

form treatment notes from Kaiser Permanente dated December 18 to 26, 2001 that diagnosed anxiety and stress and advised that she could not work.¹

A December 21, 2001 postal inspection service investigative memorandum advised that appellant was interviewed on December 18, 2001 after it received information concerning the misuse of postal envelopes by appellant. She was advised of her *Miranda* right which she acknowledged, but she declined to sign a waiver form. At the interview, appellant stated that her supervisor, William Sterling, addressed envelopes on his computer and mailed copies of a previous Office decision to employing establishment management. Mr. Sterling was also interviewed and he confirmed appellant's statement. Signed statements from appellant and Mr. Sterling attesting to these facts were attached. In an undated statement, Mary Brunkhorst, manager of distribution operations, advised that on December 18, 2001 she approached appellant and told her that two gentlemen wanted to see her and directed appellant to them. After appellant's interview, Mr. Sterling was interviewed and acknowledged that he addressed the envelopes, not appellant. Ms. Brunkhorst stated that on December 20, 2001 she was informed by the union that appellant was upset about how the interview had been handled.

By letter dated January 25, 2002, the Office advised appellant of the evidence needed to support her claim. In a February 22, 2002 response, appellant stated that when the postal inspectors called her in for the interview, she asked if she needed union representation and was told to wait and see. Appellant became upset because the inspectors would not tell her why she was there. When the postal inspectors read her rights, which she would not sign, she became more frightened. Appellant stated that she was questioned forcefully about her family and regarding personal use of postal envelopes. She explained that Mr. Sterling had addressed the envelopes to forward Office correspondence to employing establishment management regarding a prior claim. Appellant was very nervous and crying when she left the interview and went to the ladies room. Several hours later, Mr. Sterling told appellant that he explained to the postal inspectors that he used the envelopes. Appellant then went to see a union steward who told her she should have had representation at the interview. She went home and rested but later went to the hospital where she was put on bed rest for several hours. Appellant filed both a grievance and an Equal Employment Opportunity (EEO) claim and was seeing a physician, taking medication and attending a stress release class.

In a January 7, 2002 report, Dr. Maria Villarosa, a psychiatrist, noted an episode of depression that began with work issues when appellant became humiliated after being accused of improperly using postal equipment and products. She listed as stressors a case filed against the employing establishment and a discrimination lawsuit and diagnosed major depression, single episode without psychosis. In a duty status report dated January 7, 2002, Dr. Villarosa advised that appellant could not work. On January 28, 2002 she reiterated her diagnosis. Appellant also submitted additional form reports from Kaiser Permanente dating from January 7 to 28, 2002.² Dr. Paul Hsiang, Board-certified in family medicine, noted a history that appellant was humiliated at work and was depressed due to work stress.

¹ The signatures on the reports are illegible.

² Several reports were signed by Dr. Villarosa. The signatures on the other reports are illegible.

By decision dated March 5, 2002, the Office denied appellant's claim on the grounds that she had not established a compensable factor of employment.

On April 3, 2002 she requested a hearing and submitted additional Kaiser Permanente reports from February 14 to April 2, 2002.³ In an April 9, 2002 report, Dr. Villarosa diagnosed major depression and advised that appellant could return to her usual restricted duty on April 16, 2002. Appellant also submitted statements from coworkers Linda D. Beckton, Dawana Vaughnaker and Elaine Roberson who attested that they had seen appellant after the interview on December 18, 2001 and she was very upset. Fabiola Dominguez, a union representative, advised that she had filed a grievance on behalf of appellant regarding the lack of union representation at the interview. A June 9, 2002 grievance settlement found that, at the December 18, 2001 interview, the postal inspectors should have asked appellant if she wanted union representation there. At the hearing, held on October 30, 2002, appellant's representative argued that at the December 18, 2001 interview, appellant was advised improperly regarding union representation. Appellant testified that she was harassed during the interview and that she remained off work for four and a half months.

In a February 14, 2003 decision, an Office hearing representative modified the March 5, 2002 decision, finding that, although the December 18, 2001 interview was not compensable, the fact that appellant was not afforded union representation was a compensable factor of employment. The hearing representative denied the claim on the grounds that the medical evidence did not establish that her emotional condition was caused by the compensable employment factor.

On January 19, 2004 appellant requested reconsideration and submitted duplicates of evidence previously of record and treatment notes from social workers dating from January 17 to April 11, 2002. In a May 14, 2002 treatment note, Dr. Villarosa diagnosed major depression in partial remission. On February 24, 2005 appellant again requested reconsideration. She attached a decision dated March 8, 2004 regarding an accepted lumbar strain, adjudicated by the Office under file number 131141171. She stated that an Office claims examiner inadvertently mixed the instant emotional condition claim, file number 132044440, with that of 131141171. Appellant attached a copy of the January 19, 2004 reconsideration request which stated that she was requesting reconsideration of file number 132044440.

