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<b>L.B., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 08-1210</b>
	)	<b>Issued: October 2, 2008</b>
<b>DEPARTMENT OF THE ARMY, WALTER</b>	)	
<b>REED ARMY INSTITUTE OF RESEARCH,</b>	)	
<b>Silver Spring, MD, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

On March 18, 2008 appellant filed a timely appeal from a February 5, 2008 decision of the Office of Workers' Compensation Programs, denying her claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

The issue is whether appellant met her burden of proof in establishing that her emotional condition was causally related to a compensable employment factor.

On May 15, 2007 appellant, then a 47-year-old secretary, filed an occupational disease claim for an emotional condition, alleging severe depression, anxiety and panic attacks, insomnia, chest pain, migraines, hives and hair loss due to factors of her federal employment. She alleged daily stress due to noise, odors and foul language used by coworkers in her work

environment.<sup>1</sup> Appellant alleged that Wilbur Milhous, a coworker, continuously whistled tunes loudly, banged on cabinets and railings directly outside her office, played military music loudly and clapped. She told Mr. Milhous that his behavior was rude and annoying. Mr. Milhous laughed and commented that he knew it “pissed [her] off.” Appellant alleged that Denise Anderson, a coworker, harassed her for approximately 15 months. On April 2, 2006 Ms. Anderson approached her in a threatening manner regarding appellant’s delay in getting a message to her.<sup>2</sup> She confronted appellant about not parking where she had suggested. On an unspecified date, appellant was accosted in the cafeteria by Ms. Anderson who angrily demanded to know why she was purchasing food from the cafeteria when she had advised against it.<sup>3</sup> Ms. Anderson told lies about her, including allegations that appellant stole a laptop computer, was involved with a married man and used drugs. She allegedly talked to coworkers about appellant’s leave status and told coworkers not to talk to appellant. Appellant unsuccessfully attempted to avoid Ms. Anderson. Both appellant and Ms. Anderson received a letter of warning not to speak to anyone about each other. However, Ms. Anderson ignored the warning and continued to harass appellant. Appellant also alleged that Ms. Anderson stalked her on several occasions. One night, as she walked to her motor vehicle in the parking lot after work, she saw Ms. Anderson in her vehicle facing appellant’s car with the engine running and lights on. When appellant stopped at a grocery store, Ms. Anderson walked up behind her and whispered, “We both had the same idea to shop before heading home.” She informed her supervisor about the incident the following morning. Appellant alleged that no action was taken by management.

The Office requested additional information, including a detailed description of the work situations or incidents that contributed to appellant’s emotional condition and a comprehensive medical report explaining how the employment factors caused or aggravated her medical conditions.

In an undated statement, the employing establishment noted that incidents involving appellant and Ms. Anderson from 2001 to 2002 were addressed at a July 12, 2002 meeting. Corrective measures were instituted to eliminate interaction between them.

On May 15, 2007 Thomas H. Hudson, appellant’s supervisor, stated that an investigation found no evidence to either corroborate or contradict an April 30, 2007 incident report alleging improper and threatening interaction between appellant and Ms. Anderson.<sup>4</sup> He stated that there was a history of adversarial behavior between the two women which counseling had not

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<sup>1</sup> Appellant alleged that the odors came from food and unspecified chemicals. The noise came from the atrium and hallway, floor buffing machines, equipment transported through the halls, the sound of malfunctioning equipment and cell phone conversations. The foul language included vulgar comments about women spoken in a neighboring office.

<sup>2</sup> Appellant went to a supervisor’s office to register for a class. The supervisor asked her to notify Ms. Anderson of the class. Before she could e-mail her about the class, Ms. Anderson approached and asked why she had not been informed about the class.

<sup>3</sup> Ms. Anderson advised appellant against eating cafeteria food because she did not like the food there.

<sup>4</sup> Ms. Anderson alleged that on April 30, 2007 she was crossing the street when appellant approached in her vehicle and screamed at Ms. Anderson to get out of the street. She felt that appellant was trying to frighten her or hit her. Appellant denied that the incident occurred.

corrected. Mr. Hudson issued a letter of instruction to appellant restricting her movement while walking and driving on the employing establishment premises. Any further incidents between appellant and Ms. Anderson were to be reported to her supervisor. Mr. Hudson noted that on May 8, 2007 appellant saw Ms. Anderson in a hallway. Appellant told Mr. Hudson that she was afraid of Ms. Anderson and she left work. In a December 17, 2007 statement, Mr. Hudson indicated that appellant complained about noise from adjacent offices and the atrium area. He spoke to employees in those offices and to employees who sometimes carried on conversations in the atrium. They agreed to keep the volume of their conversations low and to avoid using inappropriate language. Mr. Milhous agreed to stop whistling in the atrium area and playing military music in his office. Mr. Hudson heard of no further incidents concerning noise. He was never advised of an odor in the office area. Mr. Hudson indicated that it might have been a one-time occurrence due to someone eating lunch in the atrium area.

