

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

JEANNIE K. MALLICK-LIYANAGE, Appellant	)	
	)	
and	)	<b>Docket No. 03-1743</b>
	)	<b>Issued: May 14, 2004</b>
DEPARTMENT OF JUSTICE, IMMIGRATION	)	
& NATURALIZATION SERVICE,	)	
Anaheim, CA, Employer	)	
	)	

<i>Appearances:</i> Thomas Martin, Esq., for the appellant Office of Solicitor, for the Director	<i>Case Submitted on the Record</i>
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**DECISION AND ORDER**

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

**JURISDICTION**

On July 1, 2003 appellant, through her attorney, filed a timely appeal from the April 1, 2003 decision of the Office of Workers' Compensation Programs' hearing representative which affirmed the Office's March 8, 2002 decision finding that appellant failed to establish that she sustained an emotional condition in the performance of duty. 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 is whether appellant has established that she sustained an emotional condition in the performance of duty.

**FACTUAL HISTORY**

On May 10, 2001 appellant, then a 59-year-old asylum officer, filed an occupational disease claim alleging that on July 1, 1995 she first realized that her neck, left shoulder and wrist, aggravated knee injury, post-traumatic stress disorder, depression and anxiety were caused by

factors of her federal employment. Appellant stated that the employing establishment refused to accommodate her knee injury, failed to timely authorize a knee brace, breached a settlement agreement and engaged in constructive demotion/discharge which caused her post-traumatic stress disorder, anxiety, panic attacks, uncontrolled hypertension and neuritis of the right eye. On April 4, 2001 appellant stopped working. She has not returned to work.

In detailed narrative statements and letters, appellant alleged that she was harassed, discriminated and retaliated against and ignored by her supervisors. Appellant submitted numerous medical reports regarding her physical and emotional conditions.

By decision dated March 18, 2002, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition in the performance of duty. The Office determined that the following incidents occurred, but were not considered to be compensable factors of employment: (1) supervisory asylum officer (SAO) Patricia Franks informed appellant on October 14, 1999 that there was no money available to purchase the file cabinet she requested; (2) on July 30, 1998 appellant received a letter from Irene Martin, deputy director of the employing establishment, regarding complaints about the way she treated two coworkers and the denial of her request for advanced sick leave; (3) on October 25, 1999 management refused to allow appellant to use award hours to attend an appointment at the Department of Labor; (4) stress resulted from management's refusal to assist employees with Office issues; (5) the employing establishment did not help appellant get her leave back; (6) on May 18, 1999 the employing establishment discriminated against appellant by denying her request for administrative leave to prepare for her workers' compensation hearing; (7) the employing establishment refused to advance appellant sick leave for eye surgery; (8) on May 24, 1999 the employing establishment would not allow appellant to use "company time" to work on her workers' compensation claim; (9) on July 13, 1999 the employing establishment denied appellant's request for an extension to prepare her response for a step-three grievance; (10) the employing establishment denied appellant's request for administrative leave to make telephone calls related to her grievance and failed to respond to a new knee injury; (11) SAO Franks made suggestions regarding appellant's organization of her work space; (12) asylum officers were not allowed to investigate cases; and (13) on March 22, 2001 appellant's supervisor refused to allow her time on the clock to contact her claims examiner and complete claim forms.

The Office found that the following incidents were not established as having occurred: (1) the employing establishment retaliated against appellant by moving her to an office with a window on the third floor when they knew her multiple sclerosis (MS) caused sensitivity to light; (2) the employing establishment failed to provide assistance to appellant during her move to the third floor; (3) appellant first experienced stress after the May 2, 1995 knee injury when the Office initially denied a leg brace prescribed by her doctor; (4) on May 19, 1999 appellant's managers discriminated against her by failing to ask questions or obtain knowledge regarding her workers' compensation claim; (5) on June 9, 1999 while bending to access files that were on the floor appellant experienced increased knee symptoms and the employing establishment did not know how to report her injury to the Office; (6) appellant's MS was exacerbated because her supervisors failed to help her with workers' compensation issues and failed to provide ergonomic furniture; (7) appellant's mental stress was exacerbated by her efforts to communicate with the Department of Labor; (8) appellant received a less than excellent rating as a retaliatory action; (9) management failed to comply with their written Equal Employment Opportunity (EEO)

