

Appellant, a 47-year-old store manager, filed a Form CA-2, claim for benefits based on a stress-related condition on June 25, 2005. She stated that she experienced severe abdominal pain and emotional stress due to a September 27, 2004 letter from her supervisor which she received on October 10, 2004. The letter pertained to an investigation of alleged improper conduct, mismanagement and financial liability on appellant's part. Appellant stated that her stress-

related abdominal condition began on August 21, 2003 when she received a certified letter from Kitty G. Jolley-Grant, a supervisor. It asserted that appellant owed the United States Government the sum of \$1,459.19, which represented the total cost for government meat which was not accounted for and considered lost. Appellant contended that the accusation was false and that she experienced abdominal pain and cramping. She experienced similar abdominal pain on September 17, 19, 22 and 23, 2003 and also on November 7, 2003. Appellant again sought medical treatment for this condition. She stopped working on February 15, 2005.

On October 7, 2004 appellant stated that she received a September 27, 2004 letter from the Defense Commissary Agency informing her that it was reviewing her September 12, 2003 statement which had rebutted the allegations in the employing establishment's August 21, 2003 letter. She alleged that the September 27, 2004 letter reminded her of the prior false accusations. Appellant experienced additional stress and abdominal attacks on November 4, 9 and 11, 2004 and January 29 and 31, 2004 and February 2 and 15, 2005, for which she sought treatment. With regard to the November 4, 2004 incident, appellant stated that she was preparing the meat case for the arrival of the Vice Admiral, which triggered memories of the letters she received from the employing establishment in August 2003 and October 2004.

Appellant alleged that she experienced further stress and abdominal pain after receiving a January 25, 2005 letter from the Defense Commissary Agency. Ms. Jolley-Grant advised her that, based on a review of her rebuttal statement and investigation of the information contained in her supporting documents, the employing establishment had approved her challenge to the proposed adverse action. The employing establishment relieved appellant from financial liability for the meat loss and suspended any further investigation. Appellant experienced another severe abdominal attack on January 29, 2005 in reaction to her receipt of this letter.

By letter dated July 27, 2005, the Office advised appellant that she needed to submit additional factual and medical information in support of her claim. It noted that appellant had a previously accepted but closed claim for an injury which occurred on August 21, 2003 due to her receipt of a letter from the Defense Commissary Agency informing her that she was being held liable for lost meat. The Office asked her to indicate how and why she was affected by her receipt of the September 27, 2004 letter. The Office also asked appellant to address the January 25, 2005 letter from the employing establishment indicating it was relieving her of financial liability for the meat loss. The Office requested a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her stress-related condition and an opinion as to whether her claimed emotional condition was causally related to her federal employment. The Office advised that appellant to submit the additional evidence within 30 days.

In a September 6, 2005 report, Steven Hirsch, Ph.D a clinical psychologist, diagnosed major depressive disorder, recurrent, severe. He stated that appellant had numerous emotional problems allegedly related to workplace stress. Dr. Hirsch opined that appellant's psychological and cultural make-up predisposed her to psychological disorder. Appellant tended to overreact to minor problems with physical symptoms such as gastrointestinal distress, as developed after she received notification that she was being held financially liable to the United States Government in the amount of \$1,459.19. Dr. Hirsch concluded that appellant was totally, disabled on a psychological basis. Appellant experienced somatic complaints, insomnia and had difficulty concentrating and focusing. Dr. Hirsch noted that appellant had symptoms of anxiety

and depression with frequent headaches and abdominal pain. He opined that she was in need of additional psychological and pharmacological intervention.

By decision dated September 25, 2005, the Office denied appellant's claim on the basis that she failed to establish any compensable factor of employment. The Office accepted as factual the following allegations, but found that they were not compensable: (a) appellant received a letter from the employing establishment dated September 27, 2004 informing her that the employing establishment was reviewing her rebuttal to its August 13, 2003 determination that she was financially liable to the Federal Government; and (b) she received a January 25, 2005 letter from the employing establishment advising her that, based on its investigation, financial liability would not be assessed against her. The Office stated that appellant had not provided any evidence that the employing establishment committed administrative error in issuing the letters. The Office found that the employing establishment merely advised her that an investigation was being conducted. The Office further found that the employing establishment did not commit error in sending appellant the January 25, 2005 letter which exonerated her of any wrongdoing and relieved her of any financial liability.

By letter dated October 27, 2005, appellant requested a review of the written record.

By decision dated December 12, 2005, an Office hearing representative vacated the September 25, 2005 decision. The case was remanded for a statement from the employing establishment in response to appellant's allegations (pursuant to 20 C.F.R. § 10.117<sup>1</sup> and 20 C.F.R. § 10.118).<sup>2</sup> The hearing representative stated that, although the Office asked appellant in its July 27, 2005 letter to provide a copy of her statement to the employing establishment for

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<sup>1</sup> Section § 10.117 states:

(a) An employer who has reason to disagree with any aspect of the claimant's report shall submit a statement to the Office that specifically describes the factual allegation or argument with which it disagrees and provide evidence or argument to support its position. The employer may include supporting documents such as witness statements, medical reports or records or any other relevant information;

(b) Any such statement shall be submitted to the Office with the notice of traumatic injury or death or within 30 calendar days from the date of notice of occupational disease or death is received from the claimant. If the employer does not submit a written explanation to support the disagreement, the Office may accept the claimant's report of injury as established. The employer may not use a disagreement with an aspect of the claimant's report to delay forwarding the claim to the Office or to compel or induce the claimant to change or withdraw the claim.

