

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

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**LORI J. GIELLO, Appellant**

**and**

**DEPARTMENT OF THE ARMY, TOBYHANNA  
ARMY DEPOT, Tobyhanna, PA, Employer**

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**Docket No. 05-286  
Issued: April 14, 2005**

*Appearances:*  
*Lori J. Giello, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On November 10, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated August 11, 2004, denying that she sustained an emotional condition in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant sustained an emotional condition in the performance of duty.

**FACTUAL HISTORY**

On May 21, 2004 appellant, a 42-year-old part-time education technician, filed a timely notice of occupational disease and claim for compensation (CA-2) form alleging that she sustained an emotional condition as a result of conditions of her federal employment. Stating that she first became aware of her illness and the fact that it was caused or aggravated by her employment on May 19, 2004, appellant described the nature of her illness as "problems

sleeping, chest pains, headache, stomach problems.” She stated that she had been required to perform two jobs and do additional work that was outside her job description. Appellant did not stop working as a result of her claimed disability.

In support of her claim, appellant submitted a May 28, 2004 note signed by Dr. Joseph C. Seprosky, a Board-certified family practitioner, indicating that she had been seen on that date for evaluation of work-related stress and anxiety and elevated blood pressure.

By letter dated June 15, 2005, the Office advised appellant that the information submitted was insufficient to establish her claim. The Office asked for details of employment-related conditions or incidents which she believed contributed to her illness and a medical report with a reasoned medical opinion as to the cause of her condition.

In response to the Office’s request, appellant submitted physicians’ progress notes dating from September 24, 1990 through May 28, 2004, some of which related to her emotional condition claim. Unsigned notes from Dr. Blos dated September 24, 1990 reflect that she had “nerves due to work and boyfriend.” Progress notes bearing Dr. Seprosky’s initials reflect that on January 18, 1991 appellant was experiencing stress and was “obsessed” with the thought that she might have AIDS; that on June 11, 1993 she reported dizziness and migraines; and that on March 22 and April 28, 1994 she was experiencing migraines. Dr. Seprosky’s notes dated May 28, 2004 reflect a diagnosis of anxiety disorder, depression and “work-related stress.” The record contains several physicians’ notes bearing illegible signatures, including notes dated July 18, 2000, reflecting an impression of depression and notes dated April 23, 2001, reflecting a diagnosis of depression and anxiety and containing the words “mood swings/crying/frequent awakening.” An unsigned note dated February 17, 2004 indicated a diagnosis of depression.

Appellant provided a personal statement, received by the Office on June 24, 2004, in which she stated that she found it very difficult to perform two positions while training two “new girls.” She alleged that she had so much work to do that it was impossible to get everything done and that she did not know where to begin. Although appellant was a GS-4, she had more responsibilities than many higher grades and that, if she appeared not to be busy, her boss gave her something else to do. She noted that her secretarial and education technology job both required her to meet deadlines, including ensuring correct entry of all time and leave prior to the end of each pay period and reconciling credit card statements by the end of the month. Appellant was required to “sit in” for the directorate secretary for a couple of hours; was not provided adequate training for her education technology position; and her supervisor required her to complete tasks within a short timeframe, without regard to her current workload. Appellant also alleged that she was not treated with dignity or respect, claiming that her boss had thrown papers on her keyboard while she was typing and told her to go to the clinic by herself when she had chest pains. She alleged that since she filed a grievance several years prior, her supervisor harassed her by watching her every move, questioning her time away from her desk, even though other people in the office came in late, left early and went missing for hours and “he never says anything to them;” and by making her go to the health clinic when she became ill before going home, even though everyone else can “just go home.”<sup>1</sup> Appellant claimed that she hated to go to

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<sup>1</sup> The evidence of record does not include a copy of a grievance filed by appellant.

work and became nauseous while getting ready each morning; that she developed headaches, irritable bowel and chest pains; and that she had been seeing a psychologist and taking medication for stress.

Appellant's supervisor, Donald K. Herr, contested her allegations in a statement dated July 30, 2004. While he agreed that appellant's position required that she meet deadlines, "as is common in almost any position of this type," he stated that she performed her duties well, as evidenced by above-average performance appraisals. Mr. Herr indicated that appellant had requested and was granted reassignment to the position of education technologist, for which she received training, and that she was transitioning into her new position very nicely. At the time she applied for the new position, he informed her that she would be responsible for helping to transition another employee into her previous job. Mr. Herr denied appellant's allegations of harassment, stating that he always maintained a soft-spoken and polite presence and encouraged discussion with employees on matters of family or work issues and tried to provide a positive and congenial work environment for her. He specifically denied having thrown papers on appellant's keyboard.

