

On April 23, 2009 appellant, then a 48-year-old claims examiner, filed an occupational disease claim alleging that she developed an emotional condition as a result of being belittled, humiliated and embarrassed in front of her coworkers by her superiors. She became aware of her condition in 1990 and realized it was related to her employment in 2009. Appellant did not stop work.

On May 7, 2009 the Office asked appellant and the employing establishment to provide additional evidence. In a May 8, 2009 statement, appellant noted having chronic depression since about 1990. She alleged that Jolene Bartlett and Karen Hopps, senior claims examiners, were assigned as her trainers and mentors and provided her with inadequate job training. Appellant stated that she was initially assigned to unit two and after a few months transferred to unit one to work under Ms. Bartlett and Ms. Hopps. She alleged that throughout her assignment in unit one she was often given the opportunity to attend formal classes that were conducted for new personnel. Appellant indicated that on March 23, 2009 she was reassigned to unit two and alleged that on April 11, 2009, her supervisor reminded her to close her time sheet and this triggered bad memories of events encountered in her previous unit and she became upset. She was assigned senior claims examiners in unit one and unit two. Appellant indicated that upon assignment to unit one she was constantly confused because the processes and standards she was trained under in unit two were different. She alleged that she was discriminated against because she was a veteran and had disabilities. Appellant alleged that Ms. Bartlett and Ms. Hopps yelled at her, berated and belittled her in front of her coworkers and stated “you can’t figure that out?” and “why did you do that?” She indicated that in November 2008 she requested assistance from Ms. Bartlett regarding an assignment and Ms. Bartlett yelled “we are done with this conversation.” In late February or early March 2009, appellant improperly constructed a statement of accepted facts and Ms. Bartlett stated in a loud voice “Why did you do that? It makes no sense at all!” She alleged she was treated disparately when these same senior claims examiners spoke to her coworkers in a low, soft voice and treated them with “kit gloves.”

Appellant submitted medical records from the Veterans Administration Medical Center (VAMC) from December 28, 1998 to May 13, 2009 where she was treated for various conditions including hypertension and depression. She submitted e-mails dated January 5 and 20, 2009, to Scott Hmelo, supervisory claims examiner, informing him that she received inadequate training under Ms. Bartlett and Ms. Hopps and requested a transfer to another unit. In e-mails dated January 26 to February 3, 2009, Mr. Hmelo acknowledged appellant’s January 20, 2009 e-mail and her concerns over the quality of training she received and encouraged her to attend training sessions that would be offered over the next month. He indicated that he was placing a copy of the training schedule in appellant’s mailbox and requested she inform him of any areas of training she believed she needed to be better equipped as a claims examiner and the classes she would like to attend. In a March 3, 2009 e-mail to Mr. Hmelo, appellant requested a transfer to another unit. Also submitted was a June 1, 2009 memorandum from Harvey Armstrong, III, a claims examiner, who sat between Ms. Bartlett and appellant and noted witnessing several discussions between the two, including disagreements on writing styles, whether claims should be accepted or denied or whether appellant placed a certain file on Ms. Bartlett’s desk for signature. Mr. Armstrong noted that on a few occasions he indicated that the discussions got a little “less than heated” and he said jokingly at one point “can’t we all get along.” He witnessed an event when appellant asked Ms. Bartlett “why are you yelling” or “you don’t have to yell” and Ms. Bartlett replied “I’m not yelling or if you want me to yell, I will.” Mr. Armstrong noted that appellant complained that some of her cases were going overdue when they had been placed on Mr. Bartlett’s desk in a timely manner.

In a decision dated October 23, 2009, the Office denied appellant’s claim finding that the claimed emotional condition did not occur in the performance of duty.

LEGAL PRECEDENT

To establish an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.¹

Workers' compensation law does not apply to each and every illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specifically assigned 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 a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.³

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 the physician when providing an opinion on causal relationship and, which working conditions are not deemed factors of employment and may not be considered.⁴ 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 the matter establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁵

ANALYSIS

Appellant alleged an emotional condition as a result of being belittled, humiliated and embarrassed in front of her coworkers by two senior claims examiners. The Board must thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act. Appellant has not attributed her emotional

¹ *George H. Clark*, 56 ECAB 162 (2004).

² 5 U.S.C. §§ 8101-8193.

³ *See Lillian Cutler*, 28 ECAB 126 (1976).

⁴ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁵ *Id.*

condition to the regular or specially assigned duties of her position as a claims examiner. Therefore, she has not alleged a compensable factor under *Cutler*.⁶

Appellant made several allegations related to administrative and personnel actions. In *Thomas D. McEwen*,⁷ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁸

Appellant alleged she was provided with inadequate training from her mentors Ms. Bartlett and Ms. Hopps. The Board has held that a matter related to training by the employing establishment is an administrative matter, which is not covered under the Act absent error or abuse by the employer in such a matter.⁹ The record does not support appellant's contention that she was not provided with adequate training, rather, the evidence supports that she was offered opportunities to obtain training on several occasions. In a written statement, appellant indicated that throughout her assignment in unit one she was often given the opportunity to attend formal classes that were conducted for new personnel. Similarly, in an e-mail from Mr. Hmelo dated January 6, 2009, he addressed her concern that she was inadequately trained and offered her an opportunity to obtain additional training over a four-week training period in any area that she believed she had not received proper training or needed additional training. Appellant provided no evidence supporting that the employing establishment unreasonably refused to provide appropriate training. She has not established a compensable factor of employment in this regard. Appellant has presented no corroborating evidence to support that the employing establishment acted unreasonably.