Commission agreement regarding appellant's use of administrative leave; (10) the employing establishment initially denied an extension allowing time for appellant to prepare her step-three response for a grievance; (11) the employing establishment's response to a step-two grievance was condescending, insulting and "saturated with untruths;" (12) the employing establishment blatantly refused to accommodate appellant by installing a bin in the wrong place in her office; (13) the employing establishment did not allow a union representative to attend appellant's workers' compensation hearing; (14) on July 1, 1999 appellant received a "disparaging" memorandum from management referring to her neurologist's May 11, 1999 letter; (15) appellant suffered from numerous health problems resulting from job stress; (16) appellant experienced nightmares and a fear of going places and talking to people; (17) a male Somalian applicant shouted at appellant and beat on her desk and the employing establishment ignored her advice that the applicant was committing fraud; (18) another male applicant threatened to take action against appellant; (19) appellant often felt nervous as male applicants from a number of countries shouted at her and appeared to feel it was not proper for a female to question them; (20) asylum officers were not allowed to reveal the names of prospective asylees, and thus, they were unable to verify information provided; (21) appellant's numerous failed attempts to have a meaningful dialogue with management resulted in high blood pressure; (22) in November 2000 appellant refused to perform an alleged illegal activity that her supervisor, Bruce Lumsden, requested of her concerning a Middle Eastern applicant; (23) in March 2001 Mr. Lumsden allegedly yelled at appellant, threatening adverse personal action and refused to contact her Office claims examiner about an approved occupational disease claim; (24) appellant felt chest pain and became very apprehensive about returning to the office after completion of a foreign detail in March 2001 because she knew Mr. Lumsden would find a way to retaliate against her for complaining about him; (25) appellant felt guilty every day and night fearing the possibility that she had admitted a dangerous terrorist into this country; (26) appellant experienced a panic attack following a showing of the movie "Blackhawk Down" because it reminded her of her job; and (27) the employing establishment retaliated against appellant in processing her Form CA-7 claim for leave buy back.

The Office reviewed the medical evidence of record and found it insufficient to establish that appellant sustained an emotional condition caused by compensable factors of her federal employment. Accordingly, the Office denied appellant's claim for compensation on the grounds that she did not establish that she sustained an emotional condition in the performance of duty.

In an April 10, 2002 letter, appellant requested an oral hearing before an Office hearing representative.<sup>1</sup> Subsequent to the October 31, 2002 hearing, appellant submitted several detailed narrative statements and letters reiterating her previous allegations.

In an April 1, 2003 decision, the hearing representative affirmed the Office's March 8, 2002 decision finding upon review of the record and testimony that appellant failed to establish that she sustained an emotional condition in the performance of duty.

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<sup>1</sup> Subsequent to her request for an oral hearing, appellant retained an attorney to represent her before the Office.

## LEGAL PRECEDENT

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.<sup>2</sup> 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.<sup>3</sup>

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 workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. On the other hand, where disability results from an employee's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>4</sup>

In emotional condition cases, the Office must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed to be factors of employment and may not be considered.<sup>5</sup> Therefore, the initial question is whether appellant has alleged compensable factors of employment that are substantiated by the record.<sup>6</sup>

## ANALYSIS

Appellant has alleged that she was targeted, retaliated and discriminated against by the employing establishment and the Office. Actions of an employee's supervisor, which the employee characterizes as discrimination or harassment may constitute a compensable factor of employment. However, for discrimination or harassment to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur.<sup>7</sup>

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<sup>2</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>3</sup> *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>4</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> *Margaret Kryzcki*, 43 ECAB 496, 502 (1992).

<sup>6</sup> *Donald E. Ewals*, 45 ECAB 111, 122 (1993).

<sup>7</sup> *Anna C. Leanza*, 48 ECAB 115 (1996); *Shelia Arbour (Vincent E. Arbour)*, 43 ECAB 779 (1992).

Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.<sup>8</sup>

Appellant has alleged that the employing establishment refused to recognize her disabilities and provide accommodations as required by law. In support of her contention, appellant submitted an August 12, 2001 narrative statement of Edward Baltzell, her former coworker, who stated that he had no reason to doubt appellant's credibility. He also stated that appellant was injured in May 1995 due to a fall she suffered at work. Mr. Baltzell witnessed appellant's knee give out at least 20 times and the pain she experienced. He stated that appellant developed upper extremity pain, which he noticed when he saw her in tears after a long interview. Mr. Baltzell further stated that the employing establishment was grossly inadequate in complying with EEO principles and in the treatment of employees with disabilities. His statement failed to specifically identify how the employing establishment violated EEO principles in failing to accommodate appellant's disabilities.

In a July 19, 1999 letter, Robert V. Looney, director of the employing establishment, advised appellant that he was responding to a May 11, 1999 letter from her physician, Dr. Qun Xu, a Board-certified neurologist, recommending that her work schedule and environment be modified due to her multiple medical problems. Mr. Looney stated that the letter lacked any specific requests for accommodations other than a request for frequent breaks so that appellant could rest her eyes. He noted that this request was also nonspecific. Mr. Looney stated that requests for accommodation must be of a sufficiently specific nature so that the reasonableness of each measure could be determined. He indicated that Dr. Xu did not specify the duration or spacing of the breaks, whether the breaks would be taken after work on the computer or after interviewing and he did not explain whether this was a temporary postoperative measure or was ongoing. Mr. Looney noted the employing establishment's obligations under the Americans With Disability Act. Regarding the decision to move appellant to the third floor, Mr. Looney explained that it was predicated on her request to have modular furniture of the type that was on the third floor. He further explained that, although there may have been some discussion in the past in designing a workstation for appellant, that issue was never formally pursued nor approved. After consultation with the Employee Services Branch and other support branches, Mr. Looney stated that it was determined that moving appellant to the third floor was appropriate. Mr. Looney noted that there was no medical documentation in appellant's file that supported a formal request for accommodations or precluded a move to the third floor. In response to appellant's request for time "off the clock" for the move to the third floor, Mr. Looney stated that he would talk to appellant's supervisor about how much time was appropriate for her to finalize the move. He advised appellant to provide how much work remained unfinished and an estimate of the required time needed to finish. He further advised appellant that he could not offer her any additional cabinets or hardware, which was consistent with the restraints most staff worked under. He provided the Office's regulations defining accommodations and advised appellant about the type of information she should submit for any future requests for accommodations.

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<sup>8</sup> See *Lorraine E. Schroeder*, 44 ECAB 323 (1992); *Sylvester Blaze*, 42 ECAB 654 (1991).

An employing establishment memorandum to the file dated May 6, 1999 indicated that, although appellant never submitted any paperwork establishing that she had MS after being repeatedly asked to do so or anything about her physical limitations, accommodations were made. Appellant received a big screen monitor and she was moved to the third floor so that she could have the modular furniture she requested.

In an October 13, 1999 memorandum, SAO Franks responded to appellant's allegation that she was not provided with an appropriate file cabinet. SAO Franks informed appellant that no cabinets of the type she requested were available in the office, there was no money to buy them and management would make every effort to reasonably accommodate her needs. She stated that, as a result, she proposed and appellant agreed to the relocation of a file cabinet, crates and binders and the disposal of some of her information to accommodate appellant's needs.

Ron Barrett, an employing establishment labor relations specialist, advised appellant, in a March 20, 2000 memorandum, that her physician's request that she place cold compresses on her eyes during the duty day to ease pain could be accommodated by allowing her to take short breaks from her duties. Mr. Barrett further advised appellant that if her condition changed where she needed other accommodations, she should notify her supervisor at that time with the specific accommodation requirements deemed necessary by her physician.

On July 13, 2000 Gale Bloom, an employing establishment employee, requested voice activated software for appellant to accommodate her special needs. A delivery note indicated that an ergonomic chair was ordered for appellant.

The Board finds that the statements of Mr. Looney, SAO Franks, Mr. Barrett and Ms. Bloom and the employing establishment's May 6, 1999 memorandum consistently assert that the employing establishment attempted to accommodate appellant's disabilities. Thus, appellant has not established that the employing establishment refused to recognize her disabilities and provide appropriate accommodations for them.