By decision dated May 18, 2005, the Office denied appellant's reconsideration request on the grounds that she failed to establish clear evidence of error. On August 10, 2005 appellant filed an appeal with the Board on both Office file numbers. By decision dated September 13, 2005, the Office set aside the May 18, 2005 decision and, in a merit decision, denied modification of the February 14, 2003 decision. In an order dated February 15, 2006, the Board remanded the case to the Office finding that, as appellant had timely requested reconsideration of file number 132044440 on January 19, 2004 and because the record forwarded to the Board did not contain file number 131141171, an informed adjudication by the Board was not possible. On remand the Office was to obtain Office file number 131141171, to be followed by an appropriate decision and/or decisions regarding appellant's reconsideration request dated February 25, 2004.⁴

³ The signatures were either illegible or were by a social worker.

⁴ Docket No. 05-1733 (issued February 24, 2004).

On March 9, 2006 the Office resent the September 13, 2005 decision and advised appellant to follow the appeal rights contained therein.

On August 29, 2006 appellant requested reconsideration and submitted a June 29, 2006 report from James F. Skalicky, Ph.D., who noted seeing appellant on June 6, 2006 for psychological evaluation and testing. Dr. Skalicky stated that during the interview appellant became distressed and reported physical, emotional and mental symptoms and that she had retired on disability on April 19, 2004. Appellant provided a history of work-related traumatic injuries to her lower back and shoulders. During an interview on December 18, 2001, the postal inspectors failed to properly advise her that she could have a union representative present. Dr. Skalicky diagnosed mixed adjustment disorder and acute anxiety disorder due to medical conditions and opined that appellant's "coping mechanism was overwhelmed and she found herself unable to deal with the stressors in the workplace." He stated that the failure to advise appellant that she could have union representation during the December 18, 2001 interview violated her rights which caused her to become agitated and extremely emotional, stating that "the variables and alleged harassment and factors associated with the emotional trauma did bring about a harmful state to the patient" and these were considered the cause of her psychiatric problems. Dr. Skalicky opined that, "because of the inappropriate and disrespectful manner in which she was treated, she found herself in a situation that became traumatic and more painful in terms of unfairness and lack of professionalism" which increased her depression and anxiety. Appellant stated that, because she was unable to predict or control the situation, this caused an increase in distress, opining that "the incidents and stressors were a threat to her career and her well being. Clearly she needs psychological treatment, and it was all a result of the job-related injury." Dr. Skalicky concluded that, "based on the history given to me by [appellant], the medical evidence, psychological testing and [her] psychiatric symptomatology, I believe that [her] psychological diagnosed condition is directly related to the December 18, 2001 incident" arising from her federal employment. He also provided testing results.

By decision dated March 15, 2007, the Office denied modification of the prior decisions.

LEGAL PRECEDENT

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her stress-related condition.⁵ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.⁶ When the matter asserted is a compensable factor of employment and the evidence of record establishes the

⁵ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁶ *Dennis J. Balogh*, 52 ECAB 232 (2001).

truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁷

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁸ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁹ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.¹⁰ When an employee experiences emotional stress in carrying out his or her employment duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.¹¹ A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹²

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.¹³ Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹⁴

For harassment or discrimination to give rise to a compensable disability, 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. A claimant must establish a factual basis for his or her allegations that the harassment occurred with probative and reliable evidence.¹⁵ With regard to emotional claims arising under the Act, the term "harassment" as applied by the Board is not the equivalent of "harassment" as defined or implemented by other agencies, such

⁷ *Id.*

⁸ 28 ECAB 125 (1976).

⁹ 5 U.S.C. §§ 8101-8193.

¹⁰ See *Robert W. Johns*, 51 ECAB 137 (1999).

¹¹ *Lillian Cutler*, *supra* note 8.

¹² *Roger Williams*, 52 ECAB 468 (2001).

¹³ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁴ *Kim Nguyen*, 53 ECAB 127 (2001).

¹⁵ *James E. Norris*, 52 ECAB 93 (2000).

as the Equal Employment Opportunity Commission, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers' compensation under the Act, the term "harassment" is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by co-employees or workers. Mere perceptions and feelings of harassment will not support an award of compensation.¹⁶

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.¹⁷ 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.¹⁸

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹⁹ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.²⁰ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.²¹

ANALYSIS

In the present case, appellant has not attributed her emotional condition to the performance of her regular duties as a mail processor or to any special work requirement arising from her employment duties under the *Cutler* standard. Rather, her claim pertains to an investigative interview that was held on December 18, 2001. The Office accepted that the failure

¹⁶ *Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁷ *Dennis J. Balogh*, *supra* note 6.

