United States Department of Labor
Employees' Compensation Appeals Board

J.A., Appellant	)	
and	)	
DEPARTMENT OF LABOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, Jacksonville, FL, Employer	)	**Docket No. 07-1395** **Issued: October 25, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 1, 2007 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated February 26, 2007, which denied her claim and an April 6, 2007 decision, which denied her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment; and (2) whether the Office properly refused to reopen appellant's claim for further review of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On November 27, 2006 appellant, then a 36-year-old claims examiner, filed a Form CA-1, traumatic injury claim, alleging anxiety, stress and Reynaud's disease caused by a meeting

that day when she felt attacked by contract employees who alleged that her attitude and body language created a hostile environment. She explained that she became upset when she and a coworker, Lise Farmer, were called into the office of her acting supervisor, Edward Feeny, to discuss allegations made by Holly Bravo, a contract employee, who accused appellant and Ms. Farmer of being rude and unprofessional since another contract employee had been fired. Appellant stated that Mr. Feeny read an email from the contract supervisor, Norine O'Brien, who requested that Mr. Feeny address their rude and unprofessional attitude. She stated that she asked for a meeting that was held at 2:00 p.m. with Ms. Farmer, Ms. O'Brien, Rhonda Spann, a contract employee and Mr. Feeny in attendance. Appellant's attitude was discussed and voices were raised. She requested Ms. Bravo's attendance and she was brought to the meeting by Mr. Feeny. Appellant became angry because she was being wrongly accused of having a bad attitude and of being rude and unprofessional. She stated that she was attacked because she was a black female who socialized with a black female contract employee who was recently fired. Appellant stopped work and did not return.

In a statement dated November 28, 2006, Ms. Farmer noted her attendance at both meetings held the previous day. She stated that appellant became upset and left the afternoon meeting. Ms. Farmer stated that the contract employees made false accusations and that the acting supervisor should have investigated or confirmed the allegations before discussing them with appellant and Ms. Farmer. Mr. Feeny provided a November 30, 2006 statement, noting that he called the meetings because of disagreements between the federal employees and contract workers, noting that the latter thought appellant had a bad attitude. The conversation at the afternoon meeting became heated and appellant became visibly upset. He agreed with appellant that the contract employees made baseless and unsubstantiated accusations and stated that appellant's gender or race played no part in the confrontation. Mr. Feeny attached an email dated November 27, 2006, in which Ms. O'Brien requested that Mr. Feeny address her concerns that Ms. Farmer was making too many special requests and that appellant and Ms. Farmer were being rude and unprofessional. In a November 21, 2006 email, Ms. Spann generally addressed procedures and concerns regarding contract employees. A disability slip dated November 28, 2006, with an illegible signature, stated that appellant was seen and could return to work on December 4, 2006.

By letters dated December 19, 2006 and January 11, 2007, the Office informed appellant of the evidence required to support her claim. In reports dated December 4 and 18, 2006, Dr. Amila Perara, Board-certified in family medicine, diagnosed depression and anxiety and advised that appellant was under her care and was disabled from work. On December 20, 2006 the physician responded "yes" to a form question that appellant's diagnosed depression was employment related, advising "[that] she states problems with coworkers caused symptoms." Additional reports reiterated her diagnoses and advised that appellant could not work due to severe depression, stress and anxiety which appeared to have been caused by a significant stressful encounter with her supervisor and coworkers. Dr. Perara referred her to a psychiatrist.

