



stated that she first realized on June 29, 1989 that her claimed condition was employment related.<sup>1</sup>

Appellant submitted a January 28, 2004 report in which Dr. Mary Beth Napier, an attending clinical psychologist, indicated that she had dysthmic disorder.

By letter dated June 10, 2004, the Office requested that appellant submit additional factual and medical evidence in support of her claim.

Appellant submitted a June 18, 2004 statement in which she alleged that John D. Carter, a coworker, sexually harassed her by pressuring her to go to a hotel to have sex. She claimed that on one occasion at work Mr. Carter told her to “pucker up” in an attempt to get her to kiss him. Appellant alleged that Mr. Carter would visit her work area and break her concentration. She indicated that supervisors were aware of Mr. Carter’s actions but failed to take corrective action. Appellant claimed that she attended a meeting with several supervisors and Mr. Carter, regarding her problems with him, but that everyone at the meeting identified her as the source of the problem. In an undated statement, she asserted that she was mentally handicapped and had a learning disability and indicated that people tended to pick on her and make fun of her for this reason. She claimed that Mr. Carter and her other coworkers at the employing establishment were “no different than the people I had to deal with in school or my other jobs.”<sup>2</sup>

In an August 19, 2004 statement, Mr. Carter asserted that appellant “took a liking” to him and started to harass his wife by telephone and write his number in the ladies’ washroom at work. He indicated that he took this matter to his supervisor, Bertha E. Frowner, who witnessed appellant harassing him while he worked on his letter sorting machine. Mr. Carter indicated that, after appellant stopped working for the employing establishment, he “saw her again one day and we started talking” and noted that “we saw each other for a while.” Mr. Carter claimed that he was later informed by appellant’s parents that she had a mental problem and that he “should leave her alone.” Mr. Carter claimed that he did leave appellant alone, but that she would not stop sending him letters and gifts. He asserted that he and his wife went to the house of appellant’s parents and discovered that some of his gifts from her had been stolen from her parents. Mr. Carter claimed that about two years ago appellant again started to send him letters and items ordered from the internet. He asserted that he advised appellant that he had received a telephone call from postal inspectors regarding her use of the mail in this manner and indicated that she then stopped sending him items. Mr. Carter indicated that it had been about 14 years since he had last seen appellant in person.

In a letter dated June 14, 2004, Ms. Frowner stated that on an unspecified date Mr. Carter showed her personal letters that appellant had sent to his home. She indicated that Mr. Carter claimed that appellant was stalking him by making visits to his home “at all times of the day and night.”

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<sup>1</sup> In an accompanying statement, appellant stated that the man was a coworker, who worked in another part of the same floor where she worked.

<sup>2</sup> Appellant also submitted additional medical evidence in support of her claim.

By decision dated July 21, 2004, the Office denied appellant's emotional condition claim on the grounds that appellant did not meet the requirements for filing her claim in a timely manner.<sup>3</sup> The Office indicated that, under the relevant standards, appellant was aware of the causal relationship between her work and claimed condition by her last day of work on June 29, 1989 but that she did not file her claim until May 22, 2004 and did not show that a supervisor had actual knowledge of an injury at work within the prescribed time frame.

The Office referred appellant's file to Dr. Eric Berkson, a Board-certified psychiatrist and Office medical adviser, for evaluation of her ability to comprehend the relationship between her employment and claimed condition. In a report dated July 29, 2004, Dr. Berkson discussed appellant's emotional condition and learning disabilities and concluded that it appeared that appellant was not aware of the relationship between her employment and claimed condition until around the time she filed her claim.

By decision dated August 24, 2004, the Office vacated its July 21, 2004 decision and determined that, based on the opinion of Dr. Berkson, appellant had filed a timely claim for an emotional condition.

In another decision dated August 24, 2004, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors.

By letter dated September 17, 2004, appellant requested reconsideration of her claim. She alleged that Mr. Carter pressured her to have sex on numerous occasions at work. Appellant admitted that she sent gifts and other items to Mr. Carter but asserted that she was only trying to be his friend. Appellant indicated that she called Mr. Carter at home because he gave her his number and asked her to call him.<sup>4</sup> Appellant asserted that postal inspectors and supervisors wrongly suggested that she was harassing Mr. Carter at home. She indicated that on her last day of work Mr. Carter "took me to the hotel and I had sex with him" and asserted that she only did so because he would not "take no for an answer."

