

FACTUAL HISTORY

On September 14, 2001 appellant, then a 36-year-old accounting technician, filed an occupational disease claim for an employment-related emotional condition.¹ Appellant claimed that she developed major depression and generalized anxiety due to factors of her employment. Appellant indicated that she was first aware of her condition in 1991 and that she realized her condition was employment related in June 1996.

Appellant provided a 21-page statement describing various employment incidents dating back to 1991, that allegedly caused or contributed to her claimed emotional condition. She generally alleged that she was treated unfairly and forced to work in a hostile environment for more than a decade. Appellant stated that she was denied a transfer, was not selected for three positions she applied for in 1999, was not permitted to train other employees and was denied training for self-enhancement. Appellant also alleged that she was treated differently from others, that managers and supervisors spoke to her in an inappropriate tone and exhibited negative body gestures. Additionally, appellant stated that managers sent her negative emails and refused to allow her to communicate via email. She also indicated that, when she requested leave for medical reasons, she was instructed to go out on disability instead. According to appellant, management routinely failed to properly evaluate her work and was hypercritical of her performance. Appellant also claimed that management regularly failed to provide appropriate guidance. She described difficult relations with the employing establishment's comptroller, Margie Carpenter, and problems with Darrell Dockery, the assistant branch chief. Appellant also identified communication problems with her former supervisor, Sandra Anderson, and similar problems with her current supervisor, Gloria Fantroy. Appellant believed she was treated differently in part because of her back problem and she alleged that management was indifferent to her physical problems. She claimed that she was retaliated against for filing workers' compensation claims and an Equal Employment Opportunity (EEO) complaint. Appellant also took issue with her performance appraisals.

In a January 25, 2002 letter, the employing establishment denied engaging in any wrongdoing. The employing establishment explained that appellant's position was not unduly stressful and she was basically responsible for paying the agency's bills. Additionally, the employing establishment noted that it had made accommodations with respect to appellant's back injury and that she was on an approved part-time schedule. Appellant was provided a special chair and a parking space to accommodate her back condition.

In a decision dated February 13, 2003, the Office denied appellant's claim as she failed to establish any compensable employment factors as the cause of her claimed emotional condition.

¹ Appellant has an accepted occupational disease claim for lumbar strain (A25-0561255) arising on or about June 1, 1996. She was also involved in a motor vehicle accident in the employing establishment's parking facility on October 8, 1999 which the Office accepted for lumbar sprain (A25-2011946). In a decision dated December 19, 2003 (Docket No. 03-1861), the Board addressed the issue of appellant's claimed disability due to her June 1, 1996 (A25-0561255) lumbar strain. The Board found that appellant failed to establish that she was disabled due to her 1996 injury during the periods September 24, 26, 28-29, 1999 and October 14 through November 3, 1999. Appellant did, however, establish entitlement to wage-loss compensation for September 30, 1999. The Board's December 19, 2003 decision is incorporated herein by reference.

Appellant requested an oral hearing, which was held on August 21, 2003. By decision dated November 6, 2003, the Office hearing representative affirmed the February 13, 2003 decision.

LEGAL PRECEDENT

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

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.³ Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.⁴

ANALYSIS

The majority of appellant's allegations arose while she was under the supervision of Ms. Anderson from 1991 to August 2000. According to appellant the two had a difficult and strained relationship that was marked by an inability to communicate effectively. Appellant often sought Mr. Dockery's intervention as well as Ms. Carpenter's. Ms. Anderson did not specifically respond to appellant's numerous allegations, but the employing establishment generally denied any wrongdoing. Appellant frequently commented on Ms. Anderson's alleged improper tone and demeanor towards her, however, appellant did not provide specific details. Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute compensable factors of employment.⁵ In this instance, however, appellant's allegations are general and vague.

The employment incidents appellant outlined pertain to administrative or personnel matters. As a general rule, a claimant's reaction to administrative or personnel matters falls

² See *Kathleen D. Walker*, 42 ECAB 603 (1991). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁵ *Marguerite J. Toland*, 52 ECAB 294, 298 (2001).

outside the scope of the Federal Employees' Compensation Act.⁶ However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.⁷ Incidents identified by appellant regarding transfer requests, hiring, promotions, performance appraisals, quality step increases and cash awards, leave requests, work assignments, training opportunities, supervisory feedback and authorization to use email all fall within the category of administrative or personnel matters. Regarding the denial of a transfer and promotions, an employee's frustration from not being permitted to work in a particular environment or hold a particular position is not compensable.⁸ With respect to all of the administrative or personnel matters identified by appellant, the record does not establish that the employing establishment either erred or acted abusively in discharging its duties.⁹

Appellant believes that her alleged mistreatment over the years was in retaliation for filing compensation claims and an EEO complaint. Appellant, however, has not provided any support for her allegations. For harassment to give rise to a compensable disability there must be evidence that harassment did, in fact, occur.¹⁰ Appellant's mere perception of harassment is not compensable.¹¹ The allegations of harassment must be substantiated by reliable and probative evidence.¹²

Appellant has expressed a general dissatisfaction with her former supervisor, Ms. Anderson and her current supervisor, Ms. Fantroy. Complaints about the manner in which a supervisor performs her duties or the manner in which a supervisor exercises her discretion fall, as a rule, outside the scope of coverage provided by the Act.¹³ This principle recognizes that a supervisor or manager in general must be allowed to perform her duties and employees will, at times, dislike the actions taken, but mere disagreement or dislike of a supervisory or managerial action will not be actionable, absent evidence of error or abuse.¹⁴ In the instant case, appellant has not submitted evidence of error or abuse sufficient to establish that either Ms. Anderson or Ms. Fantroy acted unreasonably in discharging their respective managerial duties.

⁶ *Ruthie M. Evans, supra* note 4.

⁷ *Id.*

⁸ *See Lillian Cutler, supra* note 3.

⁹ Although appellant filed an EEO complaint against the employing establishment, there was no evidence that her complaint had been resolved as of the date the hearing representative issued her decision denying the instant claim and appellant has not otherwise provided evidence of error or abuse.

¹⁰ *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

¹¹ *Id.*

¹² *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991).

¹³ *Marguerite J. Toland, supra* note 5 at 299.

¹⁴ *Id.*

While appellant believes there is a relationship between her claimed emotional condition and her previously accepted orthopedic condition, upon close scrutiny the claims have no apparent relationship. Appellant has not alleged that her physical injuries contributed to her emotional condition or that the employing establishment required her to work beyond any limitations imposed by her physician. What she alleged was that the employing establishment treated her differently for having filed workers' compensation claims. The Office hearing representative reviewed the file in one of appellant's accepted back claims, but was unable to obtain the file concerning appellant's October 8, 1999 lumbar strain. She stated that the information she reviewed from the available orthopedic claim was not relevant to the stress claim. Appellant argues that the Office hearing representative should have also considered the 1999 lumbar strain. However, she has not identified the relevance of this information to her emotional claim. To the extent appellant is alleging that her emotional condition was due in part to her frustration over the handling of her workers' compensation claims, appellant's emotional response in this regard is not compensable under the Act.¹⁵

Appellant failed to establish a compensable factor of employment as the cause of her claimed emotional condition. Accordingly, the Office hearing representative properly denied appellant's claim.

CONCLUSION

The Board finds that appellant failed to establish that she sustained an emotional condition in the performance of duty.

¹⁵ *Matilda R. Wyatt*, 52 ECAB 421, 422-23 (2001).

ORDER

IT IS HEREBY ORDERED THAT the November 6, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 19, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member