

On December 8, 2005 appellant, a 37-year-old security screener, filed an occupational disease claim, alleging that she experienced stress, anxiety and nervousness due to the constant abuse, blatant harassing and demeaning way she was treated daily at work. She stated that she cried constantly and was afraid that she would be harassed every day at work. Appellant first realized that her condition was caused by her employment on December 4, 2005.

In support of her claim, appellant submitted a work excuse and discharge instructions dated December 4, 2005 from the Florida Hospital emergency department. She also submitted a work excuse dated December 9, 2005, bearing an illegible signature, reflecting that she was treated for chest pain, anxiety and “work-related stress.”

By letter dated January 27, 2006, the Office informed appellant that the information submitted was insufficient to establish her claim. The Office advised her to submit within 30 days additional information and evidence, including details of the employment-related incidents and conditions that allegedly contributed to her condition, as well as corroborating evidence, such as witness statements. The Office requested a comprehensive medical report providing a diagnosis and a reasoned opinion as to the cause of appellant’s condition.

In response to the Office’s request, appellant submitted December 4, 2005 emergency department records from the Florida Hospital signed by Dr. Leonardo Cisneros, Board-certified in the field of emergency medicine. Dr. Cisneros provided a diagnosis of “chest pain.” In discharge instructions, he informed appellant that she was being released without consent and that she had a potentially life-threatening heart problem that required admission. A medical record face sheet and an adult nursing flow sheet reflected her complaints of chest pain. Appellant also submitted a December 9, 2005 prescription for a psychological evaluation, bearing an illegible signature; reports of a chest x-ray, lung scan and computerized tomography scan of the brain, dated April 23, 2006; and an unsigned laboratory report dated April 23, 2006.

By decision dated June 8, 2006, the Office denied appellant’s emotional condition claim finding that she failed to establish any compensable employment factors.

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 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 her regular or specially assigned employment duties, or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees’ Compensation Act.¹ The same result is reached when the emotional disability resulted from the employee’s emotional reaction to the nature of her work or her fear and anxiety regarding her ability to carry out her duties.² 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.³ Moreover, although administrative and personnel matters are generally related to employment,

¹ 5 U.S.C. §§ 8101-8193.

² *Lillian Cutler*, 28 ECAB 125, 129 (1976).

³ *Id.*, see also *Peter D. Butt, Jr.*, 56 ECAB ____ Docket No. 04-1255 (issued October 13, 2004).

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.⁴

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.⁵ 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 harassment or discrimination under Equal Employment Opportunity standards. Rather, the issue is whether sufficient evidence has been submitted to factually support the claimant's allegations.⁶

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.⁷ When the matter asserted is a compensable factor of employment and the evidence of record established the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.⁸ 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.⁹

A claimant 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.¹⁰ Neither the mere fact that a disease or condition manifests itself during a period of employment

⁴ See *Charles D. Edwards*, 55 ECAB 258 (2004); see also *Ernest J. Malagrida*, 51 ECAB 287, 288 (2000).

⁵ See *Peter D. Butt, Jr.*, *supra* note 3.

⁶ *Id.*

⁷ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

⁸ See *Charles D. Edwards*, *supra* note 4.

⁹ *Charles E. McAndrews*, 55 ECAB 711 (2004); 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).

¹⁰ See *Charles D. Edwards*, *supra* note 4.

nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.¹¹

ANALYSIS

The Board finds that appellant has not established any compensable factors of employment under the Act. In the present case, she has not attributed her emotional condition to the performance of her regular duties or to any special work requirement arising from her employment duties under *Cutler*. Appellant has not implicated her workload as having caused or contributed to her emotional condition. Rather, she has made general allegations that she was harassed.

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.¹² However, for harassment or 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.¹³ In the present case, appellant's allegations of harassment are vague and she has not submitted sufficient evidence to establish her claim.¹⁴ She alleged that she experienced stress, anxiety and nervousness due to the abuse and the demeaning way she was treated at work. Appellant stated that she cried constantly and was afraid that she would be harassed every day that she went to work. However, she has not described in detail any specific incidents of alleged harassment, nor has she submitted any corroborating evidence to substantiate these general allegations of harassment. The Board finds that appellant's allegations are insufficient to establish that harassment did, in fact, occur. Thus, she has not established a compensable employment factor under the Act with respect to these above-described allegations of harassment.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹⁵

¹¹ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

¹² *See Lori A. Facey*, 55 ECAB 217 (2004). *See also David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹³ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁴ *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁵ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, *supra* note 7.

CONCLUSION

The Board finds that appellant did not 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 decision of the Office of Workers' Compensation Programs dated June 8, 2006 is affirmed.

Issued: March 1, 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