

August 25, 2004, she alleged that she spoke with her supervisor, Betsy Reyes regarding “possible cocaine use and dealing” within the employing establishment. Appellant stated that she contacted the Office of Inspector General (OIG) to prevent a possible cover-up and was interrogated on August 18, 2004. On that date, Omar Delmas, a coworker, walked by her area and said loudly that “people should keep information to themselves or else they’d get hurt.” Appellant reported this threat by email to Ms. Reyes and was advised to file a protective order with the police. She also spoke to an employee assistance program (EAP) adviser and he indicated that she had brought the trouble on herself and should be careful about making allegations that she could not prove.

On September 21, 2004 the Office received an undated and unsigned statement from the employing establishment that controverted the claim. It noted that appellant alleged that illegal substances were in the employing establishment; however, when the matter was investigated, she did not have any proof to support her allegations. The employee whom appellant alleged was using drugs was questioned and the case was closed as the allegations were unfounded. The employing establishment advised that it also interviewed the employee whom appellant had alleged threatened her and he denied her allegations. It could find no witnesses to support her allegation.

In a memorandum dated September 1, 2004, Cynthia Casey, a manager, indicated that she had interviewed Mr. Delmas who denied making the alleged threatening statement or any similar statements to appellant or anyone at the employing establishment.

In a September 17, 2004 statement, Robert Boyer, an employee relations specialist, stated that appellant’s allegations of wide spread cocaine use and the sale of cocaine by coworkers were based on an “overheard conversation between her coworkers” which was found to have no basis in fact. Appellant also alleged that her supervisors were aware of drug use condoned the activities and participated in them. Mr. Boyer advised that an investigation had been conducted and it was determined that her allegations were “without merit and baseless.”

In an August 25, 2004 attending physician’s report, Dr. Susan Klein, Board-certified in physical medicine, diagnosed extreme anxiety and stress. She opined that appellant was totally disabled. Dr. Klein checked the box “yes” in response to whether she believed appellant’s condition was caused or aggravated by an employment activity and filled in that appellant was threatened with physical harm by a coworker.

In a September 21, 2004 report, Evan Senreich, a social worker and psychotherapist, noted that appellant was unable to work since August 23, 2004. He related that appellant had acute distress from being threatened on the job by a coworker after requesting an investigation about possible drug usage at the employing establishment. Mr. Senreich noted that the stress “exacerbated her bipolar disorder.”

In a disability certificate dated September 27, 2004, Dr. Ulla Laakso, Board-certified in general preventive medicine, advised that appellant was under her care for a mood disorder and was unable to work.

By letter dated October 19, 2004, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she submit additional supportive factual and medical evidence.

In a November 16, 2004 report, Mr. Senreich recounted that in August 2004 appellant reported that drug usage was taking place at the employing establishment and, as a result, she was physically threatened by a coworker. Appellant related that she was not taken seriously in regard to her fear of physical retaliation by the coworker. Mr. Senreich advised that appellant had a history of bipolar disorder which was in remission for many years. In a November 20, 2004 disability certificate, Dr. Laakso advised that appellant was under her care since January 20, 2000 and that she did not feel safe to return to work due to drug dealing in her office, which worsened her symptoms.

In a statement dated December 23, 2004, appellant described those factors which she believed caused or contributed to her stress condition. She alleged that a supervisor and three coworkers were “most likely” using and or dealing cocaine. A folder containing “important legal papers” related to a nonwork matter was missing from her work cubicle. Victoria Anderson, a supervisor, intimidated and harassed her and Hazel Morgan, a union representative, called her a “nerd” and “stupid bitch.” Appellant also alleged that Mr. Delmas threatened her. She alleged that on September 18, 2004 she was “deeply shocked” to receive a separation notice. Appellant alleged that she was diagnosed with a bipolar disorder in the 1970’s but that this condition had never prevented her from working.

By decision dated May 5, 2005, the Office denied appellant’s claim. The Office found that the evidence failed to establish an emotional condition arising in the performance of duty. The Office found that appellant had not established any compensable factors of employment.

