

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SANDRA DAVIS and DEPARTMENT OF THE TREASURY, BUREAU OF  
ALCOHOL, TOBACCO & FIREARMS, Wichita, Kans.

*Docket No. 97-117; Oral Argument Held February 3, 1998;  
Issued July 8, 1999*

Appearances: *Beth Regier Foerster, Esq.*, for appellant; *Sheldon G. Turley, Jr., Esq.*,  
for the Director, Office of Workers' Compensation Programs.

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issues are: (1) whether appellant has established that she was a civil employee of the United States prior to July 1990 within the meaning of 5 U.S.C. § 8101(1)(B) of the Federal Employees' Compensation Act for purposes of coverage under the Act; and (2) whether appellant has met her burden of proof to establish that she sustained an emotional condition while in the performance of duty.

On August 23, 1994 appellant, then a special agent, filed a claim for an occupational disease (Form CA-2) alleging that on August 10, 1994 she first realized that her emotional condition was caused or aggravated by her employment. Appellant did not stop work.

Appellant's claim was accompanied by an undated narrative statement alleging that in the fall of 1986 she was sexually harassed by Manual Gonzalez, an employing establishment special agent, during the course of a preemployment interview. Appellant stated that the highest ranking officials of the employing establishment initiated an investigation of her background after she reported the harassment. Appellant further stated that she filed a complaint with the Equal Employment Opportunity Commission (EEOC) alleging sexual harassment, sex discrimination and reprisal after the employing establishment declined to offer her employment on the grounds that she failed to pass the background investigation. Appellant alleged that subsequent to an EEOC decision finding the employing establishment guilty of discrimination and reprisal, the employing establishment attempted to place her in unacceptable positions until she began to work as an agent in July 1990. Additionally, appellant alleged that it was difficult working for the employing establishment because information about the proceedings and the contents of the background investigation were known by others, although this information was supposed to have been kept confidential. Specifically, appellant alleged that she was harassed by her classmates in a training class. Also, appellant alleged that during an interview on the television show "60

Minutes” in 1993, Stephen Higgins, the employing establishment’s director, repeated derogatory information about her that was contained in investigative files, and that Mr. Higgins released a tape of the interview, that was filmed by the employing establishment, to every duty post for all of its agents to view in mandatory Equal Employment Opportunity (EEO) meetings and roll call training. Appellant further alleged that the employing establishment released her internal affairs, EEOC and personnel files to an organization called Accuracy in the Media (AIM) which wrote a nasty article about the “60 Minutes” interview, and included information that the EEOC administrative law judge had found unreliable and from extremely biased sources. Appellant then stated that this article was sent to every duty station. Appellant noted that she was involved in litigation with the employing establishment regarding its actions after the “60 Minutes” interview.

By letter dated November 3, 1994, the Office of Workers’ Compensation Programs requested the employing establishment to comment on appellant’s allegations and appellant’s ability to perform her work duties. By letter of the same date, the Office advised appellant to submit additional factual and medical evidence supportive of her claim.

