

to increased stress at work. She became aware of her condition on June 7, 2005, the day she stopped work. On July 19, 2005 the Office asked appellant to submit evidence, including a detailed description of the employment factors or incidents that she believed contributed to her claimed illness. In a letter of the same date, the Office requested that the employing establishment address appellant's allegations.

In a May 3, 2005 statement, appellant alleged that her supervisor, Major Dawn K. Sturdevant, was unapproachable, placed appellant in the middle of her battles and would roll her eyes at her. She alleged that Major Sturdevant accused her of a homosexual relationship and retaliated against her after she filed complaints with the inspector general on May 2 and 17, 2005. Appellant alleged that Major Sturdevant made comments to her about their work problems and told her that slander was against the law. She alleged that Major Sturdevant screamed, yelled, cursed, threw things and burst into fits of rage. Major Sturdevant told appellant that she was paranoid and a national security threat. Appellant accepted another position on April 25, 2005 with a tentative start date of June 26, 2005 but Major Sturdevant sabotaged her transfer by placing a memorandum in her file accusing her of homosexual conduct. She filed two Equal Employment Opportunity (EEO) complaints against Major Sturdevant which were pending. Appellant alleged that Major Sturdevant broke promises to her regarding changing her security clearance. She alleged that Major Sturdevant requested that she not speak with Major Coburn regarding her work situation and that she should follow the chain of command. Appellant stated that Major Sturdevant unreasonably objected to her leave requests and requested medical documentation substantiating her disability. She submitted reports from Dr. Susan Kirsh, a Board-certified internist, dated June 7 and 23, 2005. Dr. Kirsh treated appellant for chest pains of an unknown etiology and diagnosed adjustment disorder with mixed anxiety and depressed mood related to a conflict at work.

In an October 30, 2004 statement, Major Sturdevant noted that appellant interrupted a staff meeting by making inappropriate, hostile and disrespectful comments about her and another supervisor. She recommended that appellant address concerns or problems in a professional manner and stated that appellant had been previously counseled on her conduct and attitude. In letters to appellant's physician dated June 2 and 14, 2005, Major Sturdevant requested information regarding appellant's medical condition to assess her ability to perform her duties without aggravating or worsening her condition. She noted that she did not falsely accuse appellant of having a homosexual relationship but, rather, appellant had confided this information to her and she reported it to her upline superior. Major Sturdevant denied retaliating against appellant or verbally abusing her. She noted that appellant was currently absent without leave due to lack of medical documentation substantiating her disability. On July 27, 2005 Major Sturdevant advised that appellant's accusations were investigated by the employing establishment commander and found to be unsubstantiated. She indicated that appellant had behavioral and performance problems in her civilian and military capacities and was counseled without success.

Appellant submitted an inspector general's complaint dated May 2, 2005 and alleged that in August and September 2004, she witnessed Major Sturdevant forge the signature of a senior officer. In an inspector general's complaint dated May 17, 2005, appellant alleged that Major William Cunningham attempted to discredit her by informing supervisors that appellant was no longer a member of the squadron.

In an August 30, 2005 decision, the Office denied appellant's claim finding that the claimed emotional condition did not arise in the performance of duty.

In a May 17, 2005 letter, the employing establishment noted that appellant's tentative job offer was withdrawn due to her pending discharge from the Air Force Reserve and ineligibility to meet required qualifications of the job in question. In a July 21, 2005 notice of discharge, the employing establishment advised appellant that she was entitled to submit statements or documents on her behalf prior to the disposition of her case. On August 4, 2005 the employing establishment issued a notice of separation during probation effective August 12, 2005. The employing establishment noted that appellant was terminated because she was absent without leave from June 27 to August 10, 2005 and did not provide sufficient medical documentation to support her leave request. The employing establishment noted that Dr. Kirsh's June 23, 2005 report did not provide a definitive diagnosis or estimate a return to work date. The employing establishment noted that appellant's position required her to hold a security clearance but a clearance was not granted due to problems with appellant's financial history. The employing establishment indicated that it had been about one year since appellant's security clearance application, without a favorable adjudication, and it appeared unlikely that any clearance would be granted.

