May 6, 1999 appellant, then a 46-year-old special agent and criminal investigator, filed an occupational disease claim alleging that on March 16, 1999 she sustained job-related stress due to a number of employment incidents and conditions.

In a report dated April 19, 1999, Dr. Leslie Faricy, appellant's clinical psychologist, indicated that she treated appellant since October 1998 for anxiety and depression related to the environment in which she was working. She diagnosed generalized anxiety disorder and dysthymic disorder. Dr. Faricy opined that appellant's symptoms were closely related to a hostile work environment and it would be harmful to have appellant continue in that environment. She recommended that appellant be placed on disability leave until other work arrangements could be made.

In an April 26, 1999 report, appellant's treating physician, Dr. Jane Punsalang, an internist, indicated that appellant was seen for severe anxiety and depression. She prescribed medical leave for a period of one to two months and work in another environment.

In a report dated May 26, 1999, Dr. Faricy indicated that appellant could return to work on September 13, 1999 if concerns about her work environment were addressed.

By letters dated June 9, 1999, the Office of Workers' Compensation Programs advised appellant and the employing establishment that additional factual and medical evidence was needed to establish her claim.

By letter dated July 9, 1999, appellant submitted copies of documents related to an Equal Employment Opportunity (EEO) complaint in which she alleged ongoing sexual harassment and retaliation on the part of her supervisor, Donette Gordon. The complaint included twenty issues

which were addressed by the employing establishment. Appellant alleged that on June 20, 1995, Ms. Gordon exposed herself when they were traveling alone in a rental car that appellant was driving. She alleged that she had just interviewed a suspect in a wild horse case in Lincoln County, Nevada and Ms. Gordon had insisted on accompanying her. Appellant did not file an EEO complaint as Ms. Gordon had just become her supervisor. Appellant alleged that, upon learning of her EEO complaint, Ms. Gordon proceeded to: harass her, treated her in a disparate way from her male counterparts; denied training opportunities; reassigned her back-up weapon to a male coworker; threatened to demote her from a GS 12 to a GS 11; assigned her inferior equipment; suspended her from her job; transferred her to the BLM office in Reno; ridiculed her to lower level BLM employees, including implying that she could not be trusted. Appellant also alleged that Ms. Gordon made unrealistic demands; withdrew her participation from law enforcement meetings and questioned her leave usage. Appellant alleged that confidential information supplied to Ms. Gordon regarding Randy August, an assistant state ranger, was indirectly provided to him, resulting in a discrimination complaint against appellant. Appellant alleged that she was accused of compromising a search warrant in December 1995, and received an unjustified unpaid five-day suspension.

By letter dated July 29, 1999, the employing establishment controverted appellant's claim. Paul J. Ward, personnel officer, indicated that, on September 17, 1998, appellant was issued notice of a proposed five-day suspension and directed reassignment from Las Vegas, Nevada to Reno, Nevada. The reason for the personnel action was failure to perform the duties of her position. On October 30, 1998 the proposal was sustained and appellant was suspended from duty without pay, from November 9 to November 13, 1998. Mr. Ward advised that appellant initially, through a written memorandum, chose not to accept the reassignment and on December 1, 1998 was issued a notice of proposed removal. Appellant subsequently advised the employing establishment that she would take immediate sick leave due to stress starting December 2, 1998; however, she rescinded the request because of a desire to attend training from December 7 to December 9, 1998. On December 10, 1998 she was placed on sick leave and on December 11, 1998, appellant's legal counsel advised the employing establishment that appellant was willing to accept the reassignment. The proposed removal was retracted and appellant's reporting date to the Nevada State Office in Reno was scheduled for February 28, 1999. From December 14, 1998 to January 16, 1999, appellant was on a combination of approved sick leave (60 hours) and annual leave (124 hours). On January 25, 1999 she requested an extension of her reporting date to her new duty station. Her request was approved and her relocation postponed until March 14, 1999. Mr. Ward stated that, from March 1 to March 5, 1999, appellant took a house hunting trip to Reno, Nevada and on March 16, 1999, she reported for duty. Her immediate supervisor was not physically present in the office, however, appellant was given an assignment to complete by the end of the week. Mr. Ward indicated that, after leaving the office that same day, appellant left a voice message that evening informing the acting supervisor that she would be departing for a medical appointment in Las Vegas, Nevada and would not be in the office on March 17, 1999. On March 22, 1999 the personnel officer was informed by appellant that she was beginning an immediate two-month leave of absence. As of March 28, 1999, appellant had exhausted all her annual and sick leave and she was placed on absence without official leave (AWOL) status due to inadequate documentation relating to her illness. Mr. Ward explained that appellant had repeatedly ignored requests for appropriate medical documentation to support her absence. He stated that there were no differences in

deadlines, quotas, travel and intense assignments between appellant and other employees assigned to detached workstations. Mr. Ward advised that appellant had filed a complaint in 1996, against her immediate supervisor alleging disparate treatment and hostile work environment and noted that it was pending through the EEO system.

