

On December 8, 2004 appellant, then a 52-year-old Timesheet and Attendance Collection System (TACS) clerk, filed an occupational disease claim alleging that she sustained a stress condition beginning December 1, 2004 causally related to problems in her workplace. Her job included making station code and rural route payroll location code changes; preparing payroll packets, reports and spreadsheets on a computer and assisting coworkers. Appellant performed

voluntary overtime.¹ She alleged that supervisors committed errors in station code and rural route pay location changes which caused her additional work. Appellant alleged that Donna Gustafson, a new clerk, was not helpful when they worked together on Saturdays, causing appellant to bear most of the workload. On November 27, 2004 she and Ms. Gustafson argued.² Ms. Gustafson filed a complaint of harassment against appellant. Appellant was moved to another workstation pending resolution of Ms. Gustafson's complaint but appellant thought moving her was unfair because she was senior to Ms. Gustafson. She advised Greg Gianntonio, a manager, that Ms. Gustafson was not helpful and that the office was "falling apart." On December 1, 2004 appellant discussed the November 27, 2004 incident with Gina Van Arden, a supervisor, who "marched" her out of her office and treated her disrespectfully. A fact-finding meeting was scheduled for December 3, 2004. Appellant waited in the union office for four hours expecting Ms. Van Arden to interview her there but she did not come to the union office. She alleged that her office became disorganized and mismanaged after John Seward, a manager, retired on September 24, 2004. However, in another statement, appellant alleged that there was disorganization prior to Mr. Seward's retirement. She alleged that there was discrimination in the distribution of work assignments. Appellant alleged that she did not take time off from her work for lunch and breaks because of a staffing shortage. She experienced time pressure in handling the Sunday premium settlement adjustments. Appellant alleged that during weekdays she was "bombarded" with questions from coworkers. She alleged that Ms. Van Arden gave information regarding her claim to coworker Mabel Walton. Ms. Van Arden did not follow appellant's suggestions for improving employee performance. Appellant alleged that Ms. Van Arden was racist because she circulated an e-mail regarding statements from television commentator Andy Rooney that appellant felt were offensive to minorities. She became upset when management commented on her use of leave to care for her parents. Appellant received no formal training for her position. She had to contact programmers, specialists and managers to resolve problems that supervisors should have handled. Appellant began working at a different location when her position was abolished due to her extended time off. The employing establishment was not helpful in processing her compensation claim.

On December 17, 2004 the Office requested additional information, including a detailed description of the work situations or incidents that contributed to appellant's emotional condition and a comprehensive medical report explaining how these employment factors caused or aggravated her medical conditions.

Ms. Van Arden stated that she called appellant into her office on December 1, 2004 to discuss a proposed "fact finding" regarding the November 27, 2004 incident with Ms. Gustafson. Because allegations were made that appellant was a threat, she was temporarily moved to a different office. Appellant stated that she felt stressed and wished to go home. Ms. Van Arden noted appellant's allegation that she "carried the workload" for 27 Saturdays during the past seven months. However, records revealed that appellant worked only one Saturday alone during

¹ The employing establishment reported that appellant averaged 3.15 hours of voluntary overtime per week.

² Ms. Gustafson stated that on November 27, 2004 she answered two telephone calls and transferred a third call to appellant's phone. Appellant became upset and accused Ms. Gustafson of being lazy and rude. Ms. Gustafson stated that she was uncomfortable working in the same office as appellant and was afraid to be alone with her.

that period and was not working two of the 27 Saturdays. Ms. Van Arden stated that she did not treat appellant with hostility or disrespect.

Robert Hemphill, director of labor relations, stated that on December 1, 2004 appellant asked why she was moved, rather than Ms. Gustafson, following the incident on November 27, 2004. He explained that Ms. Gustafson had filed a harassment complaint against appellant first and it was management policy to move the alleged harasser. Appellant became upset and requested leave. Mr. Hemphill stated that appellant did not allege a hostile work environment or racial harassment (appellant is Hispanic) and he understood her concerns to be solely about the November 27, 2004 incident and Ms. Gustafson's complaint.