On September 21, 2005 appellant requested an oral hearing. In a June 7, 2005 report, Dr. Thomas J. Mako, a clinical psychologist, diagnosed mixed anxiety and depressed mood related to an ongoing work-related conflict. On August 8, 2005 Dr. Kirsh diagnosed chest pain due to cardiac, gastrointestinal or anxiety. Appellant submitted statements dated June 6 and August 8, 2005 reiterating her allegations against Major Sturdevant. She disputed the separation notice and advised that she properly requested leave without pay and was never notified that additional information was needed to support her request. Appellant contended that the employing establishment's allegations regarding her security clearance were false and inaccurate. In statements dated August 25, 2005, April 21 and June 13, 2006, appellant advised that she was reinstated after an investigation found that her commanding officer's statements were not credible. She also alleged that an investigation of Major Sturdevant found that she committed fraud and forged signatures.

By decision dated June 20, 2006, the hearing representative affirmed the August 30, 2005 decision, finding that appellant had not established any compensable employment factors.

In a letter dated November 3, 2006, appellant requested reconsideration. She noted that a "decision" found that Major Sturdevant committed perjury in terminating her for an alleged homosexual relationship. Appellant further advised that Major Sturdevant's allegations caused her emotional condition.

In a December 11, 2006 decision, the Office denied appellant's reconsideration request on the grounds that her letter neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision.

LEGAL PRECEDENT -- ISSUE 1

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.¹

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*,² the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.³ There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage under the Act.⁴ When an employee experiences emotional stress 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 her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of her work.⁵ There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage under the Act. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. 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.⁶

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.⁷ If a claimant does implicate a factor of

¹ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² 28 ECAB 125 (1976).

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

⁵ *Lillian Cutler*, *supra* note 2.

⁶ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, *supra* note 2.

⁷ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

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.⁸

ANALYSIS -- ISSUE 1

Appellant alleged that she experienced harassment and reprisals by Major Sturdevant, after filing two complaints with the inspector general on May 2 and 17, 2005. She stated that Major Sturdevant was unapproachable, that she put her in the middle of her battles, would roll her eyes at her and accused her of confessing to a homosexual relationship. Major Sturdevant made comments to appellant about their work problems after appellant asked her not to, she told appellant that slander was against the law and sabotaged appellant's transfer to another position. To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.⁹ However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.¹⁰

The factual evidence fails to support appellant's claim of harassment. Major Sturdevant noted that she did not falsely accuse appellant of having a homosexual relationship, rather, appellant confided this information to her and she reported it to her superior. She stated that she did not take any retaliatory action against appellant and did not verbally abuse her. Major Sturdevant noted that appellant was absent without leave due to lack of proper medical documentation. On July 27, 2005 Major Sturdevant advised that appellant's accusations against her were investigated through the commander and determined to be unsubstantiated. She indicated that appellant had behavioral and performance problems in both her civilian and military capacities. The employing establishment noted that appellant's tentative job offer was withdrawn because she was ineligible to meet the required qualifications for the position she sought and because she could not obtain a security clearance due to problems with her financial history.

General allegations of harassment are not sufficient.¹¹ In this case, appellant has not submitted sufficient evidence to establish harassment by her supervisor.¹² Although she alleged that her supervisor discriminated and retaliated against her and engaged in actions which she believed constituted harassment, she did not submit corroborating evidence, such as witness

⁸ *Id.*

⁹ See *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁰ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹¹ See *Paul Trotman-Hall*, 45 ECAB 229 (1993).

¹² 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).

statements, to establish her allegations.¹³ Additionally, Major Sturdevant refuted her allegations. The Board notes that there is no other evidence corroborating appellant's charges. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment or discrimination.

To the extent that appellant alleged a verbal abuse and threats by Major Sturdevant, the Board has recognized the compensability of physical threats or verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.¹⁴ The Board finds that the facts of the case, noted above in the analysis of the allegation of harassment, does not reveal that appellant's superior threatened her or acted unreasonably in view of appellant's conduct. Appellant provided no corroborating evidence, or witness statements to establish her allegations.¹⁵ Major Sturdevant denied that she threatened, harassed or spoke to appellant in a hostile manner and there is no corroborating evidence to support that the employing establishment erred or acted abusively. Appellant has not otherwise shown how supervisory comments or actions rose to the level of verbal abuse or otherwise fell within coverage of the Act.¹⁶

Appellant also noted filing an EEO claim for harassment and discrimination; however, the Board further notes that grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.¹⁷ None of the information submitted establishes improper action by her supervisor. Thus, the evidence regarding the EEO matter does not establish a compensable employment factor under the Act.

