United States Department of Labor
Employees' Compensation Appeals Board

S.M., Appellant	)	
and	)	**Docket No. 06-1548**
	)	**Issued: January 8, 2007**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER Mansfield, OH, Employer	)	

Appearances:
Malinda Morro, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 22, 2006 appellant, through her representative, filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated June 10, 2006 denying her emotional condition. 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 in establishing that she developed an emotional condition in the performance of duty.

FACTUAL HISTORY

On April 20, 2006 appellant, then a 41-year-old patient services assistant, filed a traumatic injury claim alleging that she experienced a panic attack, anxiety and stress reaction after her supervisor threatened and yelled at her on March 31, 2006. On the reverse of the form,

her supervisor, Tina Loughman, stated that she disagreed with appellant's version of the events of March 31, 2006.

Dr. V. Bowers completed a form report on April 19, 2006 and indicated that appellant reported a severe panic attack on March 31, 2006 with increased blood pressure and tachycardia. She indicated with a checkmark "yes" that appellant's condition was due to her employment. Dr. Bowers stated that appellant perceived that she was harassed by her supervisor's conduct. She diagnosed headaches, acute stress reaction, tachycardia, shortness of breath, insomnia and the inability to concentrate.

Ms. Loughman submitted a statement dated March 31, 2006 regarding the events of that date. She noted that on March 29 and 30, 2006 appellant was not completing her work and was socializing with a coworker, Dr. Rekha Pawar. Ms. Loughman discussed the situation with appellant on March 30, 2006. She instructed her to explain to Dr. Pawar that she had work to do and to return to her computer and continue working whether or not Dr. Pawar continued to speak to her. On March 31, 2006 Ms. Loughman witnessed Dr. Pawar socializing with appellant at her workstation while the telephones rang and patients waited. She notified appellant of the patients' needs. Dr. Pawar remained at appellant's workstation. Ms. Loughman left appellant's workstation and then heard Dr. Pawar yelling in the clinic. She asked appellant to report to her office and explain what had transpired. Appellant stated that she directed Dr. Pawar to leave and explained her fear of discipline. Ms. Loughman and appellant agreed that appellant had not followed instructions. She then informed her that, if she had followed instruction, the situation with Dr. Pawar would not have arisen.

In a letter dated May 1, 2006, the Office requested additional factual and medical information from appellant. Appellant submitted a statement and alleged that Ms. Loughman stood outside of her cubicle most of the day and intruded whenever she spoke to Dr. Pawar. Ms. Loughman allegedly informed her that she must keep Dr. Pawar out of her workstation or face consequences. When Dr. Pawar returned to appellant's workstation to address patient concerns, Ms. Loughman gave appellant "dirty looks." Appellant asked Dr. Pawar to leave as appellant would be disciplined. Dr. Pawar became upset. According to appellant, "[Ms. Loughman] got really mad." She reported to Ms. Loughman's office. Ms. Loughman informed appellant that she was angry and that appellant was not to repeat her instructions to Dr. Pawar. Ms. Loughman allegedly stated that, if she felt management "on my ass" she would retaliate against appellant. Appellant felt her job was threatened.

Appellant also submitted a statement dated April 20, 2006 from Lavon Dulin, a coworker, noting that appellant appeared to be in respiratory distress on March 31, 2006. She also stated that on previous occasions, Ms. Loughman had spoken to appellant in a very harsh tone, humiliated her and yelled at her in front of coworkers. Rebecca Phillips, a coworker, completed a statement on April 21, 2006. She noted that appellant became upset after Ms. Loughman instructed her not to speak with Dr. Pawar.

In a note dated April 1, 2006, Dr. James H. Mooney, an internist, stated that appellant had trouble breathing on March 31, 2006 after mulling over a stressful event from the day. Her symptoms were highly suggestive of an anxiety response. Dr. Joseph T. Spare completed a form

report on May 10, 2006 and diagnosed adjustment disorder with mixed emotional features. He noted that appellant had a history of a panic attack triggered by a conflict with her supervisor.

Dr. Pawar submitted an undated statement asserting that Ms. Loughman frequently rushed towards appellant's cubicle and glared at her while Dr. Pawar was explaining orders. She stated, "[Appellant] fearfully told me three different times that she was told by Ms. Loughman that she would be 'in trouble' if she spoke to me." Dr. Pawar noted that appellant was her patient care assistant. She noted that she came to her office in tears on two occasions after reprimands from Ms. Loughman. Dr. Pawar did not provide any specific dates that these incidents occurred.

