

On June 28, 2005 the Office requested that appellant submit additional information in support of her claim. It requested that she provide a description of those factors in her employment giving rise to her condition and a medical report from an attending physician providing an opinion on causal relationship.

In response, appellant advised that she had been under continual stress as of January 2004 due to intimidation in front of customers and coworkers. She stated that some coworkers made comments relating to her emotional stability which hindered her ability to receive fair treatment by her supervisors. Appellant alleged that, after returning to work following medical leave, she was verbally harassed by an interim manager she had never met.

In a medical note dated June 29, 2005, Dr. Debora L. Ferguson, an attending psychiatrist, listed nine treatment dates commencing February 21, 2005. She advised that appellant felt stress, overwhelmed and became tearful. Dr. Ferguson diagnosed an adjustment disorder (mixed), stating appellant's condition was exacerbated by work conditions due to a lack of cooperation with supervision and human resources.

On July 15, 2005 Myra Smith, appellant's supervisor, responded to the claim advising that appellant had confided that she was stressed due to caring for her husband and a granddaughter. She noted that in April 2004, a conflict arose between appellant and a coworker. On May 13, 2005 a meeting was held with appellant to discuss her whereabouts on that day. Ms. Smith noted that appellant became ill, stating that she asked to go home. Appellant had just returned to work after having been off for approximately 30 days. Ms. Smith stated that there were no staffing shortages and no extra demands were made of appellant. She noted that appellant was supervised in a unit headed by a T6 but felt she did not have to comply with the T6 even after being given instructions by Ms. Smith. Appellant had exhausted all sick and annual leave and was currently on leave without pay.

In a September 21, 2005 decision, the Office denied appellant's claim. It found that she had not established any compensable work factors.

On October 15, 2005 appellant requested an oral hearing which has held on June 20, 2006. At the hearing, she alleged interactions with her supervisor and coworkers which constituted harassment. Appellant became upset when Ms. Smith wrongly insisted that she had given appellant an order by telephone on March 17, 2004 which she had not followed. She alleged that Ms. Smith only acknowledged that she had not talked to appellant on March 17, 2004 after verifying it with appellant's coworker. Appellant complained about her treatment by Joyce Noland, a T6 coworker, but that was done. She related that Ms. Noland made the comment that appellant "seek some help." Appellant alleged that, when there were errors in counting the money from the retail stock at the end of the day, "[r]ather than admit that the money is wrong, then you know, making insulting remarks." She discussed her problems concerning Ms. Noland with Ms. Smith, who allegedly responded, "well, why don't you just kill each other."

When appellant returned to work on May 11, 2004, Ms. Noland informed her that she had to attend a retraining class on the May 13, 2004. However, when she went to attend the class, she discovered no class was being held. That same day, Ms. Smith and Tory Wilson, an interim

manager, discussed appellant's attendance with her in her cubicle and not in a more private area. Appellant felt harassed because she had just returned to work and Ms. Wilson "just started talking about my attendance." She alleged that on or about December 20, 2005 Ms. Smith directed her to go back to work while she was on official break and in the ladies room. Appellant stated that there had been an investigation during 2004 regarding a conflict she had with another employee. Allegedly, Ms. Nolan accused appellant of hitting her with a chair in her cubicle. Appellant stated that Ms. Nolan had commented that she needed to get help and had creating chaos in the workplace. She alleged that Ms. Nolan ranted at her while she was trying to explain credit card policy to a customer. Appellant testified that she felt overworked and stressed as the office was understaffed.

In a July 17, 2006 note submitted after the hearing, Dr. Ferguson stated that appellant had experienced a lack of support from human resources and her supervisors. She noted that, upon appellant's return to work, on the second day she was told to go to a retraining course that did not exist. This led to appellant taking additional medical leave for treatment of anxiety and depression related to an unprofessional work environment.

In an August 23, 2006 decision, an Office hearing representative affirmed the September 21, 2005 denial of appellant's claim. He found that appellant did not submit sufficient evidence to support her allegations of harassment or administrative error.

LEGAL PRECEDENT

To establish that she sustained an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric 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 emotional condition.¹

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In *Lillian Cutler*,² 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.³ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁴ When an employee experiences emotional stress in carrying out 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 an emotional reaction to a special assignment or other requirement

¹ *Leslie C. Moore*, 52 ECAB 132 (2000).

² 28 ECAB 125 (1976).

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Robert W. Johns*, 51 ECAB 137 (1999).

imposed by the employing establishment or by the nature of the work.⁵ 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.⁶

In emotional condition claims, 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. 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.⁷

As a general rule, an employee's emotional reaction to administrative or personnel actions taken by the employing establishment is not covered because such matters pertain to procedures and requirements of the employer and are not directly related to the work required of the employee.⁸ 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.⁹ An employee's frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable.¹⁰ Similarly, an employee's dissatisfaction with perceived poor management is not compensable under the Act.¹¹

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. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. Rather, the issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting her allegations with probative and reliable evidence.¹²

⁵ *Lillian Cutler*, *supra* note 2.