Appellant has also alleged that the employing establishment and the Office denied a leg brace that was prescribed by her doctor. John Lafferty, director of the employing establishment, stated in his September 12, 2001 correspondence that he spoke to Charles Phillips, appellant's first-line supervisor at the time she filed her occupational disease claim, who stated that he was not aware of any claim by appellant to have a knee brace authorized around July 1995 due to her May 2, 1995 employment injury. He noted that management in the Los Angeles, California office was not aware of any circumstances in which appellant would be denied a knee brace if she chose to wear one. He further noted appellant's unhappiness with the treatment she was receiving from her first doctor and her desire to see a doctor of her choice. He stated that the employing establishment had nothing to do with these events.

As the employing establishment indicated that it was not aware of appellant's need for a leg brace and appellant has not submitted corroborative evidence such as, a witness statement, to establish that she was in fact denied a leg brace, she has not substantiated a compensable employment factor under the Federal Employees' Compensation Act.

Appellant has contended that the employing establishment breached an EEO settlement agreement. At the hearing, appellant testified that she did not receive an amended description of her position of special emphasis program manager and an annual performance rating. Mr. Baltzell provided in an October 16, 2002 narrative statement that he and appellant complained to upper management officials of the employing establishment when management refused to update their position description and to present an annual rating appraisal in violation of the employing establishment and EEO regulations.

Mr. Lafferty stated that management believed it had complied with all the terms of the settlement agreement signed by appellant on October 22, 1998 to resolve her EEO complaints. Further, he stated that he could not respond to appellant's allegation because she had not indicated how she believed the settlement agreement was breached.

Appellant did not specifically identify incidents where the employing establishment breached the EEO agreement. Thus, she has failed to establish a compensable factor of employment.

Appellant has also contended that she was constructively demoted and discharged by the employing establishment. Mr. Lafferty denied such action and noted that appellant was a current employee of the employing establishment. As the employing establishment has denied that appellant was demoted or discharged and she has failed to submit corroborative evidence, she has not established a compensable factor of employment.

Appellant has asserted that she experienced delays in the processing of her workers' compensation claims. She stated that she did not receive any help with her claims from the employing establishment. In an incomplete narrative statement dated October 17, 2002, Dr. St. Elmo Naumann, appellant's coworker, stated that he witnessed management treat appellant differently from other employees. He noted that in July 1998 appellant was in tears after an administrative officer slammed the telephone receiver in her ear when she asked whether the employing establishment had received her check for leave-buy-back compensation.

Mr. Baltzell stated that the employing establishment violated appellant's rights in failing to provide information about the processing of workers' compensation claims and to either hire or train sufficient personnel in the Office's procedures. In a November 12, 1998 note, Mr. Baltzell stated that he had contacted workers' compensation training personnel who would be able to provide training to managers and union representatives.

In a July 17, 2001 letter, John Sciascia, manager of the employing establishment's safety and health division, advised appellant about the employing establishment's procedures for processing workers' compensation claims including the duties of the injured party and supervisor. He also advised appellant that the Office makes the final decision as to whether a claim is accepted or denied and that the employing establishment cannot overturn the Office's decision.

Monica Dafforn, an employing establishment employee, and Ms. Martin addressed the provision of workers' compensation training in correspondence dated November 13 and 15, 1998. In her November 13, 1998 note, Ms. Dafforn questioned whether it was necessary

to pay for speakers to travel to the office to address a topic that they should not get overly involved with because the regional health and safety office handled all workers' compensation cases for their office. She stated, that in the past, Bruce Ramos, an administrative assistant, went to the training so that someone in the office with expertise could complete the forms. She further stated that the "LMR" position would be a logical one to use as a point of contact to provide training to supervisors. Ms. Martin stated in her November 15, 1998 note that the regional health and safety office had provided workers' compensation training to her office and there was no reason to pay for two people to come down from San Francisco, California when the region had historically provided this training free.

The Board has held that the processing of compensation claims bears no relation to day-to-day or specially assigned duties.<sup>9</sup> Although Dr. Naumann indicated that appellant became upset when an administrative officer slammed the telephone receiver in her ears when she asked whether her compensation check had been received by the employing establishment, the Board finds that appellant's allegation that this event caused her emotional condition relates to an administrative or a personnel matter for which she has not established that the employing establishment erred or acted abusively.<sup>10</sup> The statements of Mr. Sciascia, Ms. Dafforn and Ms. Martin establish that the employing establishment did not commit error or abuse in the handling of appellant's workers' compensation claims. Appellant has not established a compensable factor of employment.

