

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

DORETHA McDELL, Appellant

and

**DEPARTMENT OF THE ARMY, FORT
HUACHUCA, Fort Huachuca, AZ, Employer**

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**Docket No. 05-1237
Issued: September 20, 2005**

Appearances:
Doretha McDell, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 16, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated April 28, 2005 denying her claim for an employment-related emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the emotional condition issue.

ISSUE

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

FACTUAL HISTORY

On September 27, 2004 appellant, then a 35-year-old contract specialist, filed an occupational disease claim alleging that she developed stress/depression in the performance of duty related to her internship at Fort Lee, Virginia. Appellant first became aware of the injury and its relation to her work on May 7, 2003. She was last exposed to the employment factors on

September 17, 2003. Appellant stopped work on January 22, 2004 and returned to work on July 6, 2004.

In a statement received by the Office on October 8, 2004, appellant attributed her emotional condition to her internship at Fort Lee, Virginia from November 2001 until September 2003. She indicated that it comprised on-the-job training for being a contract specialist in the acquisition arena. Appellant experienced stress with regard to three male coworkers, training issues, harassment and working in a hostile environment and noted that the situation was brought to an informal mediation with the Inspector General (IG) in August and September 2002. She became stressed over her work conditions in August 2002 and almost had a diabetic seizure while on travel duty at the Wright-Patterson base in Ohio, when a coworker attacked her character.

Appellant filed a complaint against three male coworkers but failed to provide any specifics on the allegations asserted or the outcome of her complaints, other than stating that the situation went to an informal mediation with the IG in August and September 2002. The record reflects that she was moved into a different building than the three male coworkers she filed the complaint against, but, in February 2003, she was moved back into the building where two of the coworkers were located. Appellant alleged that she was required to sit in a workstation between the two men. She alleged that management retaliated against her for filing the IG complaint in August 2002. Appellant stated that on February 26, 2003 Colonel Fred Roitz had dismissed her request not to be placed back in the building and that she became depressed over the matter. She took off February 27, 2003 and, when she went to her doctor's office on February 28, 2003, she was referred for a psychiatric evaluation and given a mild sedative. Appellant alleged that she was sexually harassed on April 25, 2003 by one of the male coworkers she had previously filed a complaint against. She also alleged that her training suffered, as no one on her team wanted to train her. Appellant requested a transfer from Fort Lee, but the employing establishment's Equal Employment Opportunity (EEO) office was unable to alleviate her problems and had attempted to prohibit her from going to a formal process, which caused her more mental and emotional anguish. She submitted copies of handwritten medical notes dated May 28, June 23, August 13 and 25, 2003 in which the physician, with an illegible signature, noted that she was claiming sexual and discrimination issues with regard to her job and diagnosed anxiety and major depression.

In a letter dated October 13, 2004, the Office requested additional supportive factual and medical evidence.

In a June 10, 2003 letter, appellant reiterated that, during her internship, she had been sexually harassed and subject to reprisal for filing a complaint in August 2002. She alleged that the employing establishment had viewed a personal letter from the Social Security Administration regarding her military disability which led certain individuals in the organization to view her as emotionally disturbed.

Appellant alleged that she did not receive any training from Naomi Jenkins, her team leader, from September 10, 2001 to March 20, 2002, and that management had promised that another team leader would provide her with the remaining credit card training, but did not indicate whether she had received such training. She also noted that a team member who had

volunteered to train her later said she would not be able to train her. Appellant cited to incidents in which she was not provided proper training or guidance for being a contract specialist. She stated that Mrs. Jenkins instructed her not to ask anyone for assistance and refused to train her. Appellant noted that Mrs. Jenkins and the director had assisted another intern who was not on her team. From September 2001 through March 2002, appellant was given a total of four purchase requests, none of which were over \$2,500.00 as Mrs. Jenkins felt it was over her head. In December 2001, she had her second purchase request and a member from Team A helped her.¹ Mrs. Jenkins later informed her that, if the purchase requests were not completed, she would have been in trouble. Appellant generally asserted that management had taken the side of the person who harassed her and stated that she was either not assertive enough or too assertive.

Appellant alleged that on April 25, 2003 one of the men against whom she had filed the IG complaint came to her workstation and said “I don’t want to tell you this but since you lost weight, I can see your curves now. You look real good.” She alleged that he said he was sorry when he knew she was upset. Appellant informed her team leader on April 28, 2003 that she wanted to file a complaint against the man and was told to use the chain of command. She informed the EEO office of the incident and on April 30, 2003 management moved her to a new workstation located in the same building.