In response, appellant submitted a November 7, 1994 narrative statement alleging that she was mistreated by her classmates during new agent training in June and July 1991, and that Dondi Ortiz Albritton, appellant’s supervisor, Louis Tomasello, Jr., an employing establishment resident agent-in-charge and Kathleen M. Kubicki, a former employing establishment special agent, were aware of the situation. Appellant provided the following specific incidents of mistreatment: (1) her classmates glared at her and walked away from her during a break; (2) she received an apology from Brad Brown, appellant’s classmate, toward the end of the training regarding his actions; (3) Diane Klipfel, an employing establishment supervisor, stated on several occasions that many of the agents in her office despised appellant because of the things they thought she had done to the employing establishment; (4) Dewey Web, an employing establishment resident agent-in-charge, acted surprised and replied better you than me when Mr. Albritton stated that she was a good agent in response to Mr. Web’s question regarding appellant’s ability as an agent; (5) the Memphis agents were instructed by Terrance Beaty, an employing establishment special agent-in-charge, based on instructions from Daniel M. Hartnett, the employing establishment’s associate director of law enforcement, that they were not to answer any of her questions, that they were to report everything she said and that they were to keep a record of all of her telephone calls; and (6) that Randle Beach, appellant’s classmate in training school and an agent, told her that the “60 Minutes” videotape was shown in his roll call training and that many agents had the wrong idea about her because of the videotape. Appellant stated that her condition did not result from not being given a transfer to another position or a different job assignment, rather it was caused by the employing establishment, who ruined her reputation within the employing establishment, as well as, in state and local law enforcement offices. Appellant also stated that her condition began at the start of her litigation against the employing establishment. Appellant’s response letter was accompanied by the EEOC administrative law judge’s June 29, 1988 decision.

By decision dated May 1, 1995, the Office found the evidence of record insufficient to establish that appellant sustained an injury as alleged. In an accompanying memorandum, the Office found that the allegation of sexual harassment against Mr. Gonzalez, appellant’s EEOC

complaint alleging sexual harassment and the EEOC's 1988 decision occurred before appellant was hired as a federal employee. The Office noted that appellant was employed as a data entry clerk with Smart & Wooley, a certified public accountant firm, and, at the time of the May 17, 1988 EEOC hearing, appellant was a jeweler's apprentice. The Office, therefore, found that appellant was not a "civil employee" under the Act during this period and was not entitled to coverage under the Act. The Office also found that appellant's allegations regarding knowledge of others about the confidential EEOC proceedings, harassment by her classmates while in training, Mr. Higgins' derogatory comments about her on "60 Minutes," the distribution of the videotape of the interview to all of the employing establishment's duty posts to be viewed in EEO meetings and roll call training, and the release of her internal affairs, EEO and personnel records to AIM by the employing establishment, were not substantiated by the record.

In a June 1, 1995 letter, appellant requested reconsideration of the Office's decision. In this letter, appellant alleged that she only sought medical treatment after Mr. Higgins' appearance on "60 Minutes" and the employing establishment's retaliation against her due to her appearance on the television program by releasing her confidential records and being fired three times and placed on absence without leave (AWOL) status on numerous occasions. Appellant's request was accompanied by documents regarding her sexual harassment complaint and lawsuit against the employing establishment, which included the AIM article. Appellant's request was also accompanied by narrative statements and correspondence from employing establishment employees revealing that the release and dissemination of the AIM article and videotape of the "60 Minutes" interview was not done as an act of reprisal against appellant and that appellant's privacy rights had not been violated because she signed a waiver. Appellant submitted narrative statements revealing the treatment she received from her instructors, classmates and an owner of a restaurant while attending a training course, discussions about her sexual harassment complaint, and the AIM article. Appellant also submitted a videotape of an unedited version of the "60 Minutes" interview.

By decision dated August 1, 1995, the Office denied appellant's request for modification based on a merit review of the claim. In an accompanying memorandum, the Office found that the following incidents occurred outside of appellant's federal employment: (1) sexual harassment during an employment interview; (2) harassment by appellant's coworkers; (3) appellant's reaction to Mr. Higgins' interview on "60 Minutes"; and (4) publication of the AIM article. The Office further found that repeated harassment and exposure to stressful situations which included being fired three times and placed on AWOL on several occasions by the employing establishment were not accepted as having occurred as alleged by appellant.