By decision dated August 11, 2004, the Office denied appellant's claim, finding that she failed to provide medical evidence supporting a relationship between her diagnosed condition and any compensable factor of employment.<sup>2</sup>

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act<sup>3</sup> provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>4</sup> The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."<sup>5</sup>

To establish her occupational disease claim that she has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the

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<sup>2</sup> The Board notes that appellant submitted additional evidence after the Office rendered its August 11, 2004 decision. As this evidence was not previously considered by the Office prior to its decision of August 11, 2004, the evidence represents new evidence which cannot be considered by the Board. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> 5 U.S.C. § 8102(a).

<sup>5</sup> This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB \_\_\_\_ (Docket No. 04-1257, issued, September 10, 2004); see also *Bernard D. Blum*, 1 ECAB 1 (1947).

identified compensable employment factors are causally related to her emotional condition.<sup>6</sup> Rationalized medical opinion evidence is medical evidence that 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. Such an opinion 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 appellant.<sup>7</sup>

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 or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to his regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Act. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of his work or his fear and anxiety regarding his ability to carry out his duties.<sup>8</sup> By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>9</sup> Moreover, although administrative and personnel matters are generally related to employment, they are functions of the employer and not duties of the employee. Thus, the Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.<sup>10</sup>

The Board has recognized the compensability of verbal altercations or abuse in certain circumstances; however, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.<sup>11</sup> For harassment or discrimination to give rise to a compensable disability, there must be evidence that the alleged actions did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable.<sup>12</sup> When an employee alleges harassment and cites specific incidents, the Office or other appropriate fact finder must determine the truth of the allegations. The issue is not whether the claimant has established

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<sup>6</sup> *Claudio Vazquez*, 52 ECAB 496, 498 (2001).

<sup>7</sup> *Id.*

<sup>8</sup> *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>9</sup> *Id.* See also *Peter D. Butt, Jr.* 56 ECAB \_\_\_\_ (Docket No., issued October 13, 2004).

<sup>10</sup> See *Charles D. Edwards*, 55 ECAB \_\_\_\_ (Docket No. 02-1956, issued January 15, 2004); see also *Ernest J. Malagrida*, 51 ECAB 287, 288 (2000).

<sup>11</sup> See *Charles D. Edwards*, *supra* note 10.

<sup>12</sup> See *Peter D. Butt, Jr.*, *supra* note 9.

harassment or discrimination under EEO standards. Rather, the issue is whether sufficient evidence has been submitted to factually support the claimant's allegations.<sup>13</sup>

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 factors of employment which may be considered by a physician when providing an opinion on causal relationship and which are not deemed factors of employment and may not be considered. 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.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition was caused or adversely affected by her employment.<sup>17</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.<sup>18</sup>

### ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, therefore, initially review whether the alleged incidents and conditions of employment are compensable under the terms of the Act.

Appellant has alleged that harassment on the part of her supervisor contributed to her stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors. However, mere perceptions are not compensable and there must be evidence that the harassment did, in fact, occur to give rise to a compensable disability under the Act. In the present case, appellant alleged that her supervisor took actions that she believed constituted harassment,

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<sup>13</sup> *Id.*

<sup>14</sup> *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

<sup>15</sup> *See Charles D. Edwards*, *supra* note 10.

<sup>16</sup> *Charles E. McAndrews*, *supra* note 4; *see also Arthur F. Hougens*, 42 ECAB 455 (1991) and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence corroborated such allegations).

<sup>17</sup> *See Charles D. Edwards*, *supra* note 10.

<sup>18</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

treating her unfairly and without dignity or respect. She claimed that Mr. Herr watched every move she made and questioned her time away from her desk, while failing to discipline other employees who came in late, left early and went missing for hours. Appellant also alleged that, when she was ill, her supervisor required her to go to the health clinic prior to leaving the employing establishment, even though other employees were not required to do so. Appellant claimed that her supervisor threw papers down on her keyboard while she was typing. However, she provided no corroborating evidence, such as witness statements, to substantiate a factual basis for her allegations. Moreover, Mr. Herr denied appellant's allegations of harassment, stating that he attempted to provide a positive and congenial work environment for her. The Board finds that appellant has failed to establish a compensable employment factor related to the claimed harassment.

Allegations that her supervisor watched every move she made, questioned her time away from her desk and required her to go to the health clinic prior to leaving the employing establishment relate to administrative or personnel matters, unrelated to appellant's regular or specially assigned work duties and do not fall within coverage of the Act. Although the handling of disciplinary actions, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>19</sup> Similarly, appellant's allegations that she was not provided adequate training for her new position and that she was asked to "sit in" for the directorate secretary relate to administrative functions of the employer and are, therefore, not compensable factors of employment. Her frustration from not being permitted to work in a particular environment is not a compensable factor under the Act. Appellant has submitted no evidence in this case, apart from her own feelings, that her supervisor committed error or abuse in discharging his supervisory or managerial duties and, therefore, has failed to show that her claim falls within the exception to the general rule that an emotional reaction to an administrative or personnel action is not covered by workers' compensation.