Appellant also asserted that the employing establishment denied her request for administrative leave to attend an Office hearing and meetings with Employee Assistance Program (EAP) counselors while granting such requests to other asylum officers. Further, appellant alleged that the employing establishment did not give her time to prepare for her workers' compensation hearing and that a union representative was not allowed to go with her. In addition, she alleged that the employing establishment denied her request for advanced sick leave.

In a September 19, 1998 statement, Sara Arneson, an employing establishment employee, indicated that she was treated differently from appellant in that she was allowed to use administrative leave for appointments with EAP counselors. Similarly, Kathryn E. Mahar, an asylum officer, indicated in a September 28, 1998 statement that she was placed under administrative leave for her attendance at six counseling sessions with an EAP counselor in 1997 and 1998. Further, John Jaworski, an asylum officer, indicated in a July 23, 1999 statement that he was granted administrative leave to attend a workers' compensation hearing on October 21, 1998 with a union representative. Mr. Baltzell's October 16, 2002 narrative statement revealed that the employing establishment denied appellant's request to use administrative leave to attend an Office hearing and sick leave for eye surgery. In addition, Mr. Baltzell noted a delay by the employing establishment in restoring appellant's leave. Dr. Naumann's January 8, 2001 narrative statement provided that he was aware of appellant's May 1995 employment injury and her three EEO complaints. He alleged that employing establishment managers released confidential information about appellant's health condition, specifically her MS. He witnessed

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<sup>9</sup> See *George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

<sup>10</sup> See *Janet I. Jones*, 47 ECAB 345 (1996).

appellant become emotionally distraught over the employing establishment's refusal to provide work accommodations and grant her request for leave, handling of the Somalian applicant and threat to take adverse personnel action against appellant when she demanded that Mr. Lumsden telephone her workers' compensation claims examiner.

Issues pertaining to leave are an administrative matter, and therefore, not within appellant's performance of duty.<sup>11</sup> In this case, there is no evidence establishing that the employing establishment committed error or abuse in denying appellant's requests for leave. On August 21, 1998 Ms. Martin explained that appellant was denied further sick leave because she continued to use advanced sick leave that she did not request or was not authorized. She noted that when she granted appellant 117 hours of sick leave retroactively this brought her total to 240 hours for the year. She determined that, in light of appellant's abuse of 117 hours of advanced sick leave, no additional sick leave would be advanced for the remainder of the calendar year, *i.e.*, another 4 months. She stated that this was a reasonable decision. Ms. Martin also stated that if appellant was incapacitated for more than 5 days due to her present medical condition, she would advance her sick leave up to 74 hours with the concurrence of the director. She noted that appellant should first exhaust her annual leave and compensatory time and submit a written request for the additional advanced sick leave along with full medical documentation from her doctor.

In an August 19, 1999 letter, Ms. Martin reiterated the employing establishment's policies regarding the administration of leave including advanced sick leave. She stated, among other things, that employees may be granted sick leave not to exceed 240 hours.

Mr. Lafferty stated that the employing establishment had granted appellant a significant amount of advanced sick leave and she had been approved for leave donations under the Voluntary Leave Transfer Program to deal with her knee problems over the last six years. He noted that appellant was in a leave-without-pay status because she had used 240 hours of advanced sick leave, the maximum that could be provided to her by management under the relevant contract and she had used the maximum 12 weeks of leave allowed under the Family Medical Leave Act.

Although appellant's coworkers were granted administrative leave by the employing establishment, she has not demonstrated that error or abuse was committed by the employing establishment in denying her request for such leave. In addition, the statements of Ms. Martin and Mr. Lafferty point out that granting advanced leave to appellant was not in the best interest of the employing establishment, as appellant abused the leave policy and she had exceeded the limit for the year. Accordingly, appellant has not established a compensable factor of employment under the Federal Employees' Compensation Act.

Appellant has alleged that the employing establishment denied her request for an extension to file a grievance. This allegation involves an administrative matter and appellant has failed to submit evidence establishing that the employing establishment committed error or abuse in handling this matter. Thus, she has failed to establish a compensable factor of employment.

