

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SOUZAN A. EBRAHIM and DEPARTMENT OF THE ARMY,
ARMY TRAINING DOCTRINE, Monterey, CA

*Docket No. 03-209; Submitted on the Record;
Issued April 1, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition in the performance of duty.

On March 5, 2000 appellant, then a 52-year-old assistant professor, filed a claim for compensation alleging anxiety and depression due to an unprofessional approach to the curriculum by Saad Hassouneh, her team leader. She further alleged that Mr. Hassouneh discriminated against her.

In an April 5, 2000 statement, Nagib Z. Sedrak, Chair, advised that appellant complained about her team leader concerning personal and academic matters. Mr. Sedrak advised that both individuals were counseled. Appellant alleged Mr. Hassouneh of being incompetent and not taking her advice on academic matters. She asked that he be relieved from his assignment as team leader. Mr. Hassouneh alleged that appellant was noncooperative, insisted on doing things her own way, challenged him and collaborated with another team member against him. Mr. Sedrak advised that he found no evidence of harassment and it appeared that the two did not get along. Appellant was informed of such findings and suggested to move to another team. As appellant was not satisfied with his recommendation, Mr. Sedrak advised her to advance her complaint to the Dean, Dr. Christine Campbell. Mr. Sedrak noted that Dean Campbell met with the faculty and most members of the team did not support appellant's allegations. Mr. Sedrak noted that, as a result of an internal department reorganization, appellant was reassigned to another team. Appellant later requested and was granted, a transfer to another department.

By decision dated October 31, 2000, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that her emotional condition was not sustained while in the performance of duty. The Office determined that none of the factors alleged by appellant were compensable factors of employment.

Appellant requested reconsideration. Copies of student evaluations regarding appellant's effectiveness as a teacher were provided.

In a March 17, 2000 letter, Dean Campbell set forth the results of her inquiry into the allegations of discrimination by Mr. Hassouneh. She related that on February 15, 2000 individual meetings with Mr. Sedrak and all the team members were conducted to determine whether they had seen Mr. Hassouneh display any discriminatory behavior towards appellant on the basis of gender. Mr. Sedrak and all team members were asked the same question. The individuals said that they had not observed any such behavior. Dean Campbell related that Mr. Sedrak went ahead with a plan he had announced the prior Fall to move people in the department in an effort to balance the teams better. She noted that appellant was no longer on Mr. Hassouneh's team. On a copy of this letter, appellant asserted that the letter was a fabrication and provided comments on the inadequacy of the investigation.

In a September 15, 2000 memorandum, Dean Campbell documented pertinent dates concerning appellant's problems with Mr. Hassouneh and subsequent transfers to different departments.

In a September 18, 2000 memorandum, Dr. Foazi El-Barouki, Chair of Department C documented appellant's transfer to Department C and Team C3. He noted that as Team C3 had a shrinking student body, an administrative decision was made to consolidate Team C3 into two sections which resulted in two teachers becoming "extras," one of which was appellant. Mr. El-Barouki stated that on September 5, 2000 he told appellant that her concerns of moving from Team C3 were being reviewed by the Dean. He stated that the options, as gathered from the Dean, were to move to Department D or to another school. Appellant was assigned a project to utilize her hours in the meantime.

In a reconsideration request of March 17, 2000, appellant stated that Mr. Sedrak supported Mr. Hassouneh for religious and cultural consideration and was unqualified for his position. She alleged that Mr. Sedrak told her that some students wrote similar comments in their feedback about the team leader and his conduct towards female students. Appellant opined that the investigation concerning Mr. Hassouneh was inadequate. She alleged that Mr. Hassouneh allowed male teachers certain privileges which female teachers were denied, alleging that he showed a discriminatory attitude towards woman, in general, and Egyptian woman especially.

By decision dated March 29, 2002, the Office denied modification of its previous decision. The Office found that it was not factually established that appellant's transfers were made as a result of the employing establishment's investigation into her discrimination complaint. The Office further found that appellant's allegations concerning Mr. Sedrak, other staff and the charge of gender discrimination were not factually established.

In a letter dated April 19, 2002, appellant, through her attorney, requested reconsideration. Additional evidence, including medical evidence was submitted.

In a memorandum dated January 18, 2002, Paulette Walker, an Equal Employment Opportunity (EEO) specialist stated that, based on what appellant told her, the situation pertaining to Mr. Hassouneh appeared to be a personnel matter. It was noted that appellant's previous EEO complaint was dismissed for untimely filing and not for lack of merit.

In a January 3, 2002 memorandum, Dean Campbell summarized the findings of various meetings, at which appellant was present. In a meeting on December 12, 2001, Mr. Hanalla said

that Mr. Shenouda had told him “I tried to make a joke of sorts but she misunderstood what I meant. I made a mistake.” This referred to a comment where Mr. Shenouda stated that he had said “Whatever other teams have done, we welcome you.” Dean Campbell found that Mr. Shenouda recognized his lack of sensitivity when making this statement and apologized during a later meeting on December 12, 2001.