Although appellant indicated that she had filed an EEO complaint against the employing establishment, she submitted no finding or final decision from the EEO Commission to substantiate her allegations. The Board has held that grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.<sup>20</sup>

Appellant also alleged that she experienced emotional stress in carrying out her employment duties. She stated that she found it very difficult to perform two positions while training two "new girls," alleging that she had so much work to do that it was impossible to get everything done and that she did not know where to begin. Appellant claimed that she experienced stress, nausea, headaches, irritable bowel and chest pains as a result of trying to meet deadlines and trying to complete assigned tasks within a short timeframe.

The employing establishment does not dispute this aspect of appellant's claim. Her supervisor agreed that appellant's position required her to meet deadlines and that she was responsible for training another employee for her previous job. Mr. Herr stated that she

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<sup>19</sup> See *Cyndia R. Harrill*, 55 ECAB \_\_\_\_ (Docket No. 04-399, issued May 7, 2004).

<sup>20</sup> *James E. Norris*, 52 ECAB 93 (2000).

performed her duties well, as evidenced by above-average performance appraisals. Under the principles of *Cutler*, where the disability results from a claimant's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within coverage of the Act.<sup>21</sup> Mr. Herr also indicated that appellant requested and was trained for her new assignment and was transitioning very nicely. However, the fact that she voluntarily undertook a new position does not render the alleged employment factors noncompensable. The Board has held that conditions related to stress from situations in which an employee is trying to meet his or her position requirements are compensable.<sup>22</sup> The evidence in this case is sufficient to establish that she experienced stress or anxiety in performing her regular and specially assigned duties. Thus, the Board finds that appellant has established a compensable employment factor under *Cutler*.

The fact that appellant has established employment factors that may give rise to a compensable disability under the Act does not discharge her burden of proof. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical opinion evidence establishing that she has an emotional condition or psychiatric disorder and that such disorder is causally related to an accepted compensable employment factor.<sup>23</sup> This appellant has not done.

The medical evidence of record does not contain any report addressing the effects of incidents or conditions of appellant's employment. Treatment notes merely reported her complaints of stress while at work. Dr. Seprosky's notes of May 28, 2004 connect a diagnosis of anxiety disorder and depression parenthetically to "work-related stress." However, Dr. Seprosky did not provide a rationalized opinion as to the cause of appellant's condition. Rather than explain from his medical perspective the nature of the relationship between her diagnosed condition and the established incident or factor of employment, he simply noted that she had been seen for an evaluation of work-related stress and anxiety. This notation is inadequate to establish the critical element of causal relationship. The Board has repeatedly held that a medical opinion not fortified by medical rationale is of little probative value.<sup>24</sup> There is no medical evidence of record that provides a rationalized medical opinion on the cause of appellant's diagnosed condition. The Board finds that appellant has not submitted medical evidence sufficient to establish that her diagnosed psychiatric condition is causally related to compensable employment factors.

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<sup>21</sup> See *Lillian Cutler*, *supra* note 8. See also *Tina D. Francis*, 56 ECAB \_\_\_\_ (Docket No. 04-965, issued December 16, 2004). (Where claimant alleged that stress related to her regular supervisory duties and to specially assigned duties associated with complaint investigations caused her emotional condition, the Board found that she had established compensable employment factors.)

<sup>22</sup> *Trudy A. Scott*, 52 ECAB 309 (2001); see *Richard H. Ruth*, 49 ECAB 503 (1998) (claimant's stress, as related to his regularly assigned duties, constituted a compensable factor of employment); *Lillian Cutler*, *supra* note 8.

<sup>23</sup> See *Roger W. Robinson*, 54 ECAB \_\_\_\_ (Docket No. 03-348, issued September 30, 2003).

<sup>24</sup> See *Brenda L. DuBuque*, 55 ECAB \_\_\_\_ (Docket No. 03-2246, issued January 6, 2004); see also *David L. Scott*, 55 ECAB \_\_\_\_ (Docket No. 03-1822, issued February 20, 2004) and *Willa M. Frazier*, 55 ECAB \_\_\_\_ (Docket No. 04-120, issued March 11, 2004).

**CONCLUSION**

Appellant has failed to meet her burden of proof that she sustained an emotional condition in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 11, 2004 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: April 14, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member