In a statement dated January 24, 2007, appellant again noted that she became upset at the meetings held on November 27, 2006. She characterized her job as "high stress" and "high demand" but she had been coping until the meetings of November 27, 2006 when she was "chastised, berated and attacked" by the contract employees. On February 6, 2007 appellant reported that her job had become extremely stressful and she had a very hard time keeping up

with the demands of the position and caseload and began working long hours including nights and weekends to maintain production. She stated that she began to fall further and further behind. Appellant stated that the meeting of November 27, 2006 had nothing to do with work or professionalism and that she was angry that her work had been interrupted "for this nonsense" where she had to defend her character, looks, associations and person as a whole. She stated that, because of the production numbers, she was being set up to fail and could no longer take the "berating and belittling" of her character after the November 27, 2006 meeting. Appellant indicated that after the meeting Mr. Feeny repeatedly telephoned or came by her desk wanting her statement and CA-1 form and was concerned about her backload, commenting that she had a "butt load" of work. She concluded that her condition was directly caused by the events of November 27, 2006 and employment duties of her job.

By decision dated February 26, 2007, the Office denied the claim on the grounds that appellant did not establish that her emotional condition occurred in the performance of duty.[1]

In an undated letter received by the Office on March 19, 2007, appellant reiterated her belief that her emotional condition was caused by factors of her federal employment, especially the meeting of November 27, 2006. In a decision dated April 6, 2007, the Office denied appellant's reconsideration request.

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 stress-related 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 stress-related condition.[2] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.[3] 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.[4]

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*,[5] the Board explained that there are distinctions as to the type of employment situations giving rise to a

[1] While appellant filed a traumatic injury claim and stated that, this was based on meetings held on November 27, 2006, she later expanded the claim and the Office addressed the alleged factors that occurred over more than a single workday. *See* 20 C.F.R. §§ 10.5(q)(ee).

[2] *Leslie C. Moore*, 52 ECAB 132 (2000).

[3] *Dennis J. Balogh*, 52 ECAB 232 (2001).

[4] *Id.*

[5] 28 ECAB 125 (1976).

compensable emotional condition arising under the Federal Employees' Compensation Act.[6] There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.[7] When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an 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 his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.[8] A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.[9]

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.[10] Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.[11]

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and Equal Employment Opportunity complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred. Where 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 Commission standards. Rather, the issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[12]

---

[6] 5 U.S.C. §§ 8101-8193.

[7] *See Robert W. Johns*, 51 ECAB 137 (1999).

[8] *Lillian Cutler, supra* note 5.

[9] *Roger Williams*, 52 ECAB 468 (2001).

[10] *Charles D. Edwards*, 55 ECAB 258 (2004).

[11] *Kim Nguyen*, 53 ECAB 127 (2001).

[12] *James E. Norris*, 52 ECAB 93 (2000).

ANALYSIS -- ISSUE 1

The Board finds that appellant did not meet her burden of proof to establish that she sustained an employment-related emotional condition. Appellant initially alleged that she suffered stress at meetings held on November 27, 2006. Administrative and personnel matters are not considered factors of employment absent error or abuse by the employing establishment.[13] An employee's complaints concerning the manner in which a supervisor performs his or her duties as a supervisor or the manner in which a supervisor exercises supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act.[14] Investigations and counseling sessions, like the November 27, 2006 meetings, are administrative matters of the employer and are not compensable under the Act unless there is evidence of error or abuse.[15] The Board finds that Mr. Feeny acted within his supervisory discretion by calling a meeting the morning of November 27, 2006 with appellant and Ms. Farmer to discuss the concerns raised by the contract supervisors. The afternoon meeting was held at the behest of appellant and Ms. Farmer. A claimant's own feeling or perception that a form of criticism by or disagreement with a supervisor is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under the Act absent evidence that the interaction was, in fact, erroneous or abusive. This principle 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 the actions taken.[16] There is no affirmative evidence of record to establish that Mr. Feeny acted in an abusive manner in regard to conducting these meetings and they are not compensable factors of employment.[17]

Regarding the discussions among coworkers at the meetings, while the Board has recognized the compensability of verbal abuse in certain situations, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.[18] The Board has held that being spoken to in a raised or harsh voice does not of itself constitute verbal abuse or harassment.[19] The fact that coworkers may not like one another will not constitute a compensable factor of employment absent probative evidence of conduct that may be characterized as harassment, discrimination or verbal abuse.[20] Such is not the case here. While the evidence supports that there were differences of opinion expressed at the meetings and that appellant became upset, mere perceptions of harassment or discrimination are not compensable

[13] *Id.*

[14] *Marguerite J. Toland*, 52 ECAB 294 (2001).