⁶ *Kim Nguyen*, 53 ECAB 127 (2001).

⁷ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁸ *Felix Flecha*, 52 ECAB 268 (2001).

⁹ *Kim Nguyen*, *supra* note 6.

¹⁰ *Barbara J. Latham*, 53 ECAB 316 (2002).

¹¹ *Robert Breeden*, 57 ECAB 622 (2006).

¹² *James E. Norris*, 52 ECAB 93 (2000).

ANALYSIS

Appellant alleged an emotional condition due to various factors arising in her employment as a sales associate. Primarily, she alleged instances of harassment and unfair treatment by her coworkers and supervisors. The Office denied appellant's claim, finding that she did not submit sufficient evidence to support her allegations as factual. The Board must review her allegations to determine whether they are supported by the evidence of record.

Appellant made general allegations of being overworked as her office was understaffed. However, she did not provide sufficient details pertaining to the nature of the work she performed or of the occasions when her office was understaffed. Ms. Smith responded to appellant's allegations, noting that there were no staffing shortages at the employing establishment and that no extra demands had been placed on appellant. The evidence of record does not establish any compensable factor of employment under *Cutler*.

With her claim, appellant stated generally that he had been under continual stress since January 2004 due to intimidation by her coworkers and customers. She indicated that coworkers had made comments which constituted verbal abuse, but only identified a comment by Ms. Noland that appellant should "seek help" and alleged Ms. Smith had responded to her complaints concerning Ms. Noland by stating "why don't you just kill each other." Other than attributing these comments to her supervisor and coworker, appellant did not submit sufficient details as to the identity of any other coworkers making insulting remarks as alleged or when such instances took place. The Board has recognized the compensability of verbal abuse when sufficiently detailed by the claimant and supported by the evidence of record. However, this does not imply that every statement uttered in the workplace will give rise to compensability under the Act.¹³ The evidence submitted by appellant is not sufficient to establish that the comments she attributed to Ms. Smith or Ms. Noland were, in fact, made. Appellant alleged that when accounting errors were made from the retail stock, insulting remarks were made. Without an adequate description of the time and place of such comments or supporting evidence such as witness statements, the evidence of record does not support a finding of verbal abuse. Similarly, she has not established that Ms. Smith gave erroneous directions to her in a March 17, 2007 telephone call.

Appellant noted that she was off work from March 24 to May 12, 2004 and alleged that, upon her return to work, she was informed by Ms. Noland to attend a retraining course that did not take place. Later that day, Ms. Wilson and Ms. Smith had a discussion with appellant concerning her attendance at her cubicle, which she felt was too public. She also contended that Ms. Noland had hassled her while appellant was working with customers. Appellant stated that she did not feel that she needed to be retrained and that her supervisors were harassing her for recent time off work. The Board has held that an employee's unsubstantiated allegations of harassment or discrimination are not determinative of whether such incidents occurred. A claimant must substantiate a factual basis for her allegations with probative and reliable evidence.¹⁴ Ms. Smith responded to appellant's allegation, noting that all employees had

¹³ *Peter D. Butt, Jr.*, 56 ECAB 117 (2004).

¹⁴ *See Ronald K. Jablanski*, 56 ECAB 616 (2005).

received appropriate training by their managers and supervisors. Issues such as training, the assignment of work or the discussion of personnel matters are administrative functions of the employer unrelated to the regular or specially assigned duties of the employee. An employee's emotional reaction to an administrative or personnel action is not covered absent evidence of error or abuse on the part of her supervisor.¹⁵ Appellant has not submitted sufficient evidence to establish that her managers or supervisors erred or were abusive towards her in any administrative actions. As noted, her allegations in writing and in testimony at the hearing lack a detailed description of the actions taken by her supervisors which would support a finding of error or abuse. The fact that Ms. Smith may have directed appellant to return to work on December 20, 2005 has not been demonstrated as constituting abuse. In providing instructions to an employee, a supervisor is performing an administrative function. The Board has held that an employee's mere disagreement with or dislike of the actions taken by a supervisor or manager will not be found compensable absent evidence of record establishing error or abuse.¹⁶ Again, no statements from any witnesses were submitted to substantiate appellant's allegations concerning harassment at work as factual.

CONCLUSION

The Board finds that appellant has not established that she sustained an emotional condition arising out of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the August 23, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 2, 2008
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

¹⁵ See *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

¹⁶ See *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).