In a May 23, 1996 letter, appellant, through her counsel, requested reconsideration of the Office's decision reiterating her allegations of harassment by the employing establishment. Appellant's claim was accompanied by medical evidence and narrative statements concerning unfavorable and favorable comments made about appellant, appellant's reassignment and the distribution of the "60 Minutes" videotape. Appellant's claim was also accompanied by documents regarding her lawsuit against the employing establishment and employment records. Further, appellant's request was accompanied by a time line of events which included her employment interview, the employing establishment's background investigation, the EEOC's 1988 decision, the employing establishment's supervision of her work activities, her rejection of

several employment positions subsequent to the EEOC's decision, the employing establishment's attempt to discharge her from her employment, the mistreatment she received from employing establishment employees, the dissemination of the AIM article, the "60 Minutes" interview, and her lawsuit against the employing establishment for violations of the Privacy Act and reprisal. Appellant resubmitted narrative statements regarding the treatment she received from her instructors and classmates, and the EEOC's June 29, 1988 decision.

By decision dated August 30, 1996, the Office denied appellant's request for modification based on a merit review of the claim. In an accompanying memorandum, the Office found that the incidents which occurred prior to appellant's employment with the employing establishment did not constitute compensable employment factors. The Office also found that appellant's reaction to gossip about herself and her assignment to a training class, and her lawsuit against the employing establishment did not constitute compensable employment factors.

The Board finds that appellant has failed to establish that she was a civil employee of the United States within the meaning of 5 U.S.C. § 8101(1)(B) of the Act for purposes of coverage under the Act prior to July 1990.

Section 8101(1) of the Act defines "employees" for purposes of determining entitlement to benefits under the Act.<sup>1</sup> With regard to whether a claimant is a federal employee for purposes of the Act, the Board has noted that such a determination must be made considering the particular facts and circumstances surrounding his or her employment.<sup>2</sup> Among the factors to be considered in determining who is an "employee," the Board has considered whether the claimant, although not paid, has been "rendering service similar to the service of a civil employee" and whether the employing establishment was authorized by statute to accept such services.<sup>3</sup>

In the present case, appellant's allegations that sexual harassment by Mr. Gonzalez, an employing establishment special agent-in-charge, during a preemployment interview in the fall of 1988, that reprisal by the employing establishment due to her EEOC complaint, and that the employing establishment's investigation of her background caused her emotional condition involve incidents that took place prior to her employment with the employing establishment in July 1990. At the time of these incidents, the record does not reveal that appellant was receiving pay from the employing establishment, that she was providing an identifiable service or benefit to the potential employer during the interview, and that she had received a guarantee of employment upon completion of the interview. Instead, the record indicates that appellant interviewed with the employing establishment for her own benefit. Specifically, an EEOC administrative law judge found in his decision that appellant "had long been interested in becoming an Alcohol, Tobacco and Firearms special agent" and that "[i]n furtherance of that goal, [appellant] took the Treasury Enforcement Agent Examination and was notified in March,

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<sup>1</sup> 5 U.S.C. § 8101(1).

<sup>2</sup> *Wendy S. Warner*, 38 ECAB 103 (1986).

<sup>3</sup> 5 U.S.C. § 8101(1)(B); *George Abraham (Anne Abraham)*, 36 ECAB 194 (1984).

1986 that she had achieved a passing score.” Inasmuch as appellant has failed to establish that she was an employee of the United States within the meaning of the Act at the time of the above incidents, the Office properly found that she was not entitled to coverage under the Act.<sup>4</sup>

The Board further finds that the case is not in posture for decision regarding the issue of whether appellant has met her burden of proof to establish that she sustained an emotional condition while in the performance of duty.

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 factors of her federal employment. To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>5</sup>

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 illness has some connection with the employment, but nevertheless does not come within the coverage of workers’ compensation law. When an employee experiences an emotional reaction to his or her regular or specially assigned work duties or to a requirement imposed by the employment, or has fear and anxiety regarding his or her ability to carry out his or her duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability comes within the scope of the Act. On the other hand, where the disability results from an employee’s emotional reaction to employment matters that are not related to the employee’s regular or specially-assigned work duties or requirements of the employment, the disability does not fall within the coverage of the Act.<sup>6</sup> Disability is not covered where it results from such factors as an employee’s fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee’s feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.<sup>7</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors 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

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<sup>4</sup> *Larry Knoke*, 39 ECAB 353 (1988).

