

hostile work environment on or before June 11, 2008. Her supervisor noted that her position required coordinating correspondence. Appellant's supervisor stated that he could not confirm her allegations. Appellant stopped work on June 11, 2008 and did not return.

In February 17 and March 20, 2009 letters, appellant noted that she filed an Equal Employment Opportunity (EEO) Commission complaint for "ongoing discrimination (reprisal)." She submitted documents regarding the status of the complaint.

In an April 7, 2009 letter, the Office advised appellant of the additional evidence needed to establish her claim, including a detailed description of the identified work factors and a medical report from her attending physician explaining any causal relationship between those factors and the claimed emotional illness.

In an April 18, 2009 letter, appellant responded that on June 10, 2008 she received an e-mail from a supervisor requesting that she not include extraneous e-mails in outgoing correspondence. She characterized the supervisor's e-mail as an improper attempt to filter and interfere with her assignments in retaliation for a February 2007 settlement agreement. Appellant became upset and left to seek medical treatment.

Appellant submitted reports from Dr. Loreto S. Albiol, an attending Board-certified internist, holding her off work from May 2008 to April 30, 2009 due to anxiety and depression.¹

By decision dated September 18, 2009, the Office denied the claim on the grounds that appellant failed to establish any compensable factors of employment. It found that she established as factual that she received e-mails on June 10, 2008 and on prior occasions advising her not to include extraneous e-mails in outgoing correspondence. The Office found that supervisory evaluation of appellant's work was not a compensable employment factor as no administrative error or abuse was shown. It further found that she did not establish her allegations of disparate treatment, harassment, retaliation, reprisals or a hostile work environment.

In a September 26, 2009 letter, appellant requested a review of the written record. She asserted that she included only necessary material in her correspondence. Appellant alleged that her supervisors were attempting to filter her work assignments as part of unlawful and criminal reprisals.

Appellant submitted a September 14, 2009 report from Dr. Smita Patel, an attending Board-certified psychiatrist, diagnosing major depression. She also provided correspondence showing that the EEO claim remained unresolved.²

¹ Appellant also submitted reports from a social worker which do not constitute medical evidence. *Sedi L. Graham*, 57 ECAB 494 (2006) (the reports of a social worker do not constitute competent medical evidence, as a social worker is not a physician as defined by 5 U.S.C. § 8101(2) of the Act).

² Appellant submitted July 8, July 9 and December 11, 2009 letters from the employing establishment denying leave and transfer requests made in 2009. She also provided a chronology of events related to an occupational hearing loss claim. These documents do not address the identified work factors.

By decision dated February 1, 2010, an Office hearing representative affirmed the denial of appellant's emotional condition claim on the grounds that she did not establish any compensable factors of employment. The hearing representative found that she did not provide a detailed statement of the alleged work factors other than the June 10, 2008 e-mail, an administrative matter where no error or abuse was shown.

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 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 to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³ 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.⁴

Generally, an employee's emotional reaction to administrative or personnel actions taken by the employing establishment is not covered because such matters pertain to procedures and requirements of the employer and are not directly related to the work required of the employee.⁵ An administrative or personnel matter will be considered to be an employment factor, however, where the evidence discloses error or abuse on the part of the employing establishment.⁶ An employee's frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable.⁷ Likewise, an employee's dissatisfaction with perceived poor management is not compensable under the Act.⁸

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.⁹ 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

³ 5 U.S.C. §§ 8101-8193.

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁶ *See James R. Norris*, 52 ECAB 93 (2000).

⁷ *Barbara J. Latham*, 53 ECAB 316 (2002).

⁸ *Id.*

⁹ *See Norma L. Blank*, 43 ECAB 384. (1992).

record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.¹⁰

The Board has held that incidents of discrimination, harassment or retaliation by supervisors and coworkers, if established as occurring and arising from the employee's performance of his or her regular duties, could constitute employment factors.¹¹ To give rise to a compensable disability under the Act, there must be probative and reliable evidence that harassment or discrimination did in fact occur.¹² Mere perceptions of harassment, retaliation or discrimination are not compensable under the Act.¹³

ANALYSIS

Appellant alleged that she sustained an anxiety condition as a result of employment incidents which the Office found to be noncompensable. Therefore, the Board must review whether the alleged incidents are covered employment factors under the terms of the Act.

The Board notes that appellant did not attribute her emotional condition to her regular or specially assigned duties under *Cutler*. Appellant attributed her emotional condition, in part, to a June 10, 2008 e-mail from her supervisor requesting that she not append certain e-mails to outgoing correspondence. However, the Board has characterized supervisory discussions or evaluations of job performance as administrative or personnel matters, covered only when error or abuse is established.¹⁴ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁵ To support such a claim, a claimant must establish a factual basis by providing probative and reliable evidence.¹⁶ In this case, appellant did not submit a copy of the June 10, 2008 e-mail or any evidence corroborating her allegations of impropriety. As she did not establish that the supervisor's e-mail constituted error or abuse, she did not establish a compensable factor of employment in this respect.

Appellant also contended that the June 10, 2008 e-mail was an illegal attempt to filter or interfere with her work. However, an employee's dissatisfaction with the way a supervisor performs his or her duties or exercises discretion in assigning work is not compensable absent administrative error or abuse.¹⁷ Appellant did not submit any evidence corroborating her allegations of improper supervisory actions. The Board has held that mere allegations, in the

¹⁰ *Id.*

¹¹ *Janice I. Moore*, 53 ECAB 777 (2002). See *David W. Shirey*, 42 ECAB 783 (1991).

¹² *Janice I. Moore, id.*

¹³ *Kim Nguyen*, 53 ECAB 127 (2001).

¹⁴ *Roger W. Robinson*, 54 ECAB 846 (2003).

¹⁵ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁶ See *Barbara J. Nicholson*, 45 ECAB 843 (1994).

¹⁷ *Donney T. Drennon-Gala*, 56 ECAB 469 (2005); *Linda J. Edward-Delgado*, 55 ECAB 401 (2004).

absence of factual corroboration, are insufficient to meet a claimant's burden of proof.¹⁸ Therefore, appellant has not established a compensable work factor in this regard.

Appellant also attributed her condition to a pattern of harassment, disparate treatment and reprisals related to a February 2007 settlement agreement. Incidents of harassment and reprisals, if established as factual and arising from the employee's performance of duty, could constitute employment factors.¹⁹ Appellant submitted documents regarding an EEO complaint. She did not provide a final agreement, finding of wrongdoing or corroboration of any incident of harassment or reprisal. The absence of such documentation does not support appellant's contentions. As she has not established these incidents as factual, she has not established a compensable employment factor under the Act with respect to the claimed discrimination, retaliation and disparate treatment.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty as she failed to establish any compensable factors of employment. As appellant has not established any compensable work factors, the remainder of the medical record need not be addressed.²⁰

On appeal, appellant contends that a June 10, 2008 incident, preceded by a pattern of harassment and reprisals, caused the claimed emotional condition. As stated, she did not submit sufficient evidence to establish any compensable factor of employment. The Office properly denied appellant's claim.

CONCLUSION

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

¹⁸ *Bonnie Goodman*, 50 ECAB 139 (1998).

¹⁹ *Janice I. Moore*, 53 ECAB 777 (2002).

²⁰ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 1, 2010 is affirmed.

Issued: December 13, 2010
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