

**United States Department of Labor
Employees' Compensation Appeals Board**

KIMBERLY C. HARRIS, Appellant

and

**SOCIAL SECURITY ADMINISTRATION,
CENTER FOR HUMAN RESOURCES,
Dallas, TX, Employer**

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**Docket No. 03-2132
Issued: February 10, 2004**

Appearances;
Kimberly C. Harris, pro se,
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On September 2, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated August 6, 2003 denying her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the entire case.¹

ISSUE

The issue on appeal is whether appellant has established that she sustained an emotional condition in the performance of duty.

¹ As the Office issued a merit decision on August 6, 2003 the appropriateness of the two nonmerit decisions on June 25 and April 7, 2003 is moot, as the Board may consider all of the evidence in the record on the merits. 20 C.F.R. §§ 501.2(c) and 501.3(d).

FACTUAL HISTORY

On August 28, 2001 appellant, then a 38-year-old claims representative, filed a notice of occupational disease alleging that she developed undue stress, which she realized on January 26, 2001 was caused by actions of management and the union. In a letter dated October 18, 2001, the Office requested additional factual and medical information. By decision dated November 28, 2001, the Office denied appellant's claim finding that she failed to establish a compensable factor of employment.

Appellant requested reconsideration on August 12, 2002 and submitted a detailed narrative statement and additional factual and medical information. By decision dated October 3, 2002, the Office reviewed appellant's claim on the merits and denied modification of the November 28, 2001 decision. Appellant requested reconsideration on March 5 and April 22, 2003 and the Office declined to reopen her claim for further consideration of the merits on April 7 and June 25, 2003, respectively.

Appellant requested reconsideration on July 7, 2003 and submitted statements from coworkers in support of her claim. By decision dated August 6, 2003, the Office reviewed the merits of her claim and denied modification of its prior decisions.

LEGAL PRECEDENT

To establish appellant's occupational disease claim that she has sustained an emotional condition in the performance of duty, she must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence establishing employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.² Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 employment factors identified by the claimant.³

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 illness has some connection with the employment, but nevertheless does not come within the concept of workers compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of

² *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

³ *Id.*

a reduction-in-force or frustration from not being permitted to work in a particular environment to hold a particular position.⁴

In cases involving emotional conditions, when working conditions are alleged as factors causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensation 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.⁵ Perceptions and feelings alone are not compensable to establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence. Only when the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, should the Office consider the medical evidence of record to determine the causal relationship between the accepted factors and the diagnosed condition.⁶

ANALYSIS

Appellant attributed her emotional condition to the actions of her supervisors, Virginia Moreno and Janice Floyd. She stated that Ms. Moreno and Ms. Floyd improperly addressed her leave requests, that Ms. Floyd monitored her breaks and lunch, that she did not receive job training or Spanish language training, that she did not refuse training as documented in the personnel file, that her mentor, Jane Kenagy, improperly returned her work for correction, that she was threatened with a demotion, that Ms. Moreno improperly conducted desk audits when appellant was not present that her request for reassignment was denied, that Ms. Moreno reviewed her mail and that Ms. Moreno and Ms. Floyd improperly monitored her work through an assistance plan which was extended beyond the original date. Appellant also alleged that the employing establishment improperly denied her request for reasonable accommodation that she was not allowed to serve on an award panel and that she did not receive an achievement award.

Ms. Moreno stated that appellant was not entitled to an achievement award. Ms. Floyd responded on September 18, 2002 and denied error or abuse as to appellant's allegations. She stated that there was no mentoring training available at the employing establishment, that appellant's job description included answering the telephone and that she did not control the selection of awards panel member, as this was a union function. Ms. Floyd also stated that the Spanish class was for bilingual employees, not to teach Spanish. She stated that appellant refused training on more than one occasion. Ms. Floyd stated that appellant received feed back on cases with errors. She also stated that it was to appellant's advantage that the assistance plan continued until her work reached a minimally successful level. Ms. Floyd stated that she reminded all employees when there was no break time and submitted a note from Dana B. Callahan that there was no requirement that an employee be notified prior to a desk audit being conducted by a management official.

⁴ *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

⁵ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

⁶ *Id.*; *Fred Faber*, 52 ECAB 107, 110 (2000).

Regarding appellant's allegation that the employing establishment engaged in improper disciplinary actions, wrongly denied leave, improperly assigned work duties, unreasonably monitored her activities at work and improperly denied training,⁷ these allegations relate to administrative or personnel matters and do not as a general rule, fall under coverage under the Federal Employees' Compensation Act.⁸ But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁹ Appellant has alleged that the employing establishment acted unreasonably, but Ms. Moreno and Ms. Floyd denied these allegations. She has submitted insufficient evidence to substantiate that the employing establishment erred in the administration of these personnel matters. Therefore, appellant has not established these as compensable factors of employment.