Appellant alleged that management recommended that she obtain a Master’s Degree while she was in training and that they would pay for it, but later said it did not have the money for her to take the courses. She did not identify any details of this alleged denial other than noting that her supervisor rejected her request for a certain type of account because she was not allowed to use Fort Lee email and access the internet for professional development courses. Appellant stated that she had to pay for the first seven courses and purchase her own computer, even though the employing establishment had at least twelve laptops. She alleged that she was given only one day per week to work on a course which required 96 hours to complete, but other employees (all males) were given time to work on their courses.

Appellant stated that, although she had 10 months of on-the-job training, she did not feel fully prepared to function in the acquisition arena upon graduation from the intern program. She noted that she was not doing A-76 training, a specific type of training, although she was given a training book by the team leader and the team member names of whom she was supposed to work with. Appellant alleged that, because she was quiet, management allowed other individuals in the organization to dictate how she would be trained. She alleged that this improper guidance had caused her confusion and resulted in her lack of knowledge with regard to contracting.

In a copy of a letter sent to her Senator, appellant alleged that the employing establishment falsified and obstructed a federal investigation concerning her allegations of sexual harassment and retaliation for filing an EEO complaint. The employing establishment’s September 25, 2003 notice of acceptance/dismissal of appellant’s EEO complaint was provided. The employing establishment’s EEO office had accepted for investigation appellant’s allegations regarding the April 2003 comments a male coworker made to her which she considered offensive and sexually harassing. It further accepted for investigation the issue of whether she was

¹ It is unclear what team appellant was on.

properly trained in a specific area, the A-76 contracts. The EEO office did not accept appellant's remaining allegations of training, working conditions and reprisal for investigation. It dismissed her allegations regarding disparate treatment in terms of training because of her gender and her allegation of hostile working conditions because of the lack of timeliness in reporting. It also dismissed her allegation of hostile working conditions because of reprisal for filing an IG complaint in August 2002 and her allegation of having to move back to her original building on the basis that she failed to state a claim under the civil right laws administered by the EEO office. In a September 5, 2002 statement, Kimberly L. Laverty, a contract negotiator and classmate of appellant, during a course at the Wright-Patterson base in Ohio, described a medical incident involving appellant on August 26, 2002. She stated "I can't imagine the embarrassment of traveling across country and meeting a fellow student..., one that is in another class, and discovering that he had 'heard' about you."

By decision dated April 28, 2005, the Office denied appellant's emotional condition claim finding that she failed to establish a compensable factor of employment.

LEGAL PRECEDENT -- ISSUE 1

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 his 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.² 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.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 However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.⁵ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁶

² 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁴ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

⁵ See *William H. Fortner*, 49 ECAB 324 (1998).

⁶ *Ruth S. Johnson*, 46 ECAB 237 (1994).

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. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.⁷ A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.⁸ The issue is whether the claimant has submitted sufficient evidence under the Act to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁹ The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.¹⁰

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.¹¹ 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.¹²

ANALYSIS

Appellant alleged that she sustained a stress-related emotional condition as a result of a number of employment incidents and conditions which the Office found to be noncompensable. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant has alleged reprisals and a pattern of harassment during her internship at the employing establishment. She stated that management retaliated against her for filing an IG complaint against two male coworkers and moved her back into the building where they were. Appellant also alleged that management engaged in disparate treatment with regard to training the male interns. As noted, incidents of harassment by supervisors and coworkers, if

⁷ See *Michael Ewanichak*, 48 ECAB 364 (1997).

⁸ See *Charles D. Edwards*, 55 ECAB ____ (Docket No. 02-1956, issued January 15, 2004); *Parley A. Clement*, 48 ECAB 302 (1997).

⁹ See *James E. Norris*, 52 ECAB 93 (2000).

¹⁰ *Beverly R. Jones*, 55 ECAB ____ (Docket No. 03-1210, issued March 26, 2004).

¹¹ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹² *Id.*

established as occurring and arising from the employee's performance of his or her regular duties, could constitute employment factors.¹³ Appellant, however, did not provide any specificity for her general allegations or submit sufficient evidence to support her allegations of harassment and a hostile work environment. She did not submit witness statements or other documentation corroborating her account of events. Moreover, there were no formal decisions by the employing establishment's EEO office or any adjudicatory agency to substantiate appellant's allegations of sexual harassment, that she was not properly trained, or that the training methods and practices employed by the employing establishment were abusive or improper. Appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and hostile work environment.