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<sup>11</sup> *Beverly Diffin*, 48 ECAB 125 (1996).

Further, appellant has alleged that the employing establishment ignored her warnings about admitting terrorists into the United States. She described an incident where she was waiting for a second file in the case of an Iraqi immigrant before issuing a decision, when the case was reassigned to another caseworker to conduct the interview. She stated that the case was subsequently reassigned to her with instructions to send the immigrant to court and she complained to her supervisor that the interviewing officer should handle the case.

Appellant described her reaction to watching the movie "Blackhawk Down" and her concern as to whether an asylum officer had granted cases involving terrorists due to the employing establishment's refusal to trust the officers' instincts and denial of their pleas to investigate some applicants. Appellant also described an incident where a Somali applicant shouted at her and demanded that she hear his case. Appellant stated that the applicant beat on her desk. She expressed her resultant nervousness about interviewing male applicants from various countries about credibility issues and noted management's refusal to put safeguards in place for this type of situation and to arrest the applicant. Appellant stated that there were other instances where male applicants yelled at her and the employing establishment refused to investigate the credibility of applicants. She noted the employing establishment's refusal to implement recommendations from a study conducted at its headquarters in San Francisco to assess the levels of post-traumatic stress disorder among asylum officers.

In response to appellant's allegation that terrorists were allowed to enter the country, Mr. Lafferty stated in a January 16, 2002 letter that her claim was not substantiated and that a fraud interdiction coordinator had been designated to assist asylum officers in the handling of possible fraudulent claims. In an email message of the same date, Douglas L. Vincent, an employing establishment supervisor, advised Mr. Lafferty that he did not recall the incident involving the Somalian applicant. He explained what actions he would have taken in such a situation, which included stopping the interview. The employing establishment provided an October 1, 1997 memorandum to asylum office directors and staff providing the procedures for processing claims filed by terrorists or possible terrorists.

Appellant responded to Mr. Vincent's comments by stating that being scared by an asylum applicant occurred within the performance of duty. She further stated that during training in 1994 the employing establishment stated that it would provide safety measures, but never did so. She also stated that there was no button under her desk to push for a security guard and there may not have been one in the building.

Appellant's fear that she could have granted entry into the United States to terrorists is self-generated, and thus, does not constitute a compensable factor of employment. Mr. Lafferty's statement provides that measures were established to assist asylum officers in the handling of fraudulent claims. Further, appellant's supervisor, Mr. Vincent, did not recall the incident with the Somalian applicant, but explained how he would have handled that type of situation.

Appellant has contended that Mr. Lumsden committed abuse in November 2000 by demanding that she perform an illegal activity regarding a Middle Eastern applicant. She complained to Mr. Lafferty who agreed with her legal analysis concerning the case in question. She also alleged that Mr. Lumsden consistently ignored her requests for work accommodations

and that he retaliated against her after she complained about him. Appellant related that in March 2001 Mr. Lumsden yelled at her, threatened her with adverse personnel action, refused to contact her Office claims examiner about an approved occupational disease claim and confronted her with a letter that was ordered removed from all office files by the October 1998 EEO settlement. She also related that Mr. Lumsden engaged in a prohibited personnel action by threatening to take personnel action against her when she refused to obey his order that she read approximately 350 administrative computer messages sent to her while she was away on a foreign detail, study new asylum case law and complex asylum regulations and to solve any and all issues surrounding her workers' compensation claims due to complications of her MS.

Appellant has not submitted any corroborative evidence establishing that Mr. Lumsden yelled at her. Further, the assignment of duties constitutes an administrative matter and she has not submitted evidence showing that the employing establishment committed error or abuse in handling this matter.<sup>12</sup>

Appellant's receipt of a low performance appraisal, the employing establishment's failure to give appellant an annual performance appraisal<sup>13</sup> and the filing of grievances by appellant against the employing establishment concerning her requests for leave certain work accommodations and assistance with compensation claims<sup>14</sup> involve administrative or personnel matters.