Parul Kumar, an employing establishment compensation specialist, denied that the employing establishment discriminated against appellant in any way. She denied that the work environment was stressful or lacked proper management. Management did not discriminate in the assignment of work duties. Management provided training in the form of personal instructions, manuals and handbooks. Appellant voluntarily worked an average of 3.15 hours of overtime a week. She never told management that performing overtime was stressful for her. Ms. Kumar denied that management caused appellant additional work by failing to properly monitor station code and rural route pay location changes. She denied appellant's allegation that she carried the Saturday workload alone for six months as there was another employee who assisted her on Saturdays. Ms. Kumar denied that appellant was overburdened with questions from other employees. She stated that work was shared equally by the employees.

Appellant submitted medical reports dated December 7, 2004 to April 14, 2005 in which Dr. Roger L. McCoy, a family practitioner, diagnosed situational anxiety, generalized anxiety disorder, adjustment disorder and a major depressive episode. Her conditions were due to work stress beginning in November 2004 caused by problems with management's handling of her leave requests and compensation claim and an increased workload. In January 27, 2005 to May 2, 2006 reports, Wendy Hart-Stravers, a licensed clinical psychologist, diagnosed generalized anxiety disorder and a single episode of a major depressive disorder due to work stress. Appellant indicated that her job became more stressful when Ms. Van Arden became her supervisor in February 2004 and there was tension in the office. Ms. Gustafson was not a helpful coworker. The November 27, 2004 incident with Ms. Gustafson was the culmination of appellant's tension. The employing establishment did not process her compensation claim properly. Ms. Hart-Stravers opined that appellant's emotional condition was caused by tension and "chaos" in appellant's office, lack of support from her supervisor and difficulties with coworkers.

By decision dated May 2, 2005, the Office denied appellant's claim on the grounds that she failed to establish that she sustained an emotional condition causally related to a compensable employment factor. It accepted as compensable factors: (1) her regular or specially assigned duties, including making station code and payroll location codes; preparing payroll packets, reports and spreadsheets on a computer; and (2) that she assisted coworkers and voluntarily worked overtime an average of 3.15 hours a week.³ None of appellant's other

³ The employing establishment indicated that appellant worked an average of 3.15 hours a week. The Office indicated erroneously that the figure was 3.19 hours.

allegations were accepted as factual or compensable. The Office found that the medical evidence did not establish that her emotional condition was caused or aggravated by the accepted factors.

On April 26, 2006 appellant requested reconsideration and reiterated her allegations.

Gregg Giannantonio, a manager, disputed appellant's allegation that she had such a heavy workload that she could not take breaks or lunch. He stated that he was not aware of any tasks that would cause this to happen. Throughout the daily operations, there was always time for everyone to take their breaks and lunch periods and a schedule was implemented to provide coverage when employees were away from their workstations. Mr. Giannantonio spoke to appellant and Ms. Gustafson on November 27, 2004 about their confrontation and attempted to resolve the issues involved.

On September 7, 2006 Ms. Kumar stated that appellant was not pressured to complete the Sunday premium settlements task because she was given a two-month extension and was notified of the extension one month prior to the original deadline. She voluntarily worked overtime and never complained that it was stressful. Ms. Gustafson had asked Ms. Van Arden about overtime in the context of general office policy and not in regard to appellant's overtime. There was no discrimination in the assignment of overtime. Ms. Kumar stated that there was no evidence of error or abuse in management's handling of the station code and rural route pay changes and appellant was not adversely impacted by these matters. After Mr. Seward left the employing establishment, appellant did not complain of any problems with management or work stress. Regarding the December 3, 2004 fact-finding meeting, Ms. Van Arden was ready to conduct the meeting in her office but appellant instead went to the union office. Ms. Van Arden did not "march" appellant out of the office on December 1, 2004. Appellant left after requesting leave. Regarding lunch and other breaks, all employees were informed that the breaks were not optional. Appellant was not forced to go without time for lunch or other breaks. Ms. Van Arden did not inform Ms. Walton of appellant's compensation claim. Ms. Kumar denied that appellant was overloaded with work on Saturdays because Ms. Gustafson was not helpful. Regarding appellant's allegation that she was "bombarded" with questions from coworkers, appellant raised the issue at a staff meeting and all employees were instructed to direct calls to Ms. Van Arden. Management did not deny her leave requests. Ms. Kumar denied that the employing establishment mishandled appellant's compensation claim. It provided her with assistance in a timely and professional manner. Regarding the "racist" e-mail sent by Ms. Van Arden, Ms. Kumar stated that there was no evidence that it was racist or intended to ridicule anyone. Appellant was not denied a chance to tell her version of the November 27, 2004 incident with Ms. Gustafson. She discussed the matter with Mr. Hemphill.