Appellant also attributed her condition, in part, to the manner and method in which she was trained; Colonel Roitz's February 26, 2003 denial of her request not to be placed back in the building where two of the men she brought allegations against were; her workstation placement after the denials of her February 26, 2003 request and the alleged sexual harassment incident of April 25, 2003; the issues surrounding her pursuit of a master's degree during her internship; and the length of time it took the EEO office to process her claim. The Board will review these alleged incidents to the extent that appellant is claiming that these factors caused or contributed to her emotional condition.

Appellant alleged that she did not receive adequate training, that Mrs. Jenkins criticized her and refused to train her, and that she was not given proper guidance during the intern program because she was a quiet individual. She further expressed frustration over the employing establishment's methods and procedures for obtaining her master's degree during her internship. The Board has held that an employee's emotional reaction to being made to perform duties without adequate training may be compensable.¹⁴ However, appellant did not submit sufficient evidence to corroborate that any training was denied her during the intern program. Appellant also did not submit any evidence to collaborate her contention that Mrs. Jenkins criticized her and failed to provide proper guidance or that the training program's methods and practices were abusive. The assignment of work is an administrative function and the manner in which a supervisor exercises his or her discretion falls outside the scope of the Act. Absent evidence of error or abuse, a claimant's mere disagreement or dislike of a managerial action is not compensable.¹⁵ The Board notes that, while the employing establishment might have encouraged appellant to further her formal education, there is no evidence of record to support that the pursuit of a master's degree was a job requirement of her internship. Moreover, there is no evidence of error or abuse in the employing establishment's decisions regarding the payment of graduate course work, the amount of time provided to appellant to complete her course work or the denial of her request for a special type of account. The Board finds that this amounts to self-generated frustration from not being allowed to work in a particular position or to hold a particular job and, thus, is not compensable under the Act.¹⁶ In this case, appellant has submitted

¹³ *Janice I. Moore*, 53 ECAB 777 (2002).

¹⁴ *Donna J. Dibernardo*, 47 ECAB 700 (1996).

¹⁵ *Barbara J. Latham*, 53 ECAB 316 (2002).

¹⁶ *Lori A. Facey*, 55 ECAB ____ (Docket No. 03-2015, issued January 6, 2004).

no evidence of error or abuse by the employing establishment in the assignment of her work or the training methods and practices employed. Thus, she has not established a compensable employment factor.

Appellant also attributed her emotional condition, in part, to her reaction to having to return to the building and work next to the male coworkers she had filed the IG complaint against. She also attributed her emotional condition to the April 25, 2003 alleged sexual harassment incident. Appellant, however, presented no evidence of error or abuse regarding her work assignment to a particular building or to her assignments to particular workstations.¹⁷ While appellant may have disliked certain management decisions, the Board has held that self-generated frustration arising from not being allowed to work in a particular position or to hold a particular job is not compensable under the Act.¹⁸ Appellant also noted that she had requested a transfer, but presented no showing of error or abuse by the employing establishment regarding this. Denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment absent a showing of error or abuse as they do not involve the employee's ability to perform his or her regular or specially assigned work duties but rather constitute his or her desire to work in a different position.¹⁹ She has also alleged that she experienced frustration in connection with her EEO claim. However, the Board has held that the processing of claims bears no relation to her day-to-day or specially assigned duties.²⁰ Therefore, the Board finds that appellant has not established a compensable factor of employment in this regard.

The Board further notes that appellant has provided no evidence to substantiate her vague allegation that the employing establishment leaked confidential information about her to other employees. There is also no evidence to support appellant's vague allegation that a coworker maliciously attacked her character following her stress reaction in August 2002 while on travel. While Ms. Laverty's statement supports that appellant had a medical incident in August 2002, Ms. Laverty only expressed her opinion about what appellant told her. This evidence does not establish that any such incident was part of appellant's employment duties nor does it otherwise establish a compensable employment factor.

For the foregoing reasons, the Board finds that 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.²¹

¹⁷ *Id.*

¹⁸ *Id.*; see *Katherine A. Berg*, 54 ECAB ____ (Docket No. 02-2096, issued December 23, 2002).

¹⁹ *Hasty P. Foreman*, 54 ECAB ____ (Docket No. 02-723, issued February 27, 2003).

²⁰ See *George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

²¹ 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).

CONCLUSION

Appellant has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the April 28, 2005 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: September 20, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

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