<sup>5</sup> *Wanda G. Bailey*, 45 ECAB 835 (1994); *Kathleen D. Walker*, 42 ECAB 603, 608-09 (1991).

<sup>6</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>7</sup> *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *Lillian Cutler*, *supra* note 6.

providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>8</sup> Therefore, the initial question presented in the instant case is whether appellant has alleged compensable factors of employment that are substantiated by the record.

Appellant's primary allegation is that harassment by the employing establishment caused her emotional condition. Specifically, appellant alleged that after she entered the employment of the United States, she was harassed by her coworkers due to the release of confidential records regarding her EEOC claim. Appellant has also alleged that she was harassed by derogatory comments made by Mr. Higgins, the employing establishment's former director, regarding her EEOC claim during an interview on "60 Minutes," and the distribution of an unedited version of this interview by the employing establishment to its duty posts. Appellant further alleged that she was harassed by the employing establishment's release of her confidential records to AIM that were published in an article, which was distributed by the employing establishment to its duty posts. The Board has held that actions of the employing establishment which the employee characterizes as harassment or retaliation may constitute factors of employment giving rise to coverage under the Act. Mere perceptions of harassment and retaliation are not compensable under the Act.<sup>9</sup> To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations of harassment with probative and reliable evidence.<sup>10</sup>

In this case, appellant has provided probative and reliable evidence to support her allegation of harassment by her coworkers. In support of this allegation, appellant submitted a November 22, 1995 narrative statement of David Aston, a deputy sheriff for Sedgwick County assigned to work with appellant. In this statement, Mr. Aston noted that he learned appellant had filed a sexual harassment lawsuit against the employing establishment and watched the "60 Minutes" interview. Mr. Aston stated that several times during his assignment he was asked on a daily basis by various fellow coworkers whether he was concerned about the fact that appellant had filed a sexual harassment lawsuit in the past. He responded that he had no concerns and was not going to violate any issues of that kind. He then stated that he occasionally overheard conversations about the "60 Minutes" program and the issue of appellant's notoriety due to the lawsuit and television program. Mr. Aston concluded that appellant seemed to be under a great deal of stress over the lawsuit and the related publicity which created workplace discussions. In further support of her allegation, appellant submitted a December 14, 1993 narrative statement of Ernest C. Yerrington, an employing establishment special agent, indicating that he was appellant's classmate at the new agent training school in Glynco, Georgia, and that he was completely unaware of appellant's EEOC claim until other classmates told him about it. Mr. Yerrington stated that some of his classmates ostracized appellant and felt that she was untrustworthy which appeared to cause appellant a great deal of stress. Additionally, appellant submitted an undated narrative statement of Mr. Tomasello, an employing establishment resident agent-in-charge, revealing that he heard about appellant's background investigation and EEO

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<sup>8</sup> *Margaret S. Kryzcki*, 43 ECAB 496, 502 (1992); *Lillian Cutler*, *supra* note 6.

<sup>9</sup> *William P. George*, 43 ECAB 1159 (1992).

<sup>10</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

claim from another individual and that a majority of appellant's classmates had preconceived notions and knowledge of those complaints, and they were less than understanding with her. Mr. Tomasello stated that appellant was the subject of uncomplimentary remarks during classes and social events and was not trusted by her fellow classmates.<sup>11</sup> In a December 21, 1995 narrative statement, Mr. Tomasello indicated that while he was on temporary assignment at the employing establishment's national academy in 1991, it was not uncommon for him to hear the academy staff make unflattering remarks in his presence directed towards appellant which related to her EEO complaint. An undated narrative statement of Diane Klipfel, an employing establishment supervisor, revealed that the AIM article was posted on numerous bulletin boards throughout the employing establishment's Chicago office and that she was personally told several derogatory comments about appellant's sex life, alcohol and drug abuse and mental problems. Ms. Klipfel stated that she related some of what had been said to her to appellant who was unable to cope with the information over a period of time and that this was a source of great pain to appellant. Ms. Klipfel then stated that she discontinued telling appellant about the comments because of her pain. Inasmuch as appellant has provided probative and reliable evidence of harassment by her coworkers based on the constant spread of negative rumors, she has established a compensable employment factor under the Act.

