



she returned to work in October 2004 she was placed on limited duty, where she was not given any reasonable accommodation for her asthma condition. Appellant alleged that working conditions in limited duty were not pleasant because the workers were mistreated; she stated that they were made to feel “worthless” because they were given assignments such as watching the exits.

In February 2005, Pamela Cooper became her manager and Charles Shields was made her supervisor. Appellant asserted that Ms. Cooper did not like her from the start and made limited duty “miserable.” She alleged that it was Ms. Cooper’s job to get rid of all injured workers in limited duty by pressuring them to quit. Appellant asserted that, when injured employees did not quit, Ms. Cooper made life “hell” for them. Mr. Shields transferred to another department in May 2005. He was replaced by three management officials who behaved even more unreasonably toward the limited-duty employees. Appellant alleged that she was a “fighter” who refused to tolerate harassment and intimidation. She alleged that these officials made her life extremely unpleasant and uncomfortable, causing her to experience significant stress and anxiety. Appellant experienced outbursts of asthma, hypertension, diarrhea, sweating, shaking, difficulty breathing, accelerated heartbeat and vomiting while attempting to get ready for work in the morning. She further alleged that, as she arrived at work and approached her workplace, she would begin to feel faint and become ill.

Appellant submitted a June 30, 2005 form report from a Dr. Bruce Chow, who noted appellant’s history of injury, stated findings on examination and diagnosed work-related anxiety and stress.

By letter dated July 14, 2005, the Office advised appellant that she needed to submit additional information in support of her claim. The Office asked her to further describe the employment-related conditions or incidents which she believed contributed to her emotional condition.

The employing establishment submitted a July 19, 2005 memorandum from Mario Gallardo, Human Resources Specialist, which controverted appellant’s claim. Mr. Gallardo responded to appellant’s allegations and submitted statements from Mr. Shields, appellant’s immediate supervisor, and Ms. Cooper, appellant’s immediate manager. Mr. Shields advised that his job was to oversee the limited-duty personnel, which included monitoring work assignments to ensure that injured workers were disseminated to the terminals as needed, within the injured worker’s physical capabilities. He also tracked and monitored clock rings and made sure that all such personnel sign in every day that they worked. Although Mr. Shields did not discipline appellant, he did counsel her regarding her attendance problems, which resulted in her being placed on leave restriction. He did not discuss anything with appellant that was not business related or related to his mission in providing security to the traveling public. Mr. Shields asserted that he always maintained a professional relationship with all limited-duty personnel, including appellant.

Ms. Cooper responded to appellant’s allegations:

“Several months ago [appellant] had a discussion with me stating that she will never be able to resume her duties as a security screener. She stated that her doctor

declared her to be permanent and stationary with several restrictions that will preclude her from returning to full duty. I explained to [appellant] that I was not sure of the TSA policy with respect to employees who have permanent restrictions that preclude them from returning to their full-time screener position. I also explained that limited duty was temporary and that such duty is not designed to be a permanent assignment. My recommendation to [appellant] was for her to contact you and I then offered to allow her (if she so desired) to use the office computer and to look at other jobs that are available on the internet.... I also recommended that she apply for any vacancy announcement that did not have physical requirements. [Appellant's] attendance is not satisfactory as she has not been regular in attendance. Also, [she] has been placed on leave restriction a couple of times wherein she continues to have problems in being regular in attendance. A recent example of this took place in June 2005. [Appellant] requested time off so she can travel to Arizona to visit her father.... [She] did not know what her leave balance was and we both went on line to Employee Express to review her leave balance and noticed that she did not have leave to cover her request. I had to deny [appellant's] request simply because she did not have the leave to cover her absence. [Appellant] never turned in an OPM 71 for any time off in July 2005.... I have never told [her] that she was going to be fired. However, I did tell [appellant] that I was recommending her for formal disciplinary action for being irregular in attendance. I maintain a professional relationship with my employees and do not discuss personal and/or private matters not related to the employment. However, in the case of [appellant] she has shared with me bits and pieces of her asthma condition, her boyfriend, her son and her financial problems.”