By decision dated November 9, 2006, the Office denied appellant's claim on the grounds that she failed to establish that her emotional condition was causally related to a compensable employment factor.

Appellant requested reconsideration and submitted a June 8, 2007 report in which Ms. Hart-Stravers stated that her regular or specially assigned work duties created excessive pressure because she was trying to meet her production standards and deadlines. Her duties included tasks making station code and rural route pay location changes; preparing payroll

packets, Sunday premium reports, reports and spreadsheets and providing assistance to coworkers. Appellant alleged that job assignments were not evenly distributed among her coworkers. Ms. Van Arden was abrasive with appellant and more demanding of her than other employees. She alleged that Ms. Van Arden discriminated against her and made derogatory comments about her input during meetings. Ms. Gustafson was not helpful and was not friendly towards appellant. Appellant had difficulties with other coworkers as well. She was upset about Ms. Gustafson's harassment complaint against her and being moved to a different location. Appellant was upset about the "Andy Rooney" e-mail that she found offensive to minorities. Ms. Hart-Stravers opined that it was the combination of her work duties, stress and hostility in the work environment that caused her generalized anxiety disorder and major depressive disorder, single episode.

By decision dated September 14, 2007, the Office denied appellant's claim on the grounds that she failed to establish that her emotional condition was causally related to a compensable employment factor.

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.⁴ 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.⁵

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.⁶

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.⁷ 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

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Michael Thomas Plante*, 44 ECAB 510 (1993).

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

evidence of record substantiates that factor.⁸ 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.⁹ Where the claimant alleges compensable factors of employment, he must substantiate such allegations with probative and reliable evidence.¹⁰ 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.¹¹

ANALYSIS

Some of appellant's allegations involve administrative or personnel 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.¹² In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹³ Appellant alleged that her office became disorganized and mismanaged after Mr. Seward retired on September 24, 2004. However, in another statement, she contradicted herself by alleging that there was disorganization prior to Mr. Seward's retirement. Ms. Kumar denied that the work environment lacked proper management. She noted that, after Mr. Seward left the employing establishment, appellant did not complain of any problems with management or work stress. Appellant alleged that supervisors committed errors in station code and rural route pay location changes which caused her additional work. Ms. Kumar stated that there was no evidence of error or abuse in management's handling of the station code and rural route pay changes and appellant was not adversely impacted by these matters. Appellant alleged that she had to contact programmers, specialists and managers to resolve problems that supervisors should have handled. However, she provided no details such as dates, the names of individuals involved or what occurred. These particular administrative or personnel matters are not established as compensable employment factors.

Appellant alleged that Ms. Gustafson was not helpful when they worked together on Saturdays, causing appellant to bear most of the workload for 27 Saturdays in seven months. However, Ms. Van Arden indicated that records revealed that appellant worked only one Saturday alone during that period and was not working two of the 27 Saturdays. Ms. Kumar also denied that appellant was overloaded with work on Saturdays because Ms. Gustafson was not sufficiently helpful. On November 27, 2004 appellant and Ms. Gustafson argued and Ms. Gustafson later filed a complaint of harassment against her. Mr. Giannantonio spoke to

⁸ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁹ *See Charles E. McAndrews*, 55 ECAB 711 (2004).

¹⁰ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

¹¹ *See Charles D. Edwards*, 55 ECAB 258 (2004).