In a December 13, 2001 meeting, appellant had expressed interest in asking Mr. Sedrak some questions relating to her case. Dean Campbell noted that two months earlier, Mr. Sedrak had exercised his right as a manager not to meet with appellant. Dean Campbell noted that when she approached Mr. Sedrak about the matter, he stated that he was going to continue to exercise his right not to meet with appellant, but would answer any questions submitted in writing. Dean Campbell noted that during a December 17, 2001 meeting, she informed appellant of Mr. Sedrak’s position.

In a letter dated February 11, 2002, Dean Campbell noted that appellant brought forward a witness, Ms. Gharib, who had allegedly heard Mr. Sedrak say on occasion “It [i]s his culture, it [i]s his religion,” referring to Mr. Hassouneh’s behavior towards appellant. A copy of Ms. Gharib’s statement was provided. He noted that, when Mr. Sedrak was asked about the statement, he wrote in a January 2, 2002 memorandum that he was alluding to the fact that religion and culture differences can have some influence on a person’s make-up and behavior. Dean Campbell summarized the results of her original inquiry, which was documented in her March 17, 2000 memorandum to appellant. She further stated that she met with appellant and Ms. Gharib on December 20, 2001 to discuss Mr. Hassouneh’s behavior. She noted that at that time, Ms. Gharib described two specific incidents: (a) a complaint to Mr. Sedrak about Mr. Hassouneh “yelling” in a room with several people when he was asked by appellant whether a flyer had been distributed; and (b) Mr. Hassouneh’s directive that Ms. Gharib go to the Chairperson when she wanted to leave at 4:10 p.m. Dean Campbell noted that at a meeting on February 7, 2002, appellant and Ms. Gharib allegedly asked Mr. Abdaljabbar to present an idea for an activity they had to Mr. Hassouneh and when Dr. Abdaljabbar did so, Mr. Hassouneh accepted the idea. Dean Campbell found that Mr. Hassouneh, as a team leader, did not display the teamwork when he was unwilling, on a number of occasions, to accept appellant’s suggestions for activities and exercises. She noted that he did not act in a professional manner when he yelled into a room with several people, including appellant and shouted at appellant a few times. In a March 7, 2002 letter, Dean Campbell advised that she had counseled Mr. Hassouneh on February 28, 2002 on his lack of teamwork spirit. She noted that Mr. Sedrak was present at the counseling session.

In a March 13, 2002 letter to appellant, the Dean Campbell advised that she told appellant that she could be placed in Department D due to understaffing but that moving her elsewhere was a problem as other departments were adequately staffed. Other options concerning places to transfer to were discussed.

By decision dated May 9, 2002, the Office denied modification of the March 29, 2002 decision.

The Board finds that appellant has not met her burden of proof that she sustained an emotional condition while in the performance of duty.

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 the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.¹

Perceptions and feelings alone are not compensable. 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.² 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.³

In the present case, appellant has alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. Appellant generally alleged discrimination and unprofessional behavior by Mr. Hassouneh. The Board must, thus, initially review whether the allegations made are established as compensable employment factors covered under the Act.

The employing establishment investigated appellant's allegations and found no evidence of harassment or discrimination based on gender by Mr. Hassouneh. On March 17, 2000 Dean Campbell noted that Mr. Sedrak and four- of five-team members said they had not observed incidents of gender discrimination by Mr. Hassouneh against appellant. One team member noted that Mr. Hassouneh had shouted at appellant. On February 11, 2002 Dean Campbell advised that Mr. Hassouneh, as a team leader, did not display the appropriate teamwork spirit expected and had yelled in a room of people including at appellant.

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.⁴ However, for harassment or discrimination to give rise to a compensable disability under the

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.⁵

The employing establishment's investigation revealed no findings of harassment or discrimination. This was supported by the January 18, 2002 memorandum of the EEO specialist, who stated that the situation appeared to be a personnel matter. Although appellant believed that the investigation was inadequate and the March 17, 2000 letter advising her of the results of the investigation was a fabrication, there is no evidence that the employing establishment erred in the handling of conducting its investigation of and the handling of the discrimination complaint. The Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regularly or specially assigned employment duties are not considered to be employment factors, absent evidence of error or abuse.⁶ A review of the evidence establishes that appellant has not shown that the employing establishment's actions in connection with its investigation into Mr. Hassouneh's alleged harassment was unreasonable or in error. Appellant's reaction to the result of the investigation is not within the performance of duty. Furthermore, the record does not support appellant's allegation that her transfer was granted because of the investigation into her discrimination complaint.