Appellant stated that she was threatened with a demotion and denied transfer requests. The denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform her regular or specially assigned work duties, but rather constitute the desire to work in a different position.¹⁰ Regarding appellant's allegation that she developed stress due to insecurity about maintaining her position, this is not a compensable factor of employment under the Act.¹¹

Appellant attributed her emotional condition to various actions by Ms. Floyd and Ms. Moreno. She stated that both Ms. Floyd and Ms. Moreno declined to write a letter of recommendation, which Ms. Floyd confirmed. She asserted that Ms. Floyd accused her of using drugs, which Ms. Floyd denied. Appellant stated that neither supervisor attended her baby showers, which Ms. Floyd confirmed stating that this was an after work activity. Appellant stated that Ms. Floyd informed her that her coworkers did not like her, which Ms. Floyd confirmed. These allegations bear an insufficient relationship to her regular or specially assigned duties and are not deemed compensable factors of employment.¹²

Appellant also alleged that she developed an emotional condition as she was overworked. She attributed her condition to required overtime, quotas and deadlines. Appellant also stated that her alphabetic breakdown encompassed the largest number of claimants. Overwork, if substantiated can be a compensable factor of employment. Ms. Floyd denied that appellant's

⁷ *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

⁸ 5 U.S.C. §§ 8101-8193.

⁹ *Martha L. Watson*, 46 ECAB 407 (1995).

¹⁰ *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

¹¹ *See Artice Dotson*, 42 ECAB 754, 758 (1990).

¹² *Janet L. Terry*, 53 ECAB ____ (Docket No. 00-1673, issued June 5, 2002).

alphabetic breakdown was larger than the norm and denied that appellant worked overtime in April, May, June or July 1998. Appellant has not submitted sufficient evidence to support her allegation that she was overworked. Ms. Floyd indicated that appellant did not work more than her coworkers, denied that she had to utilize the mandatory overtime provisions at the employing establishment and denied that appellant had a larger population due her section of the alphabet. As there is no evidence substantiating appellant's claim for overwork, this factor is denied.

Appellant also attributed her emotional condition to actions of the union and her Equal Employment Opportunity (EEO) representative. Union activities are personal in nature and are not considered to be within an employee's course of employment or performance of duty.¹³ Regarding appellant's EEO claim, the processing of a claim is not, of itself, compensable.¹⁴ Therefore, appellant has not established compensable factors of employment in regard to these allegations.

Appellant alleged that Ms. Moreno treated her differently from other employees. Ms. Floyd denied this allegation, stating that Ms. Moreno was professional in her dealing with all employees. Appellant also alleged a hostile work environment, that she was bullied and demeaned, that Ms. Floyd and Ms. Moreno retaliated against her for filing a claim with the EEO Commission. Ms. Moreno denied these allegations. In support of her claim, appellant submitted witness statements from May Huntington and Shelly Soto Robinson, claims representatives. Ms. Huntington stated that appellant had trouble with Ms. Moreno, Ms. Floyd and Ms. Kenagy as well as with other coworkers. Ms. Robinson stated that she was afraid to socialize with appellant as Ms. Moreno, Ms. Floyd and Ms. Kenagy did not care for her. She also stated that appellant had conflicts with coworkers and that Ms. Moreno wanted to announce that appellant was on the assistance plan. For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination 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. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹⁵ Appellant did not submit sufficient factual evidence to establish that the alleged harassment, discrimination or retaliation occurred as alleged. The witness statements submitted by appellant did not detail specific alleged incidents and the general statements that appellant was not liked by management are not sufficient to corroborate her allegations or substantiate that she experienced harassment or discrimination as alleged. Therefore appellant has not established a compensable factor of employment.

¹³ See *Larry D. Passalacqua*, 32 ECAB 1859, 1862 (1981).

¹⁴ *But see Isabel R. Pumpido*, 51 ECAB 326, 329 (2000) (finding that although the processing of an EEO claim is not, of itself, compensable, appellant's attendance at a meeting was a requirement imposed by her employment).

¹⁵ *Alice M. Washington*, 46 ECAB 382 (1994).

CONCLUSION

The Board finds that appellant has failed to substantiate a compensable factor of employment and has, therefore, failed to establish that she developed an emotional condition as a result of her employment duties.

ORDER

IT IS HEREBY ORDERED THAT the August 6, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: February 10, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member