Mr. Gallardo denied appellant's allegations of harassment and abuse. He submitted an October 22, 2004 memorandum placing her on leave restriction due to her leave abuse;<sup>1</sup> a March 31, 2005 memorandum of leave restriction, for excessive and/or unscheduled absence including periods of AWOL; a June 22, 2005 memorandum of record indicating that she continued

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<sup>1</sup> This October 22, 2004 memorandum contained an official reprimand from the employing establishment's scheduling officer, Henry Thomas, who stated that he had reviewed appellant's attendance record and had determined that there was a pattern of leave abuse, for which she had been counseled on October 22, 2004. Mr. Thomas placed restrictions on appellant's use of leave, which included: (a) that she provide two days notice for leave or approved absence; (b) that requests due to sudden illness or legitimate emergency be made directly to him one hour after the beginning of her scheduled time to report to work, with a request for leave to be made on each day of absence; (c) that she submit documentation from her physician to support requests for sick leave; and (d) that she inform Mr. Thomas of the reason for tardiness or any other deviation from her normal work hours or scheduled breaks. If Mr. Thomas deemed the excuse unacceptable, she would be charged absent without official leave (AWOL) in increments of 15 minutes, in addition to any disciplinary action deemed appropriate.

to have unauthorized absences and tardiness and was in violation of her leave restrictions; and a June 24, 2005 letter of reprimand recommending formal discipline for unsatisfactory attendance.<sup>2</sup>

By statement received July 26, 2005, appellant acknowledged that she had intermittently been away from work due to her job-related injury and that she had been sick. She had gone to human resources and payroll requesting some pay to help out. Appellant's manager put her on notice of attendance, which she was mostly unable to control. She saw Mr. Gallardo about her problems and was told that the standard limited-duty position description was a standard generic form. Mr. Gallardo could not add any other duties to it for her to perform because appellant was limited to working the exit only, with no chance for promotions and no chance of a transfer to another airport. Appellant alleged that Mr. Shields joked to her about being part time and that Ms. Cooper told her twice that since she was on permanent limited duty she should be looking for another job and that she could use her computers.

Appellant filed a grievance against the employing establishment on November 7, 2005. She reiterated her allegations regarding harassment and intimidation on the part of management. Appellant also alleged that the employing establishment treated her differently than other limited-duty employees.

By decision dated February 23, 2006, the Office denied appellant's claim on the basis that she failed to establish any compensable factors of employment.

By letter dated October 1, 2006, appellant requested reconsideration. She alleged that Ms. Cooper had telephoned her medical group and informed them that her treatment was not covered by her employment because her claim was not work related. Appellant also alleged that Mr. Gallardo and Ms. Cooper did not submit all of the paperwork related to the allegations that she made against the employing establishment. She reiterated her previous allegations.

By decision dated November 8, 2006, the Office denied modification of the February 23, 2006 decision.

### **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

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<sup>2</sup> The June 24, 2005 memorandum, which appellant's supervisor Ms. Cooper submitted to the TSA program analyst, indicated that appellant was issued a memorandum of record by her supervisor for unauthorized absences and tardiness and was being recommended for formal discipline for her unsatisfactory attendance. Ms. Cooper stated that, when she spoke at length with appellant on June 14, 2005 about her attendance, appellant assured her that she would improve her dependability. However, the next day appellant called in sick and did not return until June 22, 2005. Ms. Cooper noted that appellant was placed on leave restriction on October 22, 2004 and March 31, 2005 for her excessive and unscheduled absences. On June 18, 2005 appellant failed to report for duty and did she contact the call center. In light of this conduct, she was deemed to be on AWOL status.

employment factors are causally related to the claimed emotional condition.<sup>3</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>4</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 Act.<sup>5</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>6</sup>

### ANALYSIS

The Board finds that appellant has failed to submit sufficient evidence to establish her allegations that her supervisor engaged in harassment, intimidation or discrimination. Appellant alleged that Mrs. Cooper, Mr. Shields and three other management personnel harassed her, but did not provide sufficient evidence or a description of specific incidents she believes constituted harassment or discrimination manner.<sup>7</sup> Mere perceptions of harassment or discrimination are not compensable; a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.<sup>8</sup> Appellant has not submitted evidence sufficient to establish that Mrs. Cooper and Mr. Shields engaged in a pattern of harassment towards her or created a hostile workplace environment.

Mr. Gallardo, Ms. Cooper and Mr. Shields denied appellant's allegations that she was unfairly singled her out or treated in a discriminatory manner. Mr. Shields stated that he counseled appellant about her attendance and leave problems, which were well documented by the record and resulted in her being placed on leave restriction. Disciplinary matters consisting of counseling sessions, discussions or letters of warning for conduct pertain to actions taken in an administrative capacity and are not compensable as factors of employment.<sup>9</sup> Mr. Shields denied discussing anything with appellant that was not employment related. He stated that he always maintained a professional relationship with her. With regard to appellant's allegation that she was harassed because of her light-duty status, she failed to provide a description of specific incidents

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<sup>3</sup> See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

<sup>4</sup> See *Ruth C. Borden*, 43 ECAB 146 (1991).

<sup>5</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>6</sup> *Id.*

<sup>7</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.)