Appellant submitted copies of her EEO claim and exhibits. She responded to the Office's September 27, 1999 letter and provided additional details regarding a telephone call she received from a Mark Pirtle at her home.

On October 29, 1999 Levne Hollinger, acting personnel officer, denied that Ms. Gordon ever exposed herself to appellant. Ms. Hollinger denied that unrealistic demands were placed on appellant and offered that appellant was required to perform the duties of a criminal investigator. Ms. Hollinger advised that an investigation was taken regarding harassment allegations and information provided by several female officers was given to the National Law Enforcement Office to assist in the investigation. No evidence substantiated the allegations and it was denied that Ms. Gordon cautioned appellant regarding the ranger involved. In response to questions regarding a compromised search warrant in December 1995, Ms. Hollinger stated that a search warrant was executed and appellant requested to assist, however, it became apparent that the suspect(s) were aware of the search warrant and were prepared for the arrival of BLM law enforcement. Shortly thereafter, the United States Attorney's Office in the Arizona District initiated an investigation regarding the compromise of the warrant. All officers, including appellant and Ms. Gordon were requested to submit to an interview. Appellant refused and repeatedly failed to cooperate with investigators. Given her behavior, the U.S. Attorney's Office subpoenaed appellant to a grand jury hearing in order to ascertain any involvement. Appellant was found to have no knowledge in reference to obstruction and at no time was she charged or accused of violating any criminal law or regulation. Finally, in response to incidents occurring on August 23 and 24, 1998, Ms. Hollinger advised that appellant refused to participate in an arrest warrant briefing and execution scheduled for later in the day in the Phoenix, Arizona area. Shortly thereafter, appellant refused a direct order to respond to the Nevada State office. On August 25, 1998 at approximately 3:00 p.m. appellant did appear at a meeting with Ms. Gordon to discuss her refusal of a law enforcement assignment. After discussing the incident, Ms. Gordon made the decision to suspend appellant for five working days, a decision that was upheld by Ms. Gordon's supervisor.

In a report dated April 27, 1999, Dr. Nabil Jouni, a psychiatrist, diagnosed generalized anxiety disorder, dysthymic disorder and noted that appellant was experiencing feelings of hopelessness and helplessness. He treated appellant from April 27, 1999 up to and including Febraruary 2000 and included his treatment notes.

In a return to work status form dated January 27, 2000, Dr. Faricy advised that appellant could not return to work for Ms. Gordon as it would be detrimental to appellant's well being.

By letter dated June 8, 2000, appellant requested a status and enclosed a copy of a decision from the State of Nevada Employment Security Division reversing an original decision to deny her unemployment benefits.

By decision dated July 14, 2000, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors.

By letter dated July 24, 2000, appellant requested reconsideration. In addition, she outlined that she had responded to the Office's September 27, 1999 letter and forwarded it to the Office.

By decision dated October 10, 2000, the Office denied modification on the grounds that the evidence was insufficient to warrant modification of its prior decision of July 14, 2000.

The Board finds that appellant has not established that she sustained employment-related stress.

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.[1] Workers' compensation law is not applicable to each and every injury or illness that is somehow related to employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage 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 comes within coverage of the Federal Employees' Compensation Act.[2] On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.[3]

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 the Act.[4] This includes matters involving the training or discipline of employees. In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of the case to determine whether the employing establishment acted reasonably.[5]

Furthermore, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or

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

[2] 5 U.S.C. § 8101 *et seq.*

[3] *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[4] *See Gregory N. Waite*, 46 ECAB 662 (1995).