Other allegations by appellant relate to administrative or personnel actions. In *Thomas D. McEuen*,¹⁸ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing

¹³ See *William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

¹⁴ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁵ See *William P. George*, *supra* note 13.

¹⁶ See *Judy L. Kahn*, 53 ECAB 321 (2002) (the fact that a supervisor was angry and raised her voice does not, by itself, support a finding of verbal abuse).

¹⁷ *James E. Norris*, 52 ECAB 93 (2000).

¹⁸ See *Thomas D. McEuen*, *supra* note 6.

establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁹

Regarding appellant's allegations that Major Sturdevant sabotaged her transfer and broke promises to her regarding her security clearance, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.²⁰ The Board has held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment as they do not involve the employee's ability to perform his or her regular or specially assigned work duties but rather constitute his or her desire to work in a different position.²¹ The employing establishment has either denied these allegations or contended that it acted reasonably in these administrative matters. The employing establishment noted that appellant was pending discharge from the Air Force Reserve because she was unable to obtain a security clearance due to problems with her financial history. It was further noted that she was absent without leave from June 27 to August 10, 2005 without adequate supporting medical documentation. Appellant has presented no corroborating evidence to support that the employing establishment erred or acted abusively with regard to these allegations. Thus she has not established administrative error or abuse in the performance of these actions and therefore they are not compensable under the Act.

Appellant alleged that Major Sturdevant requested that she not speak with Major Coburn regarding her work situation and that she follow the chain of command. The Board recognizes that a supervisor or manager must be allowed to perform his or her duties and that, in performing such duties, employees will at times dislike actions taken.²² Appellant has presented insufficient evidence to support that the employing establishment acted unreasonably in exercising her supervisor authority.

Appellant alleged that Major Sturdevant unreasonably objected to her leave requests and required her to produce additional medical documentation to support her claim for disability. The Board notes that the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.²³ Major Sturdevant indicated that she tried to contact both appellant and her physicians in letters dated June 2 and 14, 2005; however, she was unable to obtain complete information regarding appellant's diagnosed condition and her anticipated return to work. There is no evidence that appellant's supervisor erred or acted unreasonably in requesting medical documentation regarding leave. The Board finds that the employing establishment acted

¹⁹ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

²⁰ See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

²¹ *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

²² See *Michael A. Deas*, 53 ECAB 208 (2001).

²³ See *Judy Kahn*, 53 ECAB 321 (2002)

reasonably in this administrative matter and appellant has not established a compensable factor of employment with respect to this allegation.

Consequently, appellant has not established her claim for an emotional condition.²⁴

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act,²⁵ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,²⁶ which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by the [Office]; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office].”

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.²⁷

ANALYSIS -- ISSUE 2

Appellant’s November 3, 2006 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office.

Appellant did not submit any additional evidence with her reconsideration request only a narrative statement which reiterated her allegations that Major Sturdevant lied, harassed, verbally abused and retaliated against her. However, her letter did not show how the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office had previously considered appellant’s allegations and she

²⁴ As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).

²⁵ 5 U.S.C. § 8128(a).

²⁶ 20 C.F.R. § 10.606(b).

²⁷ 20 C.F.R. § 10.608(b).

did not set forth a particular point of law or fact that the Office had not considered or establish that the Office had erroneously interpreted a point of law with regard to her claim.²⁸

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant, as noted above, did not submit any new evidence with her reconsideration request. Although appellant asserted that there had been a decision finding Major Sturdevant committed perjury, she did not provide a copy of any such decision to the Office for review.

The Board therefore finds that the Office properly determined that appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), and properly denied her November 3, 2006 request for reconsideration.

CONCLUSION

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty. The Board further finds that the Office properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the December 11 and June 20, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 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

²⁸ See *Brent A. Barnes*, 56 ECAB ____ (Docket No. 04-2025, issued February 15, 2005) (evidence that is repetitious or duplicative of evidence already in the case record does not constitute a basis for reopening the claim).