

On March 10, 2007 appellant, then a 42-year-old sales services associate, filed an occupational disease claim, alleging that she experienced stress in the course of her federal employment. She first became aware of the condition and of its relationship to her employment on January 23, 2007. Appellant stopped work on February 15, 2007.

Appellant submitted a March 9, 2007 report from Dr. Marcellus R. Cephas, a Board-certified psychiatrist and neurologist, who noted that she had significant symptoms of depression, which she alleged were caused by stress at work. Dr. Cephas advised that stress appeared “to be the precipitating factor of her condition.” He recommended psychotherapy and medication management on a regular basis.

By letter dated April 27, 2007, the Office informed appellant of the evidence needed to support her claim and requested that she submit additional evidence within 30 days.

In a letter dated May 9, 2007, appellant alleged that her emotional condition was caused by several incidents. On August 2, 2006 she attended mediation related to an Equal Employment Opportunity (EEO) complaint of discrimination. Appellant stated that she filed the complaint because she was placed in a position that she was not prepared for and which did not conform with her disability.<sup>1</sup> She noted that the employing establishment settled her claim in consideration for her withdrawal of her EEO complaint and agreed that she would be properly equipped to perform her duties and provided with a uniform. On October 23, 2006 appellant met with her supervisor about a position for which she was not selected that had identical duties but different hours.<sup>2</sup> She provided a copy of the position that indicated that her duties included window qualifications. Appellant asserted that on November 27, 2006 she failed an evaluation for not having a uniform. A resolution was subsequently reached in which she would be placed in a new position on December 9, 2006; however, she indicated that she was not placed in the new position.<sup>3</sup> On December 11, 2006 appellant smelled a dead rodent at her workstation and despite asking for its removal it was not removed and she had to work in the pungent area. She alleged that the smell caused headaches and that she eventually had to file an unsafe condition complaint.<sup>4</sup> Appellant alleged that she was forced to work alone on January 10, 2007 because a coworker was preparing for a supervisors examination. She noted that her computer had to be rebooted and there was a line of impatient customers and she left work with a migraine headache. Appellant was sick when she left work on January 12, 2007 and Terri Taylor, a manager, informed her that she would not be paid. She received letters dated March 19 and 27, 2007 from management concerning her use of leave and provided copies. Appellant alleged that her supervisor had a conflict with her sibling and became indifferent towards her as a result. She asserted that she was denied the use of donated leave by her supervisor and placed on leave without pay. Appellant indicated that her physician attempted to fax information to the employing establishment on May 1, 2007; however, the fax machines did not have cartridges on them.

In a June 23, 2006 letter, Deitric Willard-Ruffin, the postmaster, advised appellant that she had failed to submit a bid for previously posted clerk positions and that she was being

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<sup>1</sup> Appellant stated that she was placed in a permanent rehabilitation position since June 2004 as a result of a physical disability and provided copies of letters pertaining to her bid position.

<sup>2</sup> Appellant provided a copy of an EEO complaint and correspondence regarding to the incident.

<sup>3</sup> Appellant provided a copy of her complaint regarding a violation of mediation settlement agreement and resolution.

<sup>4</sup> Appellant provided a copy of the complaint that she filed related to the rodent.

assigned to the “AR-05” position pending qualifications. Appellant was also advised to submit updated medical information regarding her current work restrictions. A copy of an August 3, 2006 settlement agreement indicated that, in consideration of appellant withdrawing her EEO complaint, the employing establishment agreed to provide her with a uniform allowance (in consultation with appellant), appropriate seating with a back support and revise her work schedule to 10:15 a.m. to 7:15 p.m. with Sundays and Thursdays off. The agreement was without prejudice to either party. A December 14, 2006 e-mail from the employing establishment advised that it would take about four weeks for appellant to receive her uniform card. Appellant provided a copy of a December 28, 2006 statement related to her bid for an assignment in October 2006 and her not being placed in the position. The Office also received March 19 and 27, 2007 letters from the employing establishment advising appellant that she was in an absent without leave status and that additional documentation was required.

