

harassment and a hostile work environment which she attributed to retaliation after she filed a whistle-blower report and discrimination complaints with the employing establishment and the Equal Employment Opportunity (EEO) Commission. Appellant contended that she was unfairly charged with being absent without leave (AWOL), had to use sick leave when she experienced headaches and had no sick leave balance, and was subject to unwarranted disciplinary actions such as suspensions. In EEO complaints, she alleged that management treated her unfairly in matters involving timesheets, leave, training and promotions. Appellant alleged that the managers defamed her when she applied for a job with another government agency. She submitted copies of disciplinary actions, including March 8, 2000 and September 23, 2003 suspensions and February 28, 2000 and July 26, 2006 notices of proposed suspension.

In decisions dated January 3, 2002 to August 28, 2006, the employing establishment denied appellant's complaints of discrimination. In decisions dated July 4, 2002 to August 25, 2004, the EEO Commission determined that appellant failed to establish her claims of discrimination and a hostile work environment against the employing establishment.

Appellant submitted medical reports which diagnosed depression related to work stress.

By decision dated October 11, 2006, the Office denied appellant's claim on the grounds that the evidence failed to establish that she sustained an emotional condition causally related to a compensable factor of employment.

On October 14, 2006 appellant requested an oral hearing that was held on April 12, 2007.

By decision dated June 22, 2007, an Office hearing representative affirmed the October 11, 2006 decision.¹

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 employment but nevertheless does not come within the coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned work 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 reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.³

¹ Subsequent to the June 22, 2007 Office decision, appellant submitted additional evidence. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

² 5 U.S.C. §§ 8101-8193.

³ *Lillian Cutler*, 28 ECAB 125 (1976).

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 coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.⁴

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors of employment, which may be considered by a physician when providing an opinion on causal relationship, and which are not deemed compensable factors of employment and may not be considered.⁵ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.⁶ As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.⁷ Where the claimant alleges compensable factors of employment, she must substantiate such allegations with probative and reliable evidence.⁸ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.⁹

ANALYSIS

Appellant alleged that her emotional condition was due to a number of employment factors. She alleged that the employing establishment defamed her when she applied for a job with another government agency. However, she submitted insufficient evidence to establish this allegation as factual. Therefore, the allegation of defamation is not established as a compensable factor of employment.

A number of appellant's allegations concern personnel or administrative matters. The Board has held that an administrative or personnel matter will be considered to be an employment factor only where the evidence discloses error or abuse on the part of the employing establishment.¹⁰ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹¹ Appellant

⁴ *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁵ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁶ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁷ *See Charles E. McAndrews*, 55 ECAB 711 (2004).

⁸ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁹ *See Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁰ *Id.*

¹¹ *Janice I. Moore*, 53 ECAB 777 (2002).

alleged that she was unfairly charged with being AWOL, had to use sick leave when she experienced headaches and had no sick leave balance, and was subject to unwarranted disciplinary actions. The record shows that she filed numerous complaints with the employing establishment and the EEO Commission. However, none of these complaints were resolved in her favor. The employing establishment and EEO decisions found that appellant failed to provide sufficient evidence of error or abuse in the handling of various administrative or personnel matters, including timesheets, the use of leave, training, promotions and disciplinary actions. Appellant failed to provide sufficient evidence to establish error or abuse in management's handling of administrative and personnel matters. Therefore, these allegations are not deemed compensable employment factors.¹²

Appellant alleged that she was harassed and discriminated against at the employing establishment. Mere perceptions of harassment or discrimination are not compensable under the Act. Appellant's burden of proof is not discharged with allegations alone. She must support her allegations with probative and reliable evidence.¹³ Appellant alleged that her emotional condition was caused by harassment and discrimination which she attributed to retaliation after she filed a whistle-blower report and discrimination complaints with the employing establishment and the EEO Commission. However, the EEO decisions found insufficient evidence to support her allegations of harassment and discrimination by the employing establishment. There is insufficient evidence of record that the employing establishment harassed appellant or treated her unfairly. Therefore, the allegations of harassment and discrimination are not deemed to be compensable employment factors.¹⁴

CONCLUSION

The Board finds that appellant failed to establish that her emotional condition was causally related to a compensable factor of employment.

¹² *Charles D. Edwards, supra* note 9.

¹³ *Cyndia R. Harrill, 55 ECAB 522 (2004).*

¹⁴ Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence. See *Barbara J. Latham, 53 ECAB 316 (2002); Garry M. Carlo, 47 ECAB 299 (1996).*

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 22, 2007 and October 11, 2006 are affirmed.

Issued: March 24, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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