United States Department of Labor
Employees' Compensation Appeals Board

CYNDIA R. HARRILL, Appellant	)	
and	)	**Docket No. 04-399**
	)	**Issued: May 7, 2004**
DEPARTMENT OF THE NAVY, LEGAL SERVICE OFFICE, Bremerton WA, Employer	)	

Appearances:
Cyndia R. Harrill, *pro se*
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On December 2, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 12, 2003 denying her emotional condition claim. 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 met her burden of proof to establish that she sustained an emotional condition in the performance of her federal duties.

FACTUAL HISTORY

On February 6, 2003 appellant, then a 44-year-old legal assistant, filed an occupational disease claim alleging that harassment by her supervisor and assistant supervisor caused her to experience stress. In support of her claim, appellant submitted a February 25, 2003 statement in which she indicated receiving numerous awards in the past but that recent changes in supervisory

rules caused things to get out of control. Appellant noted that her previous supervisors were civilians, but that she was now being supervised by Navy personnel who treated her as if she was in the military. Appellant alleged that her lunch hours were changed from afternoons to 10:00 a.m. and it was hard for her to find a place open to have lunch. Appellant added that after her lunch period was changed back to the afternoons the timing was irregular, making it hard to plan lunch. Appellant was denied leave to register her children for school and was told that it was "piss poor planning" by her to request the leave. After missing three days of work due to an illness, she was told she needed to have a note from a doctor. She contended that office policy required a doctor's note only after missing more than three days. Appellant stated that she was treated disrespectfully the prior October when Annette Hembree told her that "paybacks were a bitch" after appellant asked her to cover a lunch break. Appellant alleged that Ms. Hembree also initiated gossip, making it difficult to work as a team. Ms. Hembree allegedly told coworkers that she had head lice and subsequently shook her head over appellant and laughed. Appellant stated that she was reprimanded for giving work to others. Appellant was allegedly told by Jodi Bell, a legal assistance attorney, to never draft a legal document but was later told by a legal assistance attorney Hollis M. Nickens to draft a power of attorney. Ms. Bell allegedly signed her leave statement in the absence of Ms. Nickens, her immediate supervisor. When Ms. Nickens returned she questioned appellant as to why she did not seek her authorization for leave and later suggested that appellant was calling Ms. Bell a liar. According to appellant, Ms. Nickens later apologized. Appellant alleged that Lieutenant Commander Colleen Glaser-Allen told her that she had no entitlement to breaks and could not use the telephone for personal calls exceeding five minutes. LCDR Glaser-Allen issued appellant a letter of caution after accusing her of saying terrible things about her supervisor in front of clients and changing an appointment on a computerized schedule. Appellant stated that after reviewing a summary of the confrontation appellant had with her supervisor she asked LCDR Glaser-Allen to include that Ms. Nickens apologized and that appellant felt harassed, but LCDR Glaser-Allen refused to include either.

In a February 3, 2003 report, Dr. Richard Tanaka, a family practitioner, wrote that appellant presented with concerns of on-the-job stress related to harassment by two female attorneys. He diagnosed stress and depression probably due to her work and referred her to a clinical psychologist. In a February 20, 2003 report, Steve Savlov, Ph.D., a clinical psychologist, wrote that appellant presented appearing scattered and agitated due to harassment by female attorneys at work. He stated that appellant went from welfare to college and was now supporting herself and two children and the problems at work implicated her integrity and income. He diagnosed general anxiety disorder and panic disorder with moderate symptomatology.

In a February 28, 2003 letter, LCDR Glaser-Allen stated that she was the head of the Legal Assistance Department team and that appellant's statements were not true and taken out of context. She noted that appellant had been counseled many times over the two and half years she worked there. LCDR Glaser-Allen stated that appellant had a history of personality conflicts with her supervisors; noting that a conflict on January 27, 2003 resulted in issuing appellant a letter of caution. She indicated that appellant experienced stress in her personal life as she was breaking up with a boyfriend and her mother was ill. The record contains a February 4, 2003 letter of caution signed by LCDR Glaser-Allen that stated appellant was unprofessional in front of clients, sent out legal documents that were not approved by attorneys and failed to provide proper notice of illnesses. The record contains several emails to appellant from her supervisors

reprimanding her for actions inconsistent with office policies regarding the use of leave and giving clients unauthorized advice.