¹⁸ *Id.*

¹⁹ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

²⁰ *Leslie C. Moore*, *supra* note 5; *Gary L. Fowler*, 45 ECAB 365 (1994).

²¹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

of the postal inspectors to inform appellant that she could have union representation at the interview was a compensable factor of employment.²²

Appellant contended that the investigation itself was abusive. Investigations are considered to be an administrative function of the employer as they are not related to an employee's day-to-day duties or specially assigned duties or to a requirement of the employment. The employing establishment retains the right to investigate an employee if wrongdoing is suspected. An employee's fear of being investigated is not covered under the Act, absent a showing of error or abuse on the part of the employing establishment.²³ In this case, the evidence of record does not establish that the employing establishment committed error or abuse in scheduling the interview which concerned the misuse of postal property. The interview itself is not a compensable factor of employment.

Appellant alleged that she was harassed at the December 18, 2001 interview. While she submitted statements from coworkers and a union representative who confirmed that she was upset following the interview, the evidence does not provide substantive support that she was harassed during the interview. None of the individuals were present during the interview. Appellant has not submitted sufficient evidence to establish that the postal inspectors or any other employing establishment official harassed her during the course of the investigation.²⁴ The Board finds that the record is not sufficient to establish harassment but constitutes her perception that she was harassed. As appellant did not establish as factual a basis for her allegation of harassment, she did not establish that harassment and/or discrimination occurred.²⁵ The evidence instead suggests that the employee's feelings were self-generated and thus not compensable under the Act.²⁶

As the record supports a compensable factor of employment, that appellant was improperly advised about union representation in an investigative interview on December 18, 2001, the medical evidence must be analyzed.²⁷ The Board finds, however, that appellant has not submitted sufficient medical evidence to establish her claim. Appellant submitted a number of form reports from Kaiser Permanente, a number of which had illegible signatures and therefore do not constitute competent medical evidence. Other form reports were signed by social workers. However, a social worker is not a "physician" as defined by section 8101(2) of the Act.²⁸ These reports also do not constitute competent medical evidence. The few form reports that were signed by Dr. Villarosa merely noted a diagnosis of stress and advised that appellant could not work. None contained an opinion regarding the cause of appellant's

²² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

²³ *Jeral R. Gray*, 57 ECAB ____ (Docket No. 05-1851, issued June 8, 2006).

²⁴ *Id.*

²⁵ *Id.*

²⁶ See *Gregorio E. Conde*, 52 ECAB 410 (2001).

²⁷ See *Dennis J. Balogh*, *supra* note 6.

²⁸ 5 U.S.C. § 8102(2); see *Phillip L. Barnes*, 55 ECAB 426 (2004).

condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.²⁹ In a January 7, 2002 report, Dr. Villarosa noted that appellant became humiliated at work when she was improperly accused of misusing postal property and listed as stressors that appellant filed a case and a discrimination lawsuit against the employing establishment. Dr. Villarosa, however, did not relate appellant's diagnosed condition to the employment factor accepted in this case. Her opinion is therefore insufficient to establish causal relationship.³⁰ While Dr. Hsiang advised that appellant had been humiliated at work and was depressed due to work stress, he did not opine that appellant's condition was caused by the accepted work factor. His report is also insufficient to establish causal relationship.³¹

The Board also finds Dr. Skalicky's June 29, 2006 report insufficient to meet appellant's burden of proof to establish that her emotional condition was caused by the accepted factor of employment. While he suggested a causal relationship between appellant's condition and the accepted employment factor, his reports did not contain adequate medical rationale explaining the basis for his stated conclusion.³² Rather, Dr. Skalicky merely noted that not having union representation at the December 18, 2001 interview was unfair and couched his conclusion regarding causal relationship in general terms. He did not explain from a medical perspective the nature of the relationship between appellant's diagnosed condition and the established employment factor. Dr. Skalicky's report is of diminished probative value as he did not support his opinion with sufficient medical reasoning to demonstrate that the conclusion reached was sound, logical and rational.³³

In assessing medical evidence, the number of physicians supporting one position or another is not controlling. The weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.³⁴ The opinion of a physician must be of reasonable medical certainty and must be supported by medical rationale explaining causal relationship.³⁵

²⁹ *Willie M. Miller*, 53 ECAB 697 (2002).

³⁰ *See Beverly R. Jones*, *supra* note 16.

³¹ *Id.*

³² *See David Apgar*, 57 ECAB ____ (Docket No. 05-1249, issued October 13, 2005).

³³ *See John W. Montoya*, 54 ECAB 306 (2003).

³⁴ *Anna M. Delaney*, 53 ECAB 384 (2002).

³⁵ *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an employment-related emotional condition causally related to the accepted employment factor.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 15, 2007 be affirmed.

Issued: December 13, 2007
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board