By decision dated December 28, 2004, the Office affirmed its August 24, 2004 determination that appellant's emotional condition claim was denied because she did not establish any compensable employment factors.

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<sup>3</sup> The Office indicated that an original claim for compensation for disability or death must be filed within three years after the injury or death; that the time limitation in latent disability cases does not begin to run until the claimant is aware or by the exercise of reasonable diligence should have been aware, of the causal relationship between her employment and the compensable disability; and that, if an employee continues to be exposed to injurious working conditions after such awareness, the time limitation begins to run on the last date of this exposure. *See* 5 U.S.C. § 8122(a), (b); *Charlene B. Fenton*, 36 ECAB 151, 157 (1984). The Office also indicated that appellant's claim would still be regarded as timely if her immediate superior had actual knowledge of the injury within 30 days or if written notice of injury was given within 30 days. *See* 5 U.S.C. §§ 8122(a)(1), (2); *Jose Salaz*, 41 ECAB 743, 746 (1990).

<sup>4</sup> Appellant described one occasion when she called Mr. Carter at home to discuss a statement he had made, which hurt her feelings.

## 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.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup>

## ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decisions dated August 24 and December 28, 2004, the Office denied appellant's emotional condition claim on the grounds that she did not establish

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<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>7</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>8</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>9</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>10</sup> *Id.*

any compensable employment factors.<sup>11</sup> The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that sexual harassment by Mr. Carter, a coworker, contributed to her claimed stress-related condition. She claimed that Mr. Carter repeatedly pressured her at work to have sex with him. To the extent that disputes and incidents alleged as constituting harassment by coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.<sup>12</sup> However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment are not compensable under the Act.<sup>13</sup> 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 Mr. Carter.<sup>14</sup> Appellant alleged that Mr. Carter made statements and engaged in actions, which she believed constituted harassment, but she provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.<sup>15</sup> In fact, a number of appellant's own statements contradict her claim that she was harassed by Mr. Carter. For example, in a statement dated September 17, 2004, she admitted that she sent Mr. Carter personal letters and gifts at home, that she called him at home regarding personal matters and that she had sex with him on one occasion.<sup>16</sup> For these reasons, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

Appellant alleged that the employing establishment knew of Mr. Carter's actions and improperly failed to discipline him. She further alleged that supervisors and postal inspectors wrongly indicated that she was the source of the problem. Regarding appellant's allegations that the employing establishment improperly handled disciplinary actions, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or

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<sup>11</sup> The Board notes that, by decision dated August 24, 2004, the Office vacated a prior decision dated July 21, 2004 and determined that appellant filed a timely emotional condition claim. As this particular decision was not adverse to appellant, it would not be within the Board's jurisdiction and is not a subject of the present appeal. See 20 C.F.R. § 10.616(a).

<sup>12</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>13</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>14</sup> 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).

<sup>15</sup> See *William P. George*, 43 ECAB 1159, 1167 (1992).

<sup>16</sup> The record indicates that appellant and Mr. Carter had some form of personal relationship, although the precise nature of that relationship remains unclear. The Board has held that when a dispute is imported into the employment from a claimant's domestic or private life, the dispute does not arise out of the employment. See generally *Agnes V. Blackwell*, 44 ECAB 200 (1992) (finding that an assault which arose from a dispute imported into the employment from the claimant's domestic and private life did not arise out of the employment).

specially assigned work duties and do not fall within the coverage of the Act.<sup>17</sup> Although the handling of disciplinary actions is generally related to the employment, it is an administrative function of the employer and not duties of the employee.<sup>18</sup> 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.<sup>19</sup> However, appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to her claim that it improperly failed to discipline Mr. Carter and improperly accused her of wrongdoing. For these reasons explained above, it has not been established that Mr. Carter subjected appellant to harassment and she did not submit evidence, such as the results of a grievance, to show that the employing establishment acted improperly with respect to disciplinary matters. Thus, appellant has not established a compensable employment factor under the Act regarding administrative matters.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.<sup>20</sup>

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

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<sup>17</sup> 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).

<sup>18</sup> *Id.*

<sup>19</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>20</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' December 28 and August 24, 2004 decisions are affirmed.

Issued: July 14, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board