Appellant has also provided probative and reliable evidence to support her allegation of harassment by Mr. Higgins' derogatory and unreliable comments about her during the "60 Minutes" interview. The record reveals that appellant refused to sign a waiver specifically allowing Mr. Higgins to discuss her case against the employing establishment and her records during the "60 Minutes" interview. Although Mr. Higgins did not have a waiver from appellant, he discussed the findings of appellant's background investigation during the unedited videotape of the "60 Minutes" interview. Specifically, Mr. Higgins stated that appellant used marijuana for a four- or five-year period. He also stated that appellant was not forthcoming with providing information for some background forms and responses to derogatory information discovered by the investigator. Mr. Higgins further stated that the employing establishment's investigator was criticized by the EEOC administrative law judge because he did a good job since he found out about appellant's drug use and that the forms completed by appellant were not properly filled out. Additionally, Mr. Higgins stated that the investigative findings did not meet the employing establishment's employment standards. Mr. Higgins noted that the administrative law judge's decision was wrong and had the office responsible for filing an appeal of the decision not missed the filing deadline by two days, appellant probably would not be working for the employing establishment. Regarding appellant's drug use, the EEOC administrative law judge found in a June 29, 1988 decision that "the record contains no credible evidence of marijuana use by the [appellant] since her teens." The administrative law judge also found that the employing establishment "is left without a shred of credible evidence to justify the decision to reject the [appellant]." Inasmuch as Mr. Higgins repeated information about appellant that was deemed incredible by the administrative law judge and the administrative law judge's decision found that the employing establishment was guilty of discrimination and reprisal, appellant has provided

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<sup>11</sup> Mr. Yerrington and Mr. Tomasello both indicated in their narrative statements that appellant was mistreated by the owner of an off-base restaurant while at the employing establishment's training school in Georgia. Regarding the owner's actions, the record does not reveal that this individual was an employee of the employing establishment. Therefore, the owner's actions do not constitute a compensable employment factor under the Act.

probative and reliable evidence of harassment by Mr. Higgins' comments. Therefore, appellant has established a compensable employment factor under the Act.

Appellant has also provided probative and reliable evidence to support her allegation of harassment due to the employing establishment's release of her confidential records to AIM, and its distribution of the unedited version of the "60 Minutes" interview and the AIM article to its duty posts. Appellant's allegations involve administrative matters. The Board has 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.<sup>12</sup> The Board has held, 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.<sup>13</sup> Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated.

The evidence of record is sufficient to establish that the employing establishment committed error in releasing appellant's confidential records to AIM. Appellant's amended complaint filed in the United States District Court for the District of Columbia regarding the employing establishment's dissemination of confidential records revealed that appellant never signed a waiver for the release of her records to the employing establishment for the "60 Minutes" interview or to AIM.<sup>14</sup> In a May 12, 1993 narrative statement, Kathleen M. Kubicki, a former special agent, indicated that she left the employing establishment in 1988 and that following the airing of the "60 Minutes" interview, she received several photocopies of memoranda authored by various employing establishment management officials. Ms. Kubicki stated that after she received a copy of the AIM article and became shocked by its false information about appellant, she telephoned AIM to complain about the article. Ms. Kubicki further stated that she was told by a person identified as Bernie, AIM's communications director, that "we did n[o]t contact [the employing establishment] -- they called us." Ms. Kubicki then stated that Bernie told her that the employing establishment "sent them a huge stack of documents and they wrote the article after they went through the documents sent by [the employing establishment]." Ms. Kubicki then stated that the communications director told her that the entire article came from the documents supplied by the employing establishment. In light of the absence of a waiver from appellant to release her confidential records, the employing establishment's release of this information to AIM and Ms. Kubicki's telephone conversation with an AIM representative, the record establishes that the employing establishment committed

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<sup>12</sup> *Thomas D. McEuen, supra* note 7.