Regarding her low performance appraisal, appellant submitted a March 27, 2001 note from the officer-in-charge in Karachi, Pakistan expressing satisfaction with her job performance in that country. She stated that appellant was an outstanding officer and that she conducted extremely complicated interviews and she took the time and made the effort to do a complete, correct and fine job. Mr. Looney responded to appellant that it was obvious she made a fine impression with the officer-in-charge. Although the comments of the Pakistanian officer-in-charge and Mr. Looney indicate that appellant performed well in Pakistan, she has not submitted any evidence that the performance appraisal she received was erroneous or was intended to be a form of harassment. Further, appellant has not submitted any evidence establishing that the employing establishment committed error or abuse in not providing her with an annual performance rating.

Concerning appellant's grievances, the March 2, 1999 statement of James B. Schneider, a union representative, revealed that the employing establishment failed to fulfill EEO settlement agreements, issued retaliatory letters to appellant, refused to assist appellant with her compensation claims and mistreated appellant after she filed grievances against the employing establishment. Documents in the record indicate that Dr. Naumann, Mr. Baltzell and Judith Marty, an employing establishment employee, filed grievances against the employing establishment. In a July 19, 2002 affidavit, David Mills, an asylum officer, noted his involvement in several of appellant's grievances as her union representative. He stated that the

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<sup>12</sup> *James W. Griffin*, 45 ECAB 774 (1994).

<sup>13</sup> *Sammy N. Cash*, 46 ECAB 419 (1995).

<sup>14</sup> *Diane C. Bernard*, 45 ECAB 223 (1993).

employing establishment mistreated appellant for performing her work duties and for marrying a man from Sri Lanka, targeted her due to her disabilities and failed to provide reasonable accommodations and appropriate assistance to her. Mr. Mills noted his knowledge about the employing establishment's policy regarding employees' use of official time to contact the personnel office, EEO, EAP and the union. He also noted his understanding of the employing establishment's policy for assisting employees with their workers' compensation claims. He described appellant's physical disability and discussed the accommodations she requested. He noted other instances of harassment of employees by the employing establishment such as, Mr. Baltzell. He further noted the incident where Mr. Lumsden presented appellant with a letter that was ordered removed from the office file by the EEO on October 22, 1998. In a December 16, 2002 letter, Mr. Mills reiterated that he acted as appellant's union representative in the filing of her grievances against Mr. Lumsden.

Although appellant filed grievances regarding a number of her claims, the record does not contain any findings of these grievances, which show that the employing establishment committed harassment, discrimination or retaliation against her.

At the hearing, appellant testified that when she returned to work in April 1999 following eye surgery, her supervisor, Scott Nay, left 40 cases on her desk to be processed which caused her emotional condition. She stated that she filed a grievance to obtain additional time to process these cases. The record contains a copy of the employing establishment's corps values and goals, which discussed, *inter alia*, the requirement that appellant complete 18 interviews within a 2-week period, with adjustments for approved leave and other work assignments, in a timely manner. Mr. Lafferty acknowledged that, as pointed out by appellant's hearing testimony, she was given additional time to complete the cases given to her by Mr. Nay. The Board, therefore, finds that appellant has established a compensable factor of employment.

Appellant's burden of proof, however, is not discharged by the fact that she has established an employment factor, which may give rise to a compensable disability under the Federal Employees' Compensation Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.<sup>15</sup> Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>16</sup>

The Board finds that appellant did not meet her burden of proof to establish that her emotional condition was causally related to the employment factor of overwork because she did not submit rationalized medical evidence explaining how it caused her emotional condition. As

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<sup>15</sup> See *William P. George*, 43 ECAB 1159, 1168 (1992).

<sup>16</sup> *Id.*

previously noted, appellant submitted numerous medical documents. The relevant medical evidence of record includes an April 30, 2001 medical report of Dr. Richard J. Lettieri, a licensed clinical psychologist, finding that appellant sought treatment for reactive depression superimposed on a more long-term dysphoria. Dr. Lettieri noted that appellant sought treatment in 1997 and more currently due to conflict with the administration at her job. He did not specifically identify compensable employment factors responsible for the conflict appellant experienced with the administration at work which caused her emotional condition. Thus, Dr. Lettieri's report is insufficient to establish appellant's burden.