<sup>2</sup> 20 C.F.R. § 10.118(a) states:

(a) The employer is responsible for submitting to the Office all relevant and probative factual and medical evidence in its possession or which it may acquire through investigation or other means. Such evidence may be submitted at any time.

comment, the employing establishment did not respond. The hearing representative directed the Office to send a letter directly to the employing establishment asking for its comments.<sup>3</sup> He vacated the September 28, 2005 decision and remanded for a determination on whether the employing establishment erred by sending appellant the September 27, 2004 letter or with regard to the other allegations raised by appellant.

By letter dated January 3, 2006, the employing establishment denied appellant's allegation that Ms. Jolley-Grant had erred or acted unreasonably sending the September 27, 2004 letter advising her that management was reviewing her rebuttal statement. The letter stated that "[i]n matters of fiscal responsibility, especially where public funds are potentially impacted, there is always a secondary review of any initial decision. There was no harmful intent in the issuance of the memorandum, simply a notification that the matter would be further reviewed and giving [appellant] the opportunity to comment or submit further documentation." With regard to the abdominal pain appellant experienced on April 28, 2005, the employing establishment stated that she was on medically excused leave at the time and, therefore, not on official duty.<sup>4</sup>

By letter dated March 24, 2006, the Office requested additional information from the employing establishment. It stated:

"Please provide comments from a knowledgeable supervisor on the accuracy of the following statements provided by appellant relative to this claim:

(1) [Appellant] alleged that, on November 4, 2004, preparing the meat case for the arrival of the Vice Admiral triggered memories of the letters that she received in August 2003 and October 2004. She stated that she was thinking about false accusations when she tripped and fell on her back. Does your agency have any prior knowledge regarding this incident? Did [appellant] report her emotional reaction or the fall, to any supervisor? Please provide any information your agency may have regarding this incident;

(2) [Appellant] alleged that she received a correspondence from Ms. Jolley-Grant on January 29, 2005 advising her that she was relieved of financial liability for the meat loss. She stated that the letter caused her to suffer another severe abdominal pain attack. [Appellant] could not believe that it took over a year and a half to determine that she was not responsible for the meat loss.

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<sup>3</sup> The hearing representative noted that appellant had previously filed a claim for an emotional condition, File No. 132091148, in which the Office had asked the employing establishment for comments and the employing establishment submitted a February 25, 2004 statement essentially admitting that it had erred in finding the claimant liable.

<sup>4</sup> The employing establishment noted that appellant had claimed to have experienced another anxiety/abdominal attack on February 15, 2005 and ultimately stopped work on March 15, 2005. The letter stated that according to its own records appellant stopped working on February 15, 2005 and has not returned to work.

“Did your agency err or act abusively or unreasonably by issuing the January 26, 2005 correspondence? Did [appellant] report the abdominal pain attack to any supervisor? Please provide any information your agency may have regarding this incident.”

By letter dated March 28, 2006, the employing establishment submitted a supplemental response as follows:

“In answer to item 1, [appellant] reported this reoccurrence to the Commissary Officer, Mr. Mack Berry (who is no longer with the Agency).

“In answer to item 2, the [employing establishment] absolutely does not believe that it erred or acted unreasonably or abusively by issuing the letter for January 26, 2005. In fact, the employing establishment believed by issuing the letter, it would serve to relieve [appellant] of much of the stress she allegedly felt because of the situation.

“In answer to item 3, [appellant] initially reported this occurrence to Mr. Berry and followed it by submitting a medical excuse from her practitioner and later submitted an updated ... claim.”

By decision dated April 12, 2006, the Office denied appellant’s claim on the basis that she failed to establish a compensable factor of employment. The Office accepted the occurrence of the following events, but found that they were not compensable:

(1) Appellant received a letter from the employing establishment dated September 27, 2004, informing her of the receipt of her rebuttal to the initial August 13, 2003 decision holding her financially liable to the Federal Government;

(2) On November 4, 2004 while appellant was thinking about the accusations, she tripped and fell on her back. The Office stated that it informed her in its January 5, 2005 letter that this incident would be considered a separate claim and that she should file a Form CA-1 notice of traumatic injury for that injury;

(3) Appellant received a letter from Ms. Jolley-Grant on January 29, 2005 advising her that she was relieved of any financial liability for the meat loss. The letter caused her to suffer another severe abdominal pain attack.