In reports dated May 9 and June 9, 2007, Dr. Jared S. Putnam, an attending psychiatrist, stated that he began treating appellant on April 12, 2007 for preexisting depression, anxiety and insomnia which had worsened.<sup>5</sup> He diagnosed major depression and generalized anxiety disorder. Appellant indicated that stressors at her job caused her symptoms to become significantly worse. She described difficulty with a coworker who stalked her and she perceived a lack of consistent support. On May 3, 2007 she appeared very anxious because of a situation at work that caused her to fear for her safety. Appellant stopped work for a time but fell back into her depression after she returned to work, feeling harassed and unsupported. Dr. Putnam stated that appellant could not return to work under current conditions.

By decision dated February 5, 2008, the Office denied appellant's claim on the grounds that she failed to establish that she sustained an emotional condition causally related to a compensable employment factor.

### **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 an illness has some connection with employment but nevertheless does not come within the coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned work 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>

Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage

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<sup>5</sup> Dr. Putnam stated that appellant was initially treated for her emotional condition by her primary care physician.

<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.<sup>8</sup>

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 work factors of employment, which may be considered by a physician when providing an opinion on causal relationship, and which are not deemed compensable factors of employment and may not be considered.<sup>9</sup> If 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.<sup>10</sup> 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.<sup>11</sup> Were the claimant alleges compensable factors of employment, she must substantiate such allegations with probative and reliable evidence.<sup>12</sup> When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.<sup>13</sup>

### ANALYSIS

Several of appellant's allegations are not established as factual. She alleged that Ms. Anderson harassed her for approximately 15 months. On April 2, 2006 Ms. Anderson approached her in a threatening way regarding appellant's delay in getting a message to her. She confronted her when she did not park where she had suggested. Appellant was accosted in the cafeteria by Ms. Anderson who demanded to know why she was purchasing food from the cafeteria when she had advised against it. Ms. Anderson told lies about her, including allegations that she stole a laptop computer, was involved with a married man and used drugs. She talked to coworkers about appellant's leave status and told them not to talk to appellant. Appellant alleged that Ms. Anderson stalked her on several occasions. One night, as she walked to her motor vehicle in the parking lot after work, she saw Ms. Anderson in her vehicle facing her vehicle with the engine running and lights on. When appellant stopped at a grocery store, Ms. Anderson walked up behind her and whispered, "We both had the same idea to shop before heading home." There is insufficient evidence that these incidents and situations occurred. There is no evidence, such as witness statements, establishing these allegations as factual. Appellant failed to support these allegations with specific, substantive, reliable and probative

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<sup>8</sup> *Michael Thomas Plante*, 44 ECAB 510 (1993).

<sup>9</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>10</sup> *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>11</sup> *See Charles E. McAndrews*, 55 ECAB 711 (2004).

<sup>12</sup> *Joel Parker, Sr.*, 43 ECAB 220 (1991).

<sup>13</sup> *See Charles D. Edwards*, 55 ECAB 258 (2004).

evidence. As there is insufficient evidence to establish these allegations as factual, they cannot be considered as possible compensable employment factors.

Appellant alleged two factors that are established. She alleged that she was exposed to noise, odors and foul language used by coworkers in her work environment. Appellant alleged that Mr. Milhous whistled tunes loudly, banged on cabinets and railings with his ring outside her office and played military music loudly. The handling of complaints from an employee regarding adverse conditions in the work environment is an administrative function of supervisors. The Board has held that an administrative or personnel matter will be considered to be an employment factor only where the evidence discloses error or abuse on the part of the employing establishment.<sup>14</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>15</sup> Mr. Hudson stated that he spoke to employees in offices near appellant and to employees who sometimes carried on conversations in the atrium. They agreed to keep the volume of their conversations low and to avoid using inappropriate language. Mr. Milhous agreed to stop whistling in the atrium area and playing military music in his office. Mr. Hudson indicated that, after this corrective action, he heard no further complaints from appellant concerning noise. As to odors, he noted that he was never informed of an odor in the office area. He indicated that it might have been a one time occurrence due to someone eating lunch in the atrium area. The record establishes that management took corrective action regarding the administrative or personnel matters concerning appellant's work environment and there were no further complaints from appellant regarding these matters. Appellant has not established error or abuse in the handling of these matters. Therefore, she failed to establish any compensable factors of employment in regard to administrative or personnel matters.

Appellant failed to establish any compensable factors of employment. Therefore, the Office properly denied her claim for an emotional condition.<sup>16</sup>

### **CONCLUSION**

The Board finds that appellant failed to establish that her emotional condition was causally related to a compensable factor of employment.

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<sup>14</sup> *Id.*

<sup>15</sup> *Janice I. Moore*, 53 ECAB 777 (2002).

<sup>16</sup> Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence. See *Barbara J. Latham*, 53 ECAB 316 (2002); *Garry M. Carlo*, 47 ECAB 299 (1996).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 5, 2008 is affirmed.

Issued: October 2, 2008  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board