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

discrimination are not compensable.[6] Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. The issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting her allegations with probative and reliable evidence.[7]

The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegations that her supervisor: cancelled her scheduled training conferences; denied her the opportunity to attend other training conferences; required her to obtain authorization before purchasing supplies for her investigations; required her to rewrite a large number of cases that had been closed; placed written reprimands in her file because she failed to present case plans by a certain date; questioned her regarding the use of sick leave; required her to provide medical verification; issued unfair performance evaluations and wrongly denied leave, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.[8] Although the handling of disciplinary actions, evaluations and leave requests, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[9] The Board has also held that an employing establishment's refusal to give an employee training as requested is an administrative matter, which is not covered under the Act unless the refusal constitutes error or abuse.[10]

Appellant submitted voluminous materials that included transcripts and information from her EEO claim, which contain allegations of harassment, retaliation and discrimination on Ms. Gordon's part. The Board finds, however, that none of the documents provides sufficient support to establish that the employing establishment committed error or abuse in these administrative matters with specific reference to appellant or that she was verbally abused by Ms. Gordon. Furthermore, no final action occurred regarding appellant's EEO claim and the employing establishment submitted several statements denying appellant's allegations.

Regarding appellant's contention that she was subjected to harassment and humiliation by her supervisor, an employee's complaints about the manner in which supervisors perform supervisory duties or the manner in which a supervisor exercises supervisory discretion falls, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor must be allowed to perform his or her duties and that, in the performance of these

[6] *See Michael Ewanichak*, 48 ECAB 354 (1997).

[7] *Id.*

[8] *See Janet I. Jones*, 47 ECAB 345 (1996).

[9] *Id.*

[10] *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

duties, employees will at times dislike actions taken. Mere disagreement or dislike of a supervisory or management action is not compensable, absent evidence of error or abuse.[11] In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[12] To support such a claim, a claimant must establish a factual basis by providing probative and reliable evidence.[13] Mere perceptions of harassment or discrimination are not compensable under the Act.[14] In the present case, the employing establishment denied each of the allegations that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors or coworkers.[15] Appellant alleged that supervisors and coworkers made statements and engaged in actions which she believed constituted harassment and discrimination, but she provided no supporting evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.[16] Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Regarding appellant's allegations that she wished to work in a different environment without her supervisor, Ms. Gordon, the Board has previously held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform her regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.[17] Thus, appellant has not established a compensable employment factor under the Act in this respect.

Similarly, appellant's allegations regarding not being supplied information relevant to her case was not substantiated. Her supervisor indicated that the information she withheld was not relevant to appellant's case and was needed for a separate investigation. The Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regularly or specially assigned employment duties, are not considered to be employment factors.[18]

However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of

[11] *Daniel B. Arroyo*, 48 ECAB 204 (1996).

[12] *Ruth S. Johnson*, *supra* note 5.

[13] *See Barbara J. Nicholson*, 45 ECAB 803 (1994).

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

[15] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[16] *See William P. George*, 43 ECAB 1159, 1167 (1992).

[17] *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

[18] *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[19] The employing establishment had repeatedly denied appellant's allegations. Appellant has provided insufficient evidence to support her allegations that the employing establishment erred or acted abusively in any of the named administrative actions and has not established a compensable employment factor under the Act with respect to these administrative matters.

Appellant alleged that her supervisor referred to Germans as "bitches" and that she was German. She acknowledged that her supervisor did not directly call her a "bitch." Appellant also alleged that she was informed about a conversation that Larry Smith overheard between Mark Pirtle and Ms. Gordon, denigrating her competence. The allegation was denied. Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.[20] Appellant has not shown how any comments were directed at her or would rise to the level of verbal abuse within the coverage of the Act.[21]

The Board, therefore, finds that in this case appellant's emotional condition is considered self-generated.[22] She has failed to establish that she sustained an emotional condition in the performance of duty.[23]

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof to establish that he sustained an emotional condition in the performance of duty. Consequently, as appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record.[24]

[19] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[20] *Harriet J. Landry*, 47 ECAB 543, 547 (1996).

[21] *See, e.g., Alfred Arts*, 45 ECAB 530, 543-44 (1994) and cases cited therein (finding that the employee's reaction to coworkers' comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction). *Compare Abe E. Scott*, 45 ECAB 164, 173 (1993) and cases cited therein (finding that a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

[22] *Sandra Davis*, 50 ECAB 450 (1999).

[23] As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).

[24] *Id.*

The December 10 and July 14, 2000 decisions of the Office of Workers' Compensation Programs dated are hereby affirmed.

Dated, Washington, DC
January 23, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member