(4) On November 4, 2004 preparing the meat case for the arrival of the Vice Admiral triggered memories of the letters that she received in August 2003 and October 2004;

(4) On February 15, 2005 as appellant was preparing the documentation to meet Ben Ragsac, she was flooded with memories of the letters and overwhelmed by the false accusations and financial liability charged against her. She then had severe abdominal pain;

(5) On April 28, 2005 appellant went to the Camp Pendleton Commissary so that she could be ready to return to work on May 9, 2005. While walking to the meat department, she was flooded with memories and started to get dizzy, a headache, cramps and shortness of breath.

The Office found that, with regard to all of the incidents described above, the employing establishment acted reasonably in its administrative capacity and had not erred or committed abuse. None of the alleged incidents were found compensable factors of employment.

### **LEGAL PRECEDENT**

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition, and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.<sup>5</sup> There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.<sup>6</sup>

Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>7</sup> On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.<sup>8</sup>

### **ANALYSIS**

The Board finds that there is insufficient evidence that the administrative and personnel actions taken by management were erroneous. Therefore, appellant has not established compensable factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.<sup>9</sup> In the instant case, appellant has presented no evidence that the employing establishment acted unreasonably or committed error with regard to the investigation of missing meat or in advising her of proposed actions and possible liability.

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<sup>5</sup> See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

<sup>6</sup> See *Ruth C. Borden*, 43 ECAB 146 (1991).

<sup>7</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>8</sup> *Id.*

<sup>9</sup> See *Alfred Arts*, 45 ECAB 530, 543-44 (1994).

Regarding the September 27, 2004 letter, the employing establishment advised appellant that it had received and was reviewing her rebuttal to the August 13, 2003 letter. Appellant has submitted no evidence to establish error or abuse in advising her of the investigation and consideration of her arguments. The Board has held that investigations are an administrative function of the employing establishment that do not involve an employee's regularly or specially assigned employment duties. They are generally not considered to be employment factors absent a showing of error or abuse.<sup>10</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>11</sup> Appellant alleged that Ms. Jolley-Grant erred or acted abusively in conducting an investigation of the incident in which twice the usual amount of beef was ordered for the commissary. This resulted in much of the meat going unsold and spoiled and a financial loss of \$1,459.19. Appellant has not shown that the employing establishment's investigation of this matter was unreasonable.<sup>12</sup> The employing establishment's September 27, 2004 letter merely advised her that her rebuttal was being reviewed. Appellant's reaction to the letter was self-generated as no error or abuse is demonstrated by this notification from her supervisor. The January 25, 2005 employing establishment letter informed appellant that she had been fully exonerated as a result of the investigation and the matter was closed. Therefore, she was merely apprised of a positive outcome to the investigation. Any anxiety on her part due to acceptance of this letter must be considered self-generated. Appellant has not presented sufficient evidence to establish that the letters constituted error or abuse. The anxiety she experienced at the time of the November 4, 2004 tripping incident, the January 15, 2005 incident while preparing the documentation to meet Mr. Ragsac and the April 28, 2005 incident she experienced at the commissary were also self-generated. Regarding appellant's allegation that she experienced stress due to insecurity about maintaining her position, the Board has previously held that a claimant's job insecurity, including fear of a reduction-in-force, is not a compensable factor of employment under the Act.<sup>13</sup> As noted the mere fact that personnel actions were later modified or rescinded does not in and of itself, establish error or abuse.<sup>14</sup> Appellant has not established a compensable employment factor under the Act in this respect.

The Board also finds that appellant failed to submit sufficient evidence to establish that she was subjected to harassment at the employing establishment.<sup>15</sup> Appellant's allegations

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<sup>10</sup> *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

<sup>11</sup> *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>12</sup> The fact that the employing establishment ultimately concluded based on this investigation that appellant was not guilty of any wrongdoing is not compensable. The mere fact that personnel actions were later modified or rescinded, does not in and of itself, establish error or abuse. *Michael Thomas Plante*, 44 ECAB 510, 516 (1993). As noted above, the Office has already apparently accepted a previous claim that appellant filed based on her receipt of the initial August 2003 letter which advised her that she was potentially financially liable for the meat. No documentation pertaining to this previous claim is contained in the instant record.

<sup>13</sup> *See Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

<sup>14</sup> *Michael Thomas Plante*, *supra* note 12.

<sup>15</sup> *See Joel Parker, Sr.*, 43 ECAB 220 (1991). (The Board held that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.)

constitute mere perceptions or generally stated assertions of dissatisfaction with her superior at work which do not support her claim for an emotional disability.<sup>16</sup> She has not provided a description of specific incidents or sufficient supporting evidence to substantiate her allegations that she was harassed or treated in a harsh, discriminatory manner during the course of the meat investigation.<sup>17</sup> For this reason, the Office properly determined that these incidents constituted mere perceptions of appellant and were not factually established.

The Board notes that, since appellant has not established a compensable work factor, the medical evidence will not be considered.<sup>18</sup>

### **CONCLUSION**

The Board finds that the Office properly found that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the April 12, 2006 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 12, 2007  
Washington, DC

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

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

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

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<sup>16</sup> See *Curtis Hall*, 45 ECAB 316 (1994).

<sup>17</sup> See *Joel Parker, Sr.*, *supra* note 15.

<sup>18</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).