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

<sup>14</sup> The Board notes that appellant signed a waiver and submitted it to the employing establishment to permit only representatives of "60 Minutes" to review her records involving her EEOC claim, personnel file and background investigation.



error in releasing appellant's confidential records to AIM.<sup>15</sup> Thus, appellant has established a compensable employment factor under the Act.

The evidence of record is also sufficient to establish that the employing establishment committed error in distributing the unedited version of the "60 Minutes" interview and AIM article to its duty posts. Mr. Tomasello, an employing establishment resident agent-in-charge, indicated in his narrative statement that, "I first became aware of the full description of an unedited version of a "60 Minutes" interview with former ATF Director Stephen Higgins, and an AIM report article through an official ATF dissemination of that material." Further, Ms. Klipfel stated in her narrative statement that upon her arrival at work one morning, "I found a copy of the AIM article with a note attached on it saying "the truth always comes out" and that "[d]uring that week, I noted the article prominently featured on numerous bulletin boards throughout the Chicago Office, along with another agent who was also described in the article." Inasmuch as appellant did not sign a waiver for the release of her records and the employing establishment nevertheless distributed the "60 Minutes" interview and AIM article containing confidential information about appellant, the record establishes that the employing establishment committed error in distributing the "60 Minutes" videotape and the AIM article to its duty posts.<sup>16</sup> Therefore, appellant has established a compensable employment factor under the Act.

Appellant's allegations that the employing establishment attempted to place her in unacceptable positions<sup>17</sup> and improperly monitored her work activities<sup>18</sup> fall into the category of administrative or personnel actions. Appellant has failed to establish that the employing establishment committed error or abuse in offering her employment positions and in monitoring her work activities. Although the narrative statement and notes of Walter A. Hoback, an employing establishment special agent, revealed that he spoke with Mr. Beaty, an employing establishment special agent-in-charge, who told him that Mr. Hartnett, the employing establishment's associate director of law enforcement, wanted to restrict appellant to the copying machine and to direct all her telephone calls to another duty office, appellant has failed to submit any evidence establishing that the employing establishment committed error or abuse in handling these matters. Therefore, appellant has failed to establish a compensable employment factor.

Appellant has alleged that her emotional condition was caused by litigation that she initiated against the employing establishment. Allegations of stress resulting from the processing of appellant's lawsuit does not relate to her assigned duties, and therefore, are not considered compensable under the Act.<sup>19</sup>

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<sup>15</sup> *Linda C. Ball*, 43 ECAB 533, 548 (1992).

<sup>16</sup> *Id.*

<sup>17</sup> *Lillian Cutler*, *supra* note 6.

<sup>18</sup> See *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Michael Thomas Plante*, 44 ECAB 510, 516 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

<sup>19</sup> See generally *Joseph G. Cutrufello*, 46 ECAB 285 (1994); *George A. Ross*, 43 ECAB 346 (1991); *Ralph O. Webster*, 38 ECAB 521 (1987).

Appellant has established harassment by the employing establishment and error by the employing establishment, in handling administrative matters, as compensable factors of her federal employment. Since the Office has not evaluated the medical evidence of record pertaining to this aspect of the claim, the case will be remanded to the Office for further development, as appropriate, and issuance of a *de novo* decision.

The August 30, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed, in part, and vacated, in part, and the case is remanded to the Office for further proceedings consistent with this decision.

Dated, Washington, D.C.

July 8, 1999

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member