Ms. Loughman responded to appellant's statement on May 18, 2006. She denied standing outside her cubicle on March 31, 2006. Ms. Loughman stated that during one of her routes through the work area on March 31, 2006, she noticed Dr. Pawar and appellant having a loud conversation punctuated with outbursts of laughter. Immediately after appellant noticed Ms. Loughman, Dr. Pawar suddenly began yelling that she needed to speak to appellant. Dr. Pawar's actions caused a disruption in the administrative area. Ms. Loughman repeated her earlier statement regarding the discussion in her office and asserted that she did not threaten appellant, raise her voice or "state that I would be on her ass." She noted that appellant did not seem upset or in distress.

By decision dated June 9, 2006, the Office denied appellant's claim finding that she had not substantiated a compensable factor of employment.[1]

LEGAL PRECEDENT

A traumatic injury is defined as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.[2] An occupational disease or illness, on the other hand, means a condition produced by the work environment over a period longer than a single workday or shift.[3]

An employee who claims benefits under the Federal Employees' Compensation Act[4] has the burden of establishing that he or she sustained an injury while in the performance of duty.[5] In order to determine whether an employee actually sustained an injury in the performance of

[1] Appellant requested an oral hearing on June 29, 2006. However, the record does not contain a final decision from the Branch of Hearings and Review. Following the Office's June 9, 2006 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

[2] 20 C.F.R. § 10.5(ee).

[3] 20 C.F.R. § 10.5(q).

[4] 5 U.S.C. §§ 8101-8193.

[5] *Deborah L. Beatty*, 54 ECAB 340 (2003).

duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally "fact of injury" consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.

Workers' compensation law does not apply to each and every injury or illness that is somehow related 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 worker's compensation. Where the disability results from an employee's emotional reaction to her regular of specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.[6] 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.[7]

Generally, actions of the employing establishment in administrative or personnel matters unrelated to the employee's regular or specially assigned work duties, do not fall within the coverage of the Act.[8] While an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment, mere perceptions are insufficient. In determining whether the employing establishment erred or acted abusively, the Board determines whether the employing establishment acted reasonably.[9]

The Board has held that the manner in which a supervisor exercises his or her discretion falls outside the coverage of the Act. This principal recognizes that a supervisor or manager must be allowed to perform their duties and that employee's will at times disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.[10]

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[11]

ANALYSIS

Appellant has not attributed her emotional condition to her regular or specially assigned duties. Rather, she attributed her diagnosed emotional condition to actions of Ms. Loughman,

[6] *Lillian Cutler*, 28 ECAB 125 (1976).

[7] *See Thomas D. McEuen*, 41 ECAB 387, 390-91 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[8] *James E. Norris*, 52 ECAB 93, 100 (2000).

[9] *Bonnie Goodman*, 50 ECAB 139, 143-44 (1998).

[10] *Linda J. Edwards-Delgado*, 55 ECAB 401, 405 (2004).

[11] *Reco Roncoglione*, 52 ECAB 454, 456 (2001).

her supervisor, on March 31, 2006. Appellant stated that Ms. Loughman's actions on March 31, 2006 were abusive in that she lingered at appellant's workstation, chastised her for conversing with Dr. Pawar, yelled at her in the course of discipline and threatened her. She felt that these actions constituted harassment.

Ms. Loughman denied appellant's allegations. She stated that she observed appellant and Dr. Pawar socializing during one of her routes around the work area. Ms. Loughman stated that she had previously directed appellant to continue working rather than converse with Dr. Pawar. She denied threatening her, raising her voice or using crude language.

Appellant did not submit any witness statements or other evidence addressing the specific events of March 31, 2006. Dr. Pawar stated that Ms. Loughman frequently rushed appellant's cubicle and glared at her, but did not offer any specific dates of these events. Neither Ms. Dulin nor Ms. Phillips provided any specific information regarding Ms. Loughman's actions on March 31, 2006. As noted above, Ms. Loughman's method of carrying out her supervisory duties falls outside the coverage of the Act absent a finding of error or abuse.[12] Appellant did not submit sufficient evidence to substantiate her allegations that Ms. Loughman's actions on March 31, 2006 were erroneous or abusive.

Regarding appellant's allegation of harassment, there is no evidence which establishes that the acts alleged or implicated by her did, in fact, occur. She has not submitted evidence that Ms. Loughman yelled, threatened or improperly disciplined her. Mere perceptions of harassment or discrimination are not compensable under the Act.[13] 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.[14]

CONCLUSION

The Board finds that appellant failed to meet her burden of proof in substantiating a compensable factor of employment. Therefore, the Office properly denied her claim.

[12] *Edwards-Delgado*, *supra* note 10.

[13] *Roncoglione*, *supra* note 11.

[14] 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 June 9, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 8, 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