¹² *Id.*

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

appellant and Ms. Gustafson on November 27, 2004 about their confrontation and attempted to resolve the issues involved. Appellant was moved to another workstation pending the resolution of Ms. Gustafson's complaint. She thought management was unfair in moving her rather than Ms. Gustafson because appellant had seniority. Mr. Hemphill advised appellant that she was moved because Ms. Gustafson had filed a harassment complaint against appellant first and it was management policy to move the alleged harasser. Ms. Van Arden spoke to appellant on December 1, 2004 about the November 27, 2004 incident with Ms. Gustafson and appellant also discussed the matter with Mr. Hemphill. Appellant has failed to provide sufficient evidence of error or abuse in management's handling of the Saturday work schedule and the November 27, 2004 confrontation. Therefore, she has not established a compensable factor of employment with regard to these administrative and personnel matters.

Appellant alleged that Ms. Gustafson complained that she was entitled to some of appellant's overtime work and circulated rumors about her. Ms. Kumar stated that Ms. Gustafson had asked Ms. Van Arden about overtime, but in the context of general office policy and not in regard to appellant's overtime, and there was no discrimination in the assignment of overtime. Appellant provided insufficient details regarding the allegation of rumors from Ms. Gustafson such as dates, names of individuals involved and what was said. She alleged time pressure in handling the Sunday premium settlement adjustments. However, Ms. Kumar stated that appellant was not pressured to complete the Sunday premium settlements task because she was given a two-month extension and was notified of the extension one month prior to the original deadline. Appellant alleged that during weekdays she was "bombarded" with questions from coworkers. Ms. Kumar denied that appellant was overburdened with questions from other employees and noted that appellant raised the issue at a staff meeting and all employees were instructed to direct calls to Ms. Van Arden. Appellant has failed to establish a compensable factor of employment in regard to these administrative and personnel matters.

Regarding appellant's allegation of a heavy workload, Ms. Kumar noted that appellant voluntarily worked an average of 3.15 hours a week and never told management that performing overtime was stressful for her. Appellant alleged that she did not take time off from her work for lunch and breaks because of a staffing shortage. Ms. Kumar advised that all employees were informed that the breaks were not optional. Appellant was not forced to go without lunch or other breaks. Mr. Giannantonio stated that he was not aware of any tasks that would cause appellant to go without lunch or breaks. Throughout the daily operations, there was always time for everyone to take their breaks and lunch periods and a schedule was implemented to provide coverage when employees were away from their workstations.

Appellant alleged that Ms. Van Arden did not follow her suggestions for improving employee performance. Determining how to improve employee performance is a supervisory function. Appellant did not establish error or abuse in management's alleged failure to implement her suggestions. She alleged that management mishandled her compensation claim. Ms. Kumar denied this allegation and stated that management provided her with assistance in a timely and professional manner. Appellant alleged that she received no formal training for her position. However, Ms. Kumar stated that management provided training in the form of personal instructions, manuals and handbooks. Appellant alleged that she was unfairly moved to a different location when her position was abolished due to her extended time off. The assignment of positions and work locations is a supervisory function and she has provided insufficient

evidence of error or abuse in this administrative matter. Appellant alleged that management inappropriately commented on her use of leave to care for her parents. Ms. Kumar advised that management did not deny appellant's leave requests and appellant failed to establish error or abuse in the handling of her leave requests. Appellant failed to establish a compensable employment factor regarding these administrative and personnel matters.

Appellant alleged that she was the victim of discrimination and harassment. Ms. Van Arden, Mr. Hemphill and Ms. Kumar denied that the employing establishment discriminated against or harassed appellant in any way. 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 supplement her allegations with probative and reliable evidence.¹⁴ Appellant alleged that Ms. Van Arden discriminated in making work assignments and harassed her. She alleged that on December 1, 2004 Ms. Van Arden "marched" her out of her office and treated her disrespectfully. Ms. Van Arden denied that she treated appellant with hostility or disrespect. Ms. Kumar stated that Ms. Van Arden did not march appellant out of the office on December 1, 2004. Appellant simply left after requesting leave. Ms. Kumar denied that management discriminated in the assignment of work duties. Appellant alleged that she waited in the union office for four hours on December 3, 2004 for a scheduled fact-finding meeting but Ms. Van Arden did not show up. Ms. Van Arden stated that she was prepared to conduct the meeting in her office and did not understand why appellant went to the union office. Appellant alleged that Ms. Van Arden gave information regarding her compensation claim to coworker Mabel Walton but Ms. Van Arden denied this. She alleged that Ms. Van Arden was racist because she circulated an e-mail regarding comments from a television commentator that appellant felt were offensive to minorities. Ms. Kumar stated that there was no evidence that this e-mail was racist or intended to ridicule anyone. Appellant has failed to establish that management harassed or discriminated against her. Therefore, these allegations are not established as compensable employment factors.