On May 17, 2005 appellant requested a hearing, which was held on August 9, 2005. She reported Ms. Anderson’s drug use to management because the employing establishment did not tolerate drug use. Appellant reiterated her allegation of being threatened at work by Mr. Delmas. She denied that she reported widespread illegal drug use at the employing establishment, only that certain employees used drugs. Appellant filed an EEO complaint which was pending. She indicated that she had not returned to the employing establishment but was working freelance in graphic designs.

By letter dated September 9, 2005, Mr. Boyer provided the Office with a copy of a report of an investigation into appellant’s allegations. The investigation, conducted by the OIG, covered the allegations of drug use on the job and stealing from appellant. It concluded that there was a lack of evidence to substantiate appellant’s various allegations.

By decision dated October 13, 2005, the Office hearing representative affirmed the May 5, 2005 decision.

LEGAL PRECEDENT

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.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

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition, for which she claims compensation was caused or adversely affected by employment factors.³ This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions, for which compensation is claimed.⁴

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.⁵ 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.⁶

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of stress related to reporting drug use among coworkers and in being threatened. She did not attribute her emotional condition to her duties as a teleservice representative. 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 alleged stress after she reported that her supervisor and coworkers used drugs in the workplace and that she was threatened by Mr. Delmas. The Board has recognized the compensability of physical threats in certain circumstances, but the factual aspects of such

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 126 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

claimed threats must be established in order to show a compensable employment factor.⁷ Appellant has not submitted sufficient factual evidence to show that she was threatened by Mr. Delmas in the manner alleged. Her allegations regarding the use of drugs in the workplace by supervisors and employees and in being threatened by Mr. Delmas were unsupported by evidence to substantiate her contentions did not present any supporting evidence to establish the allegations as factual. Appellant's allegations were investigated by the employing establishment OIG. Ms. Casey, a manager, indicated that the allegations were not substantiated and no witnesses could be found to support appellant's assertions. Mr. Delmas denied making any threats. Mr. Boyer, an employee relations specialist, indicated that appellant's allegations of wide spread drug use was based on an "overheard conversation" and that there was no factual basis to support her representations. Appellant has not established that she was threatened.

Appellant also alleged that she was called a "nerd" or a "stupid bitch." However, these allegations were also denied. The Board has held that, while verbal abuse may constitute a compensable factor of employment, not every statement uttered in the workplace will be covered under the Act.⁸ A raised voice in the course of a conversation does not, in and of itself, warrant a finding of verbal abuse.⁹ Appellant has not submitted sufficient evidence to establish that these comments were made by specific individuals at specific times. Her allegations did not include evidence from any witnesses to substantiate that she was called names by Ms. Morgan or other individuals. A claimant must establish a factual basis for her allegations with probative and reliable evidence.¹⁰ Appellant has not established verbal abuse.

Appellant also alleged that a folder containing documents pertaining to a nonwork-related matter was missing from her work cubicle. She did not support this allegation with sufficient evidence. Also, these were materials of a personal nature and not related to appellant's regular or specially-assigned work duties. Mr. Boyer provided a copy of a report of an investigation, which included the charges of stealing. The investigation concluded that there was a "lack of evidence" to substantiate her allegations. Appellant's allegations regarding her personal and private files are not considered to be within an employee's course of employment or performance of duty.

The Board also notes that the record does not contain any formal Equal Employment Opportunity decisions substantially of any of the charges appellant has made. Without that proof and without any other evidence that an actual event of error or abuse occurred, appellant has not demonstrated that her claim is one that can be covered by workers compensation.

As appellant has not established a compensable employment factor, it is not necessary to address the medical evidence.¹¹

⁷ See *Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991).

⁸ See *Judy L. Kahn*, 53 ECAB 321 (2002).

⁹ *Karen K. Levene*, 54 ECAB 671 (2003).

¹⁰ *Andrew J. Sheppard*, 53 ECAB 170 (2001).

¹¹ *Garry M. Carlo*, 47 ECAB 299 (1996); see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

CONCLUSION

For the foregoing reasons, as appellant has not established any compensable employment factors under the Act, she has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 13, 2005 is affirmed.

Issued: April 5, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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