[15] *See Andrew Wolfgang-Masters*, 56 ECAB ____ (Docket No. 05-1, issued March 22, 2005).

[16] *See Michael A. Deas*, 53 ECAB 208 (2001).

[17] *See Roger W. Robinson*, 54 ECAB 846 (2003).

[18] *V.W.*, 58 ECAB ____ (Docket No. 07-34, issued March 22, 2007).

[19] *T.G.*, 58 ECAB ____ (Docket No. 06-1411, issued November 28, 2006).

[20] *See Donney T. Drennon-Gala*, 56 ECAB ____ (Docket No. 04-2190, issued April 26, 2005).

under the Act.[21] Appellant's reaction to the meetings is considered self-generated and not a compensable factor of employment.[22]

Appellant also generally alleged that the overwork caused her emotional condition. The Board has held that overwork may be a compensable factor of employment if it is established as factual.[23] Appellant, however, provided no evidence to document the alleged overwork and consequently this allegation was not established as a compensable factor of employment.[24] She also generally alleged that she was harassed by Mr. Feeny on November 27, 2006 because he made repeated telephone calls and visits to her desk and that he commented that she had a "butt load" of work. To establish harassment based upon a comment made by a supervisor, a claimant must establish that the comment was actually made and that the comment or any other action by the employing establishment was a form of harassment.[25] In this case, other than appellant's allegation, there is no corroborating evidence that this statement was in fact made. Thus, this would not be a compensable employment factor. Regarding appellant's general allegation that she was harassed by Mr. Feeny, where a claimant alleges harassment, the issue is whether the claimant has submitted sufficient evidence under the Act to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[26] Appellant submitted no evidence in this case to corroborate her allegations.

As appellant did not submit sufficient probative evidence to establish a compensable factor of employment, she failed to establish that she sustained an emotional condition in the performance of duty.[27]

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.[28] Section 10.606(b)(2) of Office regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.[29] Section 10.608(b) provides that when an application for

[21] *James E. Norris, supra* note 12.

[22] *See Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

[23] *See Sherry L. McFall*, 51 ECAB 436 (2000).

[24] *See Robert Breeden*, 57 ECAB ____ (Docket No. 06-734 , issued June 16, 2006).

[25] *Ernest J. Malagrida*, 51 ECAB 287 (2000).

[26] *C.S.*, 58 ECAB ____ (Docket No. 06-1583, issued November 6, 2006).

[27] Because appellant failed to establish a compensable employment factor, it was not necessary to consider the medical evidence. *Marlon Vera*, 54 ECAB 834 (2003).

[28] 5 U.S.C. § 8128(a).

[29] 20 C.F.R. § 10.606(b)(2).

reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[30] Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.[31] Likewise, evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[32]

ANALYSIS -- ISSUE 2

In her request for reconsideration, appellant merely reiterated that the evidence submitted was sufficient to establish employment-related stress. She therefore did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).[33]

With respect to the third above-noted requirement under section 10.606(b)(2), appellant submitted no additional evidence. She therefore did not submit relevant and pertinent new evidence not previously considered by the Office and the Office properly denied her reconsideration request by its April 6, 2007 decision.

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. The Board further finds that the Office properly refused to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

[30] *Id*. at § 10.608(b).

[31] *Helen E. Paglinawan*, 51 ECAB 591 (2000).

[32] *Kevin M. Fatzer*, 51 ECAB 407 (2000).

[33] *See supra* note 29.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 6 and February 26, 2007 be affirmed.

Issued: October 25, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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