Regarding appellant's allegations that Mr. Hassouneh was unprofessional in his approach to the curriculum, the Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.⁷ The record contains an incident whereby appellant and Ms. Gharib apparently complained about Mr. Hassouneh yelling in a room at several people. The Board has recognized the compensability of verbal altercations or abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.⁸ Appellant has not shown how the incident whereby Mr. Hassouneh yelled in a room of people would rise to the level of verbal abuse or otherwise fall within the coverage of the Act.⁹ While not of a professional demeanor, as noted by Dean Campbell, the matter was investigated and Mr. Hassouneh counseled as to shouting.

Appellant alleged that Mr. Hassouneh treated men differently than woman and discriminated on the basis of gender. The Board notes that the incident where Mr. Hassouneh purportedly accepted one of appellant's ideas after Dr. Abdaljabbar presented it as his own, does not establish discrimination. Perceptions of unfair treatment are not compensable.¹⁰ The Board

⁵ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

⁶ *See Patricia A. English*, 49 ECAB 113 (1997); *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

⁷ *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

⁸ *See Mary A. Sisneros*, 46 ECAB 155, 163-64 (1994); *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

⁹ *See, e.g., Alfred Arts*, 45 ECAB 530, 543-44 (1994) and cases cited therein (finding that the employee's reaction to coworkers' comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction). *Compare Abe E. Scott*, 45 ECAB 164, 173 (1993) and cases cited therein (finding that a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

¹⁰ *Id.*

has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.¹¹ With regard to appellant's allegation that Mr. Hassouneh gave permission for Dr. Abdaljabbar to arrive late, but asked Ms. Gharib to go to the Chairperson for permission to leave early, the Office properly found that this allegation of "favoritism" was not establish as factual. Dean Campbell, in her letter of February 11, 2002, merely stated that no team leader was authorized to grant such permission and never made any factual findings. Moreover, this allegation does not directly involve appellant and does not support her allegations of gender discrimination.

The evidence is insufficient to establish that the employing establishment erred, abused its authority, or acted unreasonably. Although the employing establishment found that Mr. Hassouneh, as a team leader, did not, in general display an appropriate teamwork spirit and was found to be unprofessional for yelling on several occasions the evidence is insufficient to establish that the employing establishment acted unreasonably in the matters alleged or in counseling Mr. Hassouneh. The Office noted that, although it was not clear what role a team leader played, managerial responsibilities were involved. Although appellant submitted an EEO complaint of discrimination, there is no formal finding or decision favorable to her allegations. Appellant has offered no persuasive evidence to substantiate her allegations of harassment and discrimination or to establish that the team leader or other supervisors acted outside the bounds of their managerial discretion. Appellant's perception of wrongdoing or discrimination are not compensable. Without persuasive evidence that, harassment or discrimination did, in fact, occur, the record fails to establish a compensable incident or factor of employment.¹²

With regard to allegations pertaining to appellant's transfers, 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 his or her desire to work in a different position.¹³ In this case, there is no evidence of any error by the employing establishment. Ms. Campbell appeared to accommodate appellant upon her request. Appellant has not established a compensable employment factor under the Act in this respect.

Appellant alleged that gender discrimination was a daily part of life at her agency and that the majority of the staff at her agency were "incompetent or unqualified or both." The Office properly dismissed these allegations as not being factual as the charges are vague as to time, place and manner. Similarly, she alleged that Mr. Sedrak was unqualified for his position. She alleged that he supported Mr. Hassouneh for religious and cultural reasons and had lied in his statements regarding her claim. Appellant's dissatisfaction with a perceived lack of leadership in the department constitutes frustration from not being permitted to work in a particular environment and is not compensable under the Act and is not compensable.¹⁴ No

¹¹ See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

¹² When the record fails to establish a compensable factor of employment, it becomes unnecessary to review the medical opinion evidence to determine whether compensable, established factors of employment caused or aggravated the diagnosed medical or emotional condition; see *Norma L. Blank*, 43 ECAB 384 (1992).

¹³ *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

¹⁴ See *Michael Thomas Plant*, *supra* note 11.

factual basis is found in the record to support appellant's allegation. Evidence of record which documents a chronological history after appellant's transfer to Department C and Dean Campbell's September 15, 2000 memorandum pertaining to appellant from the Fall of 1999 to September 8, 2000 fail to support any of the allegations raised by appellant. Appellant has failed to establish a factual basis for her allegations regarding Mr. Sedrak. The Office properly found that these allegations were not established as being factual.

Appellant has not established any compensable employment factors under the Act. Therefore, she has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty. Since appellant has not established a compensable employment factor, the Board will not consider the medical evidence of record.¹⁵

The decisions of the Office of Workers' Compensation Programs dated March 29 and May 9, 2002 are hereby affirmed.

Dated, Washington, DC
April 1, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹⁵ See *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).