In an April 18, 2003 statement, Lieutenant Anthony Chavez stated that he was appellant's first supervisor and frequently had to counsel her to avoid giving legal advice. In an April 21, 2003 statement, D.E. Rieke stated that he formerly supervised appellant and often instructed her to avoid giving legal advice, that other employees had problems with appellant and she often disregarded the chain of command. In a April 22, 2003 statement, Lieutenant Jonathan Rickets stated that he supervised appellant from July to October 2002 and he never witnessed or heard of any harassment towards her. He indicated that appellant was a persistent problem for management because she was unprofessional with clients, refused to follow the chain of command, often had a bad attitude and had trouble working with others younger than her.

In a statement received on April 28, 2003, Ms. Bell stated that in January 2003 appellant approached her to sign a leave request that appellant said Ms. Nickens had approved; which turned out to be false. On January 9, 2003, contrary to office policy, appellant told a client that she would track down the client's spouse and get a power of attorney signed. Ms. Bell stated that appellant took leave early and showed blatant disregard for office policy when she drafted legal documents for clients without attorney approval.

In a statement received on April 28, 2003, Ms. Hembree stated that she was the Leading Petty Officer and that she briefly scheduled appellant to take lunch at 10:00 a.m. to accommodate training schedules. She noted that lunch schedules were rotated and that appellant would often not comply with the schedule causing others to miss their scheduled lunch times. Ms. Hembree did say to appellant that "paybacks are a bitch" but indicated it was a joke after appellant was two hours late returning from lunch. She noted that the policy regarding personal telephone calls applied to all employees and not just appellant. Ms. Hembree stated that appellant ignored repeated requests to inform her that she needed help rather than asking others to do her work and that appellant was very defensive when told not to give legal advice.

In an April 23, 2003 statement, LCDR Glaser-Allen wrote that appellant's statement that her supervisors did not have experience with the civilian workforce was not true, appellant was not denied breaks, just fixed times for breaks, as the workflow was unpredictable. She refused to include the word "harassment" in a memorandum summarizing a meeting because appellant did not use that term in the meeting. LCDR Glaser-Allen stated that appellant might feel harassed because she attempted to hold appellant accountable by documenting conversations and agreements between them.

In an April 22, 2003 statement, Ms. Nickens stated that she supervised appellant from October 2002 through March 2003 and that Ms. Hembree did say to appellant that "paybacks are a bitch" but she subsequently apologized. Ms. Nickens noted that Ms. Hembree could be abrasive, but he never saw her be abusive to anyone. She denied that appellant was treated as if she was in the military or that appellant was told that she could not take leave to register her kids for school. Ms. Nickens noted that there was another telephone in the back Office to be used for longer personal telephone calls and the email appellant received regarding the need for a doctor's

note was simply a reminder of office policy. Finally, she noted that appellant frequently violated office policy about sending out unexecuted documents.

In a statement received on April 28, 2003, appellant indicated that she had previously drafted legal documents for attorneys and her supervisors were inconsistent about the policy creating confusion and stress. She stated that her medical condition was directly related to confrontations she had with supervisors and other military personnel who harassed her. Appellant noted that the problems with her boyfriend were not serious and they were still together. She added that her mother was more than ill. Appellant added that Ms. Hembree showed a lack of respect toward others and was a frequent gossip. Appellant submitted an April 21, 2003 statement from Loren Burnett, a union representative, who stated that appellant contacted her on February 5, 2003 extremely upset and was under a great deal of stress due to unwarranted harassment from naval officers. The record contains an August 6, 2001 "Time Off Award" given to appellant for her customer service skills. The record also contains a May 2, 2001 statement from Jerome Still who wrote that he witnessed Lt. Chavez use body language to embarrass appellant and blame her for making a client wait 20 minutes to see him.

