

By letter dated February 20, 2004, the Office requested additional factual and medical information from appellant. She did not, however, respond within the time allotted.

In a letter dated February 29, 2004, Henry J. Wieman, an official with the employing establishment, indicated that he was not appellant's usual supervisor. He stated:

"Since the case involved supposed harassment by her regular supervisor, I was asked to handle the claim on a day when I did supervise her section. Although my knowledge of the facts came four days after the incident, I have no reason to believe that [appellant] stated anything which was not true."

Mr. Wieman noted that appellant "was new to the section and not fully trained for her new position" but performed "up to expectations" with "no conduct issues."

In a decision dated March 22, 2004, the Office denied her claim on the grounds that she did not establish an injury as alleged.

On March 26, 2004 appellant requested reconsideration. She submitted a statement dated January 7, 2004 in which she described the events of January 2, 2004. Appellant related that she "punched in for work on the DBCS [delivery bar code sorter] machines" and returned to the desk. She stated:

"As soon as I came back to the desk, Betsy Slagle, DBCS supervisor, started yelling at me about punching in too early. Then ... I was told by Betsy that she would not adhere to that schedule and that she would put me anywhere she wanted to and with any person she wanted to. I tried to reason with her but could not. Then she told me to go to machine [number] 8, which is where I went. I was standing there for about 5 min[utes] waiting for the person I was working with, when Betsy came to me and yelled, 'What are you doing standing here! We do [not] run this machine! Who trained you anyway!' I did not realize that there were two number 8 machines and no one had ever explained this to me. She had no right to yell at me like this, I had only been working there [two] days."

Appellant submitted numerous statements from coworkers describing Ms. Slagle's conduct towards them. The record also contains numerous grievance resolutions against Ms. Slagle regarding other employees.

Appellant filed a grievance against Ms. Slagle for unacceptable conduct and discrimination based on the events of January 2, 2004. She additionally filed an Equal Employment Opportunity (EEO) complaint alleging that Ms. Slagle sexually discriminated against her by not allowing her work her chosen job assignment.

In a decision dated June 17, 2004, the Office modified its March 22, 2004 decision to find that appellant established the occurrence of the employment incident on January 2, 2004. The Office determined that appellant did not sustain an emotional condition in the performance of duty as she did not establish 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 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 specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ 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.²

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.³ However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.⁴ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁵

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. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.⁶ A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.⁷ The issue is whether the claimant has submitted sufficient evidence under the Act to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁸ The primary reason for requiring factual evidence from the claimant is support of his or her allegations of stress in the workplace is to establish a basis in

¹ 5 U.S.C. § 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

² *Gregorio E. Conde*, 52 ECAB 410 (2001).

³ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 556 (1991).

⁴ See *William H. Fortner*, 49 ECAB 324 (1998).

⁵ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁶ See *Michael Ewanichak*, 48 ECAB 364 (1997).

⁷ See *Charles D. Edwards*, 55 ECAB ____ (Docket No. 02-1956, issued January 15, 2004); *Parley A. Clement*, 48 ECAB 302 (1997).

⁸ See *James E. Norris*, 52 ECAB 93 (2000).

fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.⁹

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 a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.¹⁰ 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.¹¹

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of employment incidents on January 2, 2004, which the Office found to be noncompensable. The Board must initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that Ms. Slagle, a supervisor, questioned her start time and refused to allow her to work in her assigned position. The Board has held that the assignment of work and the monitoring of an employee are administrative functions of the employer and the manner in which a supervisor exercises his or her discretion falls outside the scope of the Act. Absent evidence of error or abuse, a claimant's mere disagreement or dislike of managerial action is not compensable.¹² In this case, while appellant filed a grievance based on Ms. Slagle's refusal to allow her to work in her chosen job assignment on January 2, 2004, the record contains no resolution of the grievance or other evidence which would establish error or abuse by the employing establishment in the assignment or monitoring of her work. Further, appellant's dissatisfaction with her work assignment appears to be based on her desire to work in a particular environment or to hold a particular position, which is not covered under the Act.¹³ Consequently, appellant has not established a compensable employment factor.

Appellant maintained that Ms. Slagle verbally abused her when she went to work on the wrong machine. The Board has held that, while verbal abuse may constitute a compensable factor of employment, this does not imply that every statement uttered in the workplace will give

⁹ *Beverly R. Jones*, 55 ECAB ____ (Docket No. 03-1210, issued March 26, 2004).

¹⁰ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹¹ *Id.*

¹² *Barbara J. Latham*, 53 ECAB 316 (2002).

¹³ *Id.*

rise to coverage under the Act.¹⁴ In this case, appellant asserted that Ms. Slagle yelled, “What are you doing standing here! We do [not] run this machine! Who trained you anyway!” Mr. Wieman, a supervisor with the employing establishment indicated that he had no reason not to believe appellant’s version of events. Appellant has not established, however, how the comments made by Ms. Slagle on January 2, 2004 rise to the level of verbal abuse.¹⁵ The Board has generally held that being spoken to in a raised or harsh voice does not of itself constitute verbal abuse or harassment.¹⁶ Appellant, consequently, has not established that Ms. Slagle verbally abused her on January 2, 2004.

Regarding appellant’s allegations of harassment and discrimination by Ms. Slagle, the Board has held that to the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from the employee’s performance of her regular duties, these could constitute employment factors.¹⁷ The evidence, however, must establish that the incidents of harassment or discrimination occurred as alleged to give rise to a compensable disability under the Act.¹⁸ Appellant submitted numerous statements from coworkers describing interactions with Ms. Slagle and copies of grievance resolutions concerning Ms. Slagle. The statements and grievance resolutions are not specific to appellant’s claims, however, and are of little probative value. While appellant filed an EEO complaint alleging sexual discrimination by Ms. Slagle, this alone does not substantiate the allegations contained therein.¹⁹ There is no indication that the EEO complaints were resolved in her favor with findings of wrongdoing by the employing establishment.²⁰ Appellant consequently has not established a factual basis for her allegation of harassment by Ms. Slagle.

As appellant failed to establish that her emotional condition was causally related to a compensable employment factor, the Office properly denied her claim.²¹

¹⁴ See *Judy L. Kahn*, 53 ECAB 321 (2002).

¹⁵ *Peter D. Butt, Jr.*, 56 ECAB ____ (Docket No. 04-1255, issued October 13, 2004).

¹⁶ *Beverly R. Jones*, 55 ECAB ____ (Docket No. 03-1210, issued March 26, 2004).

¹⁷ *Janice I. Moore*, 53 ECAB 777 (2002).

¹⁸ *Id.*

¹⁹ *Michael A. Salvato*, 53 ECAB 666 (2002).

²⁰ In contrast to mere charges filed in an EEO complaint, a final decision constitutes evidence that is instructive as it provides a substantive review of the employee’s allegations. See *Michael A. Deas*, 53 ECAB 208 (2001). The issue is not, however, whether the claimant has established harassment or discrimination under Equal Employment Opportunity Commission standards. Rather, the issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence. See *James E. Norris*, *supra* note 8.

²¹ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

CONCLUSION

The Board finds that appellant has not established that she sustained an emotional condition on January 2, 2004 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 17 and March 22, 2004 are affirmed.

Issued: November 15, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board