<sup>8</sup> *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>9</sup> *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

or sufficient supporting evidence to substantiate this allegation.<sup>10</sup> Appellant alleged that her supervisors made statements and engaged in actions which she believed constituted harassment and discrimination, but she provided no evidence, such as witness statements, to establish her various allegations as factual.<sup>11</sup> Ms. Cooper did acknowledge discussing with appellant the ability of security screeners with permanent restrictions to return to full duty. She also acknowledged telling appellant that she was unsure of the employing establishment's policy in dealing with such employees. Ms. Cooper told appellant that limited duty was designed to be temporary, not permanent, and that she offered to let appellant use her computer to check the availability of other jobs online. She denied that she harassed appellant or her coworkers or told appellant that she would be fired. Ms. Cooper indicated that she acted in her administrative capacity by placing appellant on leave restriction because her attendance was unsatisfactory and she frequently failed to submit the proper forms for requesting leave. She rejected appellant's allegation that she arbitrarily denied her leave requests, stating that she had to deny appellant's leave requests because she did not have the leave to cover her absences.

The Board finds the evidence or record is insufficient to substantiate appellant's allegations that her managers committed error or abuse in their administrative actions. While appellant alleged a pattern of abuse on the part of management in monitoring her leave, work and lunch breaks, the record reflects that these actions were necessitated by her violations of attendance and leave policies.

The Board finds that the record does not establish that the administrative and personnel actions taken by management in this case were in error and are, therefore, not considered 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>12</sup> Appellant has not presented sufficient evidence that her managers acted unreasonably or committed error with regard to the personnel matters asserted.

The Board notes that matters pertaining to use of leave are generally not covered under the Act as they pertain to administrative actions of the employing establishment and not to the regular or specially assigned duties the employee was hired to perform.<sup>13</sup> However, error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administrative or personnel matter, may afford coverage.<sup>14</sup> There is no evidence of record to substantiate appellant's allegation that Ms. Cooper and other management personnel arbitrarily and unfairly denied her sick leave and overtime pay, unfairly charged her with being AWOL, or made erroneous deductions in her paycheck to recover time taken when she was allegedly AWOL. As appellant has failed to show that these actions demonstrated error or abuse on the part of management, they are not compensable.

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<sup>10</sup> See *Joel Parker, Sr.*, *supra* note 7.

<sup>11</sup> See *William P. George*, 43 ECAB 1159, 1167 (1992).

<sup>12</sup> See *Alfred Arts*, 45 ECAB 530, 543-44 (1994).

<sup>13</sup> *Elizabeth Pinero*, 46 ECAB 123 (1994).

<sup>14</sup> *Margreate Lublin*, 44 ECAB 945 (1993).

The Board further finds that management did not commit administrative abuse or error by monitoring appellant's leave and her whereabouts at the worksite. The Board notes that disciplinary action is an administrative function and therefore any reaction to such is not considered to be in the performance of duty. The record indicates that appellant frequently violated its leave policy. Actions were taken within an administrative capacity to discipline appellant by issuing letters of warning, placing her on leave restrictions and monitoring her leave, work breaks and absences. Regarding appellant's allegation that she developed stress due to the insecurity of her job duties and her insecurity about maintaining her position, the Board has previously held that a claimant's job insecurity is not a compensable factor of employment under the Act.<sup>15</sup>

Appellant alleged that she experienced stress because reasonable accommodations were not made for her asthma condition. The Board has held that being required to work beyond one's physical limitations may constitute a compensable employment factor if substantiated by the record.<sup>16</sup> However, appellant has failed to provide any evidence such as statements from witnesses to support her allegation. Appellant alleged generally that limited-duty employees were mistreated and humiliated. However, the Board has held that an employee's dissatisfaction with holding a position in which she feels underutilized, performing duties for which she feels overqualified or holding a position which she feels to be unchallenging or uninteresting is not compensable under the Act.<sup>17</sup> Appellant has failed to substantiate her allegations. In the absence of agency error or abuse, such personnel matters are not compensable factors of employment.<sup>18</sup>

The Board finds that appellant has not established a compensable work factor. For this reason, the medical evidence will not be considered.<sup>19</sup>

### **CONCLUSION**

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

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<sup>15</sup> See *Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

<sup>16</sup> *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

<sup>17</sup> See *Purvis Nettles*, 44 ECAB 623, 628 (1993).

<sup>18</sup> The Board notes that appellant has submitted no supporting evidence to support her allegations that Mr. Gallardo and Ms. Cooper failed to submit all of her paperwork pertaining to her claim.

<sup>19</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 8 and February 23, 2006 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: May 15, 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