By decision dated August 24, 2007, the Office denied appellant’s claim finding the evidence insufficient to establish that the alleged events occurred as alleged.

On August 29, 2007 appellant requested reconsideration. On September 6, 2007 the Office received a report from Dr. Deborah Rollins, a Board-certified internist, who noted that appellant presented on January 15, 2007 with complaints of diarrhea, psychosomatic complaints before going to work, including a feeling of doom, palpitations and crying episodes. Dr. Rollins noted that appellant was referred for psychotherapy and psychiatric treatment. In a May 24, 2007 report, Dr. Cephas<sup>5</sup> noted that appellant was under his care for major depressive disorder since February 8, 2007. He advised that her current symptoms included decreased energy, depressed mood (tearfulness), irritability, anxiety, insomnia and poor concentration. Dr. Cephas opined that appellant’s condition was most likely “caused by the stressful events that transpired in her work environment.” He added that the “constant pressure that she was put under and the conflict that this generated with management caused a great deal of anxiety.” The Office also received a report from a physician’s assistant.

Appellant submitted documents related to a grievance that she filed for a bid position. A November 22, 2006 grievance resolution indicated that she would be placed in the bid position at issue, effective December 2, 2006. The parties agreed that the resolution was nonprecedential and neither party would cite the resolution in any other proceeding. Appellant also included a June 11, 2007 letter from the employing establishment closing the grievance.

By decision dated November 30, 2007, the Office affirmed the August 23, 2007 decision as modified to find that appellant did not establish incidents which occurred in the performance of duty.

### **LEGAL PRECEDENT**

Workers’ compensation law does not apply to each and every 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 disability results from an employee’s emotional reaction

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<sup>5</sup> His credentials were not listed.

to her regular or specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>6</sup> 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.<sup>7</sup>

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition, for which she claims compensation was caused or adversely affected by employment factors.<sup>8</sup> This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions, for which compensation is claimed.<sup>9</sup>

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 the physician when providing an opinion on causal relationship and, which working conditions are not deemed factors of employment and may not be considered.<sup>10</sup> If a claimant does implicate a factor of 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 the matter establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>11</sup>

### ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of several employment incidents. The Board must initially review whether the alleged incidents of employment are compensable under the terms of the Act.

The Board notes that appellant made several allegations related to administrative or personnel matters. These allegations are unrelated to the employee's regular or specially assigned work duties and do not generally fall within the coverage of the Act.<sup>12</sup> However, the Board has also found that an administrative or personnel matter will be considered to be an

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<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 126 (1976).

<sup>8</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>9</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>10</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>11</sup> *Id.*

<sup>12</sup> 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. *Sandra Davis*, 50 ECAB 450 (1999).

employment factor where the evidence discloses error or abuse. In determining whether the employing establishment erred or acted abusively, the Board has examined whether management acted reasonably.<sup>13</sup>

Among the administrative matters alleged by appellant were assertions regarding her sick leave, leave without pay, denial of leave and donated leave.<sup>14</sup> The denial of leave due to operational needs is a discretionary matter. Additionally, appellant has not shown that her requests for leave were denied. The record contains letters from the employing establishment dated March 19 and 27, 2007, which advised her that she was in an absent without leave status and that additional documentation was required. There is no indication that her leave was denied. Appellant has not submitted sufficient evidence to establish error or abuse by management in matters involving her leave.

Appellant also alleged that she was not provided with a uniform. However, the record contains a December 14, 2006 e-mail from the employing establishment indicating that it would take approximately four weeks for her to receive her uniform card. This matter was grieved and a settlement agreement dated August 3, 2006 reveals that appellant withdrew her EEO complaint in consideration of several factors, including that she be provided with a uniform allowance.<sup>15</sup> Appellant has not established that the employing establishment acted unreasonably in this matter.