Appellant further alleged that on March 23, 2009 she was transferred to unit two and alleged that, on April 11, 2009, her supervisor reminded her to close her time sheet and this incident triggered bad memories of events encountered in her previous unit and she became upset. She alleged that the standards and processes for her work were inconsistent between the assigned senior claims examiners and unit one and two. Appellant indicated that upon assignment to unit one she was constantly confused because the processes and standards under which she was originally trained were different. The Board has found that an employee's complaints concerning the manner in which a supervisor performs his duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, outside the

⁶ See *supra* note 3.

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

⁸ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

⁹ See *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

scope of coverage provided by the Act. This principle recognizes that a supervisor or manager in general must be allowed to perform his duties, that employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.¹⁰ Likewise, the assignment of work by a supervisor is an administrative function that is not compensable absent error or abuse.¹¹ Appellant presented no corroborating evidence to support that the employing establishment erred or acted abusively with regards to these allegations. There is no evidence substantiating that the employer acted unreasonably in these matters. Appellant has not established administrative error or abuse in the performance of these actions and therefore they are not compensable under the Act.

Appellant alleged that on March 3, 2009 she requested a transfer from Mr. Hmelo because she was unable to work with Ms. Bartlett and Ms. Hopps. The granting or denial of a request for a transfer and the assignment to a different position are administrative functions that are not compensable factors of employment under the Act, absent error or abuse, as they do not involve appellant's ability to perform her regular or specially assigned work duties but rather constitute her desire to work in a different position.¹² Appellant has not established a compensable factor of employment in this regard. The record supports that on March 23, 2009 she was reassigned to another unit. Appellant has presented no corroborating evidence to support that the employing establishment acted unreasonably with regards to her transfer request.

Appellant generally alleged that she was harassed and discriminated against because she was a veteran and had disabilities. She noted incidents including being yelled at, berated and belittled by senior claims examiners in front of her coworkers. Appellant alleged she was treated disparately when these same senior claims examiners spoke to her coworkers in low, soft voices and treated them with "kit gloves." She indicated that in November 2008 she requested assistance from Ms. Bartlett and Ms. Hopps yelled at her and stated "we are done with this conversation." In late February or early March 2009, appellant improperly constructed a statement of accepted facts and Ms. Bartlett stated in a loud voice "Why did you do that? It makes no sense at all!" To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.¹³ However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.¹⁴ The factual evidence fails to support appellant's claim for harassment. The record does not support appellant's allegation that she was harassed. She cited no specific instances of harassment occurring at a particular time and place, rather she just made general allegations. Appellant submitted a June 1, 2009

¹⁰ See *Marguerite J. Toland*, 52 ECAB 294 (2001).

¹¹ *D.L.*, 58 ECAB 217 (2006).

¹² *Id.*; see also *Peter D. Butt, Jr.*, 56 ECAB 117 (2004).

¹³ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁴ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991). See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

memorandum from Mr. Armstrong, a claims examiner, who noted sitting between Ms. Bartlett and appellant and witnessing several discussions between the two and noted that on a few occasions he indicated that the discussions got a little “less than heated” and he stated joking at one point “can’t we all get along.” The evidence is insufficient to show that appellant was singled out or treated disparately with regard to her claim of harassment.

To the extent appellant is alleging that she was verbally abused by Ms. Bartlett and Ms. Hopps, the Board has generally held that being spoken to in a raised or harsh voice does not of itself constitute verbal abuse or harassment.¹⁵ In the instances she described above, the Board notes that the fact that a supervisor questioned her in a raised tone of voice is insufficient, by itself, to warrant a finding that her actions amounted to verbal abuse as she did not show how loud questions regarding why appellant performed a task a certain way would rise to the level of verbal abuse or otherwise fall within the coverage of the Act.¹⁶ Additionally, appellant’s coworker, Mr. Armstrong, witnessed several discussions between the two and noted that on a few occasions he indicated that the discussions got a little “less than heated” but he did not assert that the supervisors acted abusively or unreasonably in any situation.¹⁷ Therefore, appellant has not met her burden of proof to establish verbal abuse.

Consequently, appellant has not established her claim for an emotional condition as she has not attributed her claimed condition to any compensable employment factors.¹⁸

On appeal, appellant generally asserts that the Office was biased and did not adequately adjudicate her claim or contact her employing agency with regards to her allegations. The Board notes that there is no evidence supporting her assertions of bias on the part of the Office. The record indicates that the Office solicited evidence from appellant regarding the claim and provided the employing establishment with this request. The Office properly considered the evidence and found that she did not establish her claim for an emotional condition as she did not attribute her claimed condition to any compensable employment factors.

CONCLUSION

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

¹⁵ *T.G.*, 58 ECAB 189 (2006).

¹⁶ *Peter D. Butt Jr.*, *supra* note 12.

¹⁷ *David C. Lindsey, Jr.*, 56 ECAB 263 (2005) (where the Board found that the mere fact that appellant’s supervisor raised his voice during the course of the conversation with appellant and both appellant and the supervisor spoke in tones that allowed others to overhear their conversation was insufficient to warrant a finding that his actions amounted to verbal abuse as appellant did not show how loud questions would rise to the level of verbal abuse).

¹⁸ As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the October 23, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 22, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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