In a September 12, 2003 decision, the Office found that appellant established only one compensable factor, that she was told that "paybacks were a bitch." The Office denied appellant's claim finding the medical evidence insufficient as it failed to explain how appellant's diagnosed condition was causally related to the accepted factor.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[1] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.[2]

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 employment factors.[3] This burden includes the submission of a detailed

[1] 5 U.S.C. §§ 8101-8193.

[2] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[3] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[4]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, 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 factors of employment and may not be considered.[5] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. 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.[6]

ANALYSIS

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, thus, initially review whether the alleged incidents and conditions of employment are compensable under the terms of the Act.

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions by denying her use of the telephone for extended personal calls and denied her a fixed time for lunch or breaks, wrongly denied leave, improperly assigned work duties, and unreasonably monitored her activities at work such as instructing her to not send unexecuted documents, 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.[7] 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.[8] 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 the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[9] However, appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters. LCDR Glaser-

[4] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[5] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[6] *Id.*

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

[8] *Id.*

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

Allen and Ms. Hembree stated that appellant was not refused leave requests, that she was given breaks, but not just at fixed times, because of the unpredictability of the work flow, and that lunches were rotated and occasionally started as early as 10:00 a.m. due to training schedules of all employees. Appellant has not established a compensable employment factor under the Act with respect to administrative matters as the evidence does not establish error or abuse as to the lunch rotations or leave denials.

Appellant has also alleged that harassment and discrimination on the part of her supervisors contributed to her claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[10] However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.[11] In the present case, the employing establishment denied that appellant was subjected to harassment and appellant has not submitted sufficient evidence to establish that she was harassed by her supervisors.[12] Appellant alleged that supervisors made statements that she believed constituted harassment and discrimination, but she provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.[13] The statement by Ms. Burnett was too general to establish harassment and the May 2, 2001 statement by Mr. Still did not describe any incident constituting harassment. Mr. Still's statement referred to actions by a supervisor appellant has not specifically discussed in her allegations of harassment. The Board finds that appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

The Board has held that emotional reactions to situations in which an employee is trying to meet his position requirements are compensable.[14] In *Joseph A. Antal*, a tax examiner filed a claim alleging that his emotional condition was caused by the pressures of trying to meet the production standards of his job and the Board, citing the principles of *Cutler*, found that the claimant was entitled to compensation. In *Georgia F. Kennedy*, the Board, also citing the principles of *Cutler*, listed employment factors which would be covered under the Act, including an unusually heavy workload and imposition of unreasonable deadlines. In the present case appellant made only a general reference to a heavy workload but it was not the volume of work that she alleged caused her condition but her supervisor's criticisms of how she performed her work, such as being rude to clients, sending out unexecuted documents or taking actions contrary to office policy. For this reason, the Board finds that she has not established a compensable factor under *Cutler*.

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[10] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

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

[12] *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).

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

[14] *See Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

Appellant alleged stress caused by employing establishment attorneys who did not know how to interact with civilian workers. However, the Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.[15] The Board notes that appellant's reaction to such conditions and incidents at work must be considered self-generated in that it resulted from her frustration in not being permitted to work in a particular environment or to hold a particular position.[16]

The Office accepted as a compensable factor that Ms. Hembree told appellant that "paybacks are a bitch," after appellant asked to be covered on a lunch break. Ms. Hembree indicated that she said this as a joke after appellant returned two hours late from a lunch break. While the Board has recognized the compensability of verbal abuse in certain situations, this does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.[17] While the response of Ms. Hembree to appellant's request for coverage on a lunch break may have engendered offensive feelings in appellant for which she apologized, the record establishes the comment was made after appellant had previously been two hours late from returning from lunch. Under the circumstances of the case, the Board finds that Ms. Hembree's joking remark did not constitute verbal abuse or harassment.[18]

For the foregoing reasons, the Board finds that appellant has not established any compensable employment factors.

CONCLUSION

Appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of her federal employment.

[15] *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

[16] *Tanya A. Gaines*, 44 ECAB 923, 934-35 (1993).

[17] *See Leroy Thomas, III,* 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991).

[18] *See Denis M. Dupor*, 51 ECAB 482 (2000).

ORDER

IT IS HEREBY ORDERED THAT the September 12, 2003 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: May 7, 2004
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member