

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

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**DORETHA M. BELNAVIS, Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL  
CENTER, Tampa, FL, Employer**

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**Docket No. 05-1879  
Issued: January 12, 2006**

*Appearances:*  
*Doretha M. Belnavis, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On September 12, 2005 appellant filed a timely appeal from Office of Workers' Compensation Programs' decisions dated November 20, 2004 and June 17, 2005, 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 this case.

**ISSUE**

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to a compensable factor of her employment.

**FACTUAL HISTORY**

On June 17, 2003 appellant, then a 39-year-old administrative support clerk (billing clerk), filed an occupational disease claim alleging that beginning in October 2002 she developed depression and physical symptoms, such as headaches and abdominal pain, caused by work stress. She alleged that Phyllis Jackson, her supervisor, improperly accessed her personal

medical records in the employing establishment computer system, made derogatory statements about her mental state and harassed and discriminated against her concerning her job performance.<sup>1</sup>

Appellant submitted medical evidence from Dr. Walter E. Afield, an attending Board-certified psychiatrist, in support of her emotional condition claim. He indicated that appellant's supervisor had improperly accessed her medical records and made derogatory comments about the mental conditions described therein. Dr. Afield noted that appellant was also being treated by a Dr. Jennings at the employing establishment hospital. In a July 31, 2003 report, Dr. Afield stated that he would defer to Dr. Jennings on the question of whether appellant was disabled due to her emotional condition. In an October 30, 2003 report, Dr. Afield indicated that he had obtained medical records from the employing establishment, including psychiatric treatment records.<sup>2</sup>

In notes and statements submitted to the Office in December 2003, Ms. Jackson indicated that she counseled appellant concerning matters affecting her job performance, such as her failing to meet her daily billing standards, making billing errors, spending time socializing with coworkers during the workday, making personal telephone calls and exceeding her allowed break time. In a July 2, 2003 statement, Ms. Jackson denied that she ever made derogatory comments about appellant. Regarding appellant's allegation that she improperly reviewed her medical records, Ms. Jackson stated that she was responsible for the processing of bills for employees treated at the employing establishment and, for this reason, she accessed the "patient profile and claims tracking" portion of the computer records but did not access any medical notes or reports from appellant's physicians.

By decision dated November 20, 2004, the Office denied appellant's claim on the grounds that she failed to establish that her emotional condition was causally related to a compensable factor of her employment.

Appellant requested reconsideration and submitted an agency decision on her Equal Employment Opportunity complaint dated March 26, 2004. The agency found that the evidence established that appellant was harassed and discriminated against based on her disability, post-traumatic stress disorder and depression.<sup>3</sup> The agency decision noted that management did not take timely and appropriate action and provided for remedial action by the employing establishment.

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<sup>1</sup> Appellant alleged that Ms. Jackson made comments such as, "That bitch is crazy. She's [military] service connected for PTSD [post-traumatic stress disorder] and depression and is the type of person that will get a gun in a building and shoot us all."

<sup>2</sup> These reports are not of record.

<sup>3</sup> The decision accepted as factual appellant's allegations that her supervisor illegally accessed her medical records and harassed and discriminated against her by making negative comments about her and issuing written counseling. The agency found that management did not discriminate against appellant based on her sex or race. The agency decision noted that appellant submitted testimony and witnesses who provided credible supporting testimony.

By decision dated June 17, 2005, the Office denied modification of the November 20, 2004 decision.

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act<sup>4</sup> provides for the payment of compensation benefits for injuries sustained in the performance of duty. To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying compensable employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>5</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,<sup>6</sup> the Board explained that there are distinctions in the type of employment situations giving rise to a compensable emotional condition under the Act. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the coverage under the Act.<sup>7</sup> When an employee experiences emotional distress in carrying out her employment duties and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of her work.<sup>8</sup> 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.<sup>9</sup> Generally, actions of the employing establishment in administrative matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act.<sup>10</sup> However, an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.<sup>11</sup>

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *George C. Clark*, 56 ECAB \_\_\_\_ (Docket No. 04-1573, issued November 30, 2004).

<sup>6</sup> 28 ECAB 125 (1976).

<sup>7</sup> *George C. Clark*, *supra* note 5.

<sup>8</sup> *Lillian Cutler*, *supra* note 6.

<sup>9</sup> *Id.*

<sup>10</sup> *Michael L. Malone*, 46 ECAB 957 (1995).

<sup>11</sup> *Charles D. Edwards*, 55 ECAB \_\_\_\_ (Docket No. 02-1956, issued January 15, 2004).

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.<sup>12</sup> 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.<sup>13</sup>

### **ANALYSIS**

Appellant alleged that her supervisor improperly accessed her personal medical records, made derogatory statements about her emotional condition and harassed and discriminated against her concerning her job performance. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute a compensable employment factor.<sup>14</sup> However, for harassment and 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.<sup>15</sup>

The Board notes that the March 26, 2004 agency decision found harassment and discrimination against appellant by her supervisor based on her disability. It therefore provides factual support for her allegations. The Board finds that the March 26, 2004 agency decision constitutes substantial evidence that Ms. Jackson improperly accessed appellant's medical records and harassed and discriminated against her, with regard to her post-traumatic stress disorder and depression. Therefore appellant has established a compensable factor of employment.<sup>16</sup>

However, appellant's burden of proof is not discharged by the fact that she has established an employment factor, which may give rise to a compensable disability under the Act. As noted above, appellant must also submit rationalized medical evidence establishing that

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<sup>12</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

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

<sup>14</sup> *Charles D. Edwards*, *supra* note 11.

<sup>15</sup> *Donna J. DiBernardo*, 47 ECAB 700 (1996).

<sup>16</sup> In contrast to mere allegations in a discrimination complaint, a final decision of the agency constitutes evidence that is instructive as it provides a substantive review of the employee's claim and the evidence submitted. *See Michael A. Deas*, 53 ECAB 208 (2001).

her claimed emotional condition is causally related to an accepted compensable employment factor.<sup>17</sup>

The reports from Dr. Afield refer to the accepted factor of employment but do not provide a rationalized medical opinion relating the compensable factor to appellant's emotional condition. Therefore, the medical evidence of record is not sufficient to establish that appellant sustained an emotional condition causally related to the compensable employment factor. However, Dr. Afield indicated that appellant was treated by a second psychiatrist at the employing establishment hospital, Dr. Jennings and deferred to him in one report as to the matter of appellant's disability caused by her emotional condition. No reports from Dr. Jennings are of record. The Board finds that further development of the medical evidence is needed on the issue of whether appellant's emotional condition was caused or aggravated by the accepted employment factor. On remand the Office should obtain the reports from Dr. Jennings and develop the medical evidence on the issue of causal relationship. After such further development as the Office deems necessary, it should issue an appropriate decision on the issue of whether appellant's emotional condition was causally related to the compensable employment factor.

### **CONCLUSION**

The Board finds that this case is not in posture for a decision as further development of the medical evidence is required.

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<sup>17</sup> *Brian E. Flescher*, 40 ECAB 532 (1989); *Ronald K. White*, 37 ECAB 176 (1985).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated June 17, 2005 and November 20, 2004 are set aside and the case is remanded for further development consistent with this decision, to be followed by an appropriate decision.

Issued: January 12, 2006  
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