In a July 9, 2001 medical report, Dr. Ralph W. Gant, a licensed psychologist, provided a detailed explanation of the tests he administered to appellant, history of appellant's medical treatment, work-related problems, personal background and his findings on examination. He diagnosed mood disorder due to MS, employment-related knee injury, visual problems, fibromyalgia and visual difficulties with a major depressive-like episode on Axis I. He also diagnosed chronic post-traumatic stress disorder on Axis I. He opined that, although appellant's mood disorder due to general medical conditions may have had its initial etiology in her earlier years of visual difficulties, marital conflicts and other incidents, she was able to obtain employment with the employing establishment and join an elite group of asylum officers. He however, opined that appellant's employment-related knee injury and worsening knee condition over the years combined with what she perceived as not only the employing establishment's lack of cooperation in facilitating her care, discriminatory behavior towards her, refusal of her request for time, the necessary forms and guidance to pursue medical care for her work-related problems and other conditions, her workers' compensation claims, EEO grievances, violation of sick leave and administrative leave policies, failure to provide adequate accommodations for her disability in the workplace, appellant's capacity to cope had been dramatically compromised. He further opined that the stress associated with threats to appellant's employment and career, her livelihood and integrity of her family have all combined with her medical conditions to severely aggravate a preexisting post-traumatic stress disorder to the point of whether it was doubtful that she would be able to return to work at the employing establishment or a similar setting. He stated that appellant's post-traumatic stress disorder was likely permanent based on all accounts in the literature and she required complex psychotherapy to begin to resolve and cope with these conditions in the future. Dr. Gant did not explain how appellant's employment-related knee injury caused her emotional condition. Further, as previously found above, appellant has not established that she was discriminated against by the employing establishment, that the employing establishment failed to accommodate her medical conditions, assist her in the processing of her workers' compensation claims and EEO complaints or committed error or abuse in the handling of her leave requests. Further, Dr. Gant did not opine that the accepted employment factor of overwork was responsible for appellant's emotional condition. Therefore, Dr. Gant's report does not establish appellant's burden.

In his August 18, 2001 report, Dr. Gant opined that appellant suffered from mood disorder due to MS, an employment-related knee injury, visual problems and fibromyalgia and temporomandibular problems. He further opined that appellant's chronic post-traumatic stress disorder was due to a hostile environment at work. Although Dr. Gant found that appellant's employment-related knee injury was one of the causes of his mood disorder which constitutes a

compensable employment factor,<sup>17</sup> he did not provide any medical rationale explaining how or why the knee condition caused appellant's emotional condition. Further, he did not specifically identify specific work incidents that were responsible for appellant's emotional condition. Therefore, the Board finds that his report is insufficient to establish appellant's burden.

In his undated report, Dr. Gant stated that appellant's major depressive disorder was due to her physical conditions. As he did not attribute appellant's emotional condition to a compensable work factor, his report does not establish appellant's burden.

An August 21, 2001 medical report of Dr. Judy Linnan, a psychologist, contained a diagnosis of several physical conditions and emotional conditions, which included severe major depressive episode and chronic post-traumatic stress disorder. Dr. Linnan stated that appellant experienced psychological stressors that were employment related due to persecution and continued abusive treatment at work and fears of the future. As Dr. Lettieri, Dr. Linnan did not specifically identify compensable employment factors that caused appellant's emotional conditions. In her September 11, 2001 medical report, Dr. Linnan found that appellant's post-traumatic stress disorder was caused by her fighting of a bureaucratic system to resolve several EEO job-related issues. As previously found, appellant's filing of EEO complaints does not constitute a compensable employment factor, thus, Dr. Linnan's report is insufficient to establish appellant's burden.

In an October 21, 2002 medical report, Dr. Craig A. Muir, a psychologist, diagnosed several physical conditions, as well as, mood disorder due to a general medical condition and chronic post-traumatic stress disorder. Dr. Muir did not address whether appellant's emotional conditions were caused by the accepted employment factor of overwork. Thus, his report does not satisfy appellant's burden.

As appellant has failed to submit rationalized medical evidence establishing that her emotional condition was caused by the accepted employment factor of overwork, she has failed to meet her burden of proof in this case.

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<sup>17</sup> *Gaare R. Davis*, 48 ECAB 612 (1997); *Kathryn Haggerty*, 45 ECAB 383 (1994).

**CONCLUSION**

The Board finds that appellant has failed to establish that she sustained an emotional condition in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 1, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 14, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member