Appellant alleged that she was not placed in a bid assignment, contending that she was the sole bidder and qualified for the position. 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 the employee's desire to work in a different position.<sup>16</sup> On June 23, 2006 the postmaster advised appellant that she had failed to submit a bid for a previously posted clerk position. In the absence of error or abuse, the handling of the personnel matters such as offering an employee a certain position is an administrative function of the employer and not a duty of the employee.<sup>17</sup> Furthermore, a settlement was entered into regarding the position she was seeking.<sup>18</sup> There is no evidence from appellant to show that this action by management was unreasonable. To the extent that she contends that this matter involved discrimination, she has not submitted sufficient evidence to establish that discrimination occurred. Mere perceptions and feelings of harassment or discrimination will not

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<sup>13</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>14</sup> *T.G.*, 58 ECAB \_\_\_\_ (Docket No. 06-1411, issued November 28, 2006) (actions of the employing establishment in matters involving the use of leave are generally not considered compensable factors of employment as they are administrative functions of the employer and not duties of the employee).

<sup>15</sup> The settlement did not assess any error on the part of any party to the complaint. Grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred. *C.S.*, 58 ECAB \_\_\_\_ (Docket No. 06-1583, issued November 6, 2006).

<sup>16</sup> *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

<sup>17</sup> *David S. Gilreath*, 56 ECAB 241 (2005).

<sup>18</sup> The settlement did not assess any error on the part of any party to the complaint. See *supra* note 15.

support an award of compensation. The claimant must establish such allegations with probative and reliable evidence.<sup>19</sup> Appellant submitted no evidence other than an EEO complaint resolution, for which neither party was assessed error, to substantiate her perception. The Board finds that there is insufficient evidence to establish appellant's allegation of discrimination as factual.

Appellant did not submit any factual evidence supporting her allegation that she was required to work in an area with a dead rodent or sent home without pay. While she provided a copy of her complaint related to a rodent, her allegations do not establish the fact that she worked in an area with a foul odor. Further, the Board notes that her physician's inability to fax a record to the employing establishment is unrelated to the requirements of her position and does not establish abuse or error on the part of the employing establishment. Thus, appellant has not established a compensable factor in this regard.

Appellant also alleged that she was treated differently due to a supervisor's conflict with her sibling. She has not established this allegation as a compensable employment factor. Appellant has not identified any specific dates, individuals or any provided any specific details to show that she was treated differently. Furthermore, she alleged that she perceived that she was treated differently. 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.<sup>20</sup> Thus, appellant has not established a compensable factor in this regard.

Regarding appellant's allegation that she was forced to work alone because a coworker was studying for a management examination and that she had to reboot her computer while impatient customers were waiting, the Board has held that emotional reactions to situations in which an employee is trying to meet her position requirements maybe compensable.<sup>21</sup> In *Antal*, a tax examiner filed a claim alleging that her emotional condition was caused by the pressures of trying to meet the production standards of his job. The Board, citing the principles of *Cutler*, found that the claimant was entitled to compensation. In *Kennedy*, the Board, also citing the principles of *Cutler*, listed employment factors which would be covered under the Act, including an unusually heavy workload and imposition of unreasonable deadlines. However, appellant's allegation that she was forced to work alone is not corroborated by the evidence of record. She has not submitted any evidence other than a position description, which provides that she would have window duties, to show that working the window by herself would be unreasonable. There is no indication that appellant was to only work with others or that she could not work by herself. She did not address any particular duty which she performed while working alone as causing her claimed condition. Appellant has not factually corroborated her allegations by the evidence of record.

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<sup>19</sup> *J.F.*, 59 ECAB \_\_\_\_ (Docket No. 07-308, issued January 25, 2008).

<sup>20</sup> See *Michael A. Deas*, 53 ECAB 208 (2001).

<sup>21</sup> See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

As appellant has not established a compensable employment factor, it is not necessary to address the medical evidence.<sup>22</sup>

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 30, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 26, 2008  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>22</sup> *Garry M. Carlo*, 47 ECAB 299 (1996); *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).