The Office accepted two factors as being compensable if supported by the medical evidence: (1) her regular or specially assigned duties, including making station code and payroll location code changes; preparing payroll packets, reports and spreadsheets on a computer and (2) that she assisted coworkers and voluntarily worked overtime an average of 3.15 hours a week. Under *Cutler*,¹⁵ appellant has established compensable work factors. This is not enough, however, to entitle her to benefits. Appellant must further establish a causal connection between these compensable factors of employment and her diagnosed medical conditions. She must establish that she sustained an injury "arising out of the employment."¹⁶

Causal relationship is a medical issue, and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the

¹⁴ *Cyndia R. Harrill*, 55 ECAB 522 (2004).

¹⁵ *Lillian Cutler*, *supra* note 5.

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

implicated employment factors. The opinion of the physician must be based on a complete factual and medical background, 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 compensable employment factors identified by the claimant.¹⁷

Dr. McCoy diagnosed situational anxiety, generalized anxiety disorder, adjustment disorder and a major depressive episode caused by management's handling of her leave requests and compensation claim and an increased workload. These factors have not been accepted by the Office as compensable. Additionally, Dr. McCoy did not discuss any specific work incidents or situations or provide a rationalized medical opinion explaining how appellant's emotional condition was causally related to her job. He did not address the issue of whether appellant's emotional condition was caused or aggravated by the two accepted employment factors: (1) her regular or specially assigned duties, including making station code and payroll location code changes; preparing payroll packets, reports and spreadsheets; and (2) her assistance to coworkers and voluntary overtime of approximately 3.15 hours a week. Dr. McCoy's reports do not establish that appellant's emotional condition was causally related to a compensable factor of employment.

In her initial reports, Ms. Hart-Stravers diagnosed generalized anxiety disorder and a single episode of a major depressive disorder. She opined that these conditions were caused by tension in appellant's office, lack of support from her supervisor and difficulties with coworkers. However, these factors were not accepted by the Office as compensable factors. These reports do not establish that appellant's emotional condition was causally related to a compensable employment factor. In a June 8, 2007 report, Ms. Hart-Stravers stated that appellant's regular and specially assigned work duties created excessive pressure because she was trying to meet her production standards and deadlines. Her duties included tasks related to station code and rural route pay location changes, payroll packets, Sunday premium reports, reports and spreadsheets and providing assistance to coworkers. Appellant alleged that job assignments were not evenly distributed and Ms. Van Arden was abrasive and demanding. It has not been accepted that work assignments were not fairly distributed or that Ms. Van Arden was abusive towards appellant. Ms. Hart-Stravers did not explain how appellant's assigned work duties created excessive pressure caused or contributed to her emotional condition. She did not discuss specific work tasks or projects and explain how those specific situations contributed to her emotional condition. Ms. Hart-Stravers opined that it was the combination of appellant's work duties and a hostile work environment that caused her emotional condition. However, a hostile work environment and work overload are not accepted factors in this case and Ms. Hart-Stravers did not provide sufficient details and explanation regarding the relationship of appellant's work duties to her emotional condition. Ms. Hart-Stravers' reports are not sufficient to establish that appellant sustained an emotional condition causally related to a compensable factor of employment.

There is no rationalized medical evidence of record, based on a complete and accurate factual background, explaining how appellant's diagnosed conditions of generalized anxiety disorder and major depressive disorder, single episode, were caused or aggravated by the two

¹⁷ Gary J. Watling, 52 ECAB 278 (2001); Donna Faye Cardwell, 41 ECAB 730 (1990).

accepted employment factors. Therefore, the Office properly denied her emotional condition claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 14, 2007 is affirmed.

Issued: November 21, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board