

FACTUAL HISTORY

On August 16, 2002 appellant, then a 57-year-old program support assistant, filed an occupational disease claim for compensation (Form CA-2). Appellant described her injury as work-related stress and alleged that she had been working in a hostile/abusive environment. The record indicates that appellant resigned on August 31, 2002. By letter dated December 3, 2002, the Office requested that appellant provide additional evidence regarding her claim. In a statement dated December 25, 2002, appellant alleged that she was subject to degrading comments and criticism from her supervisor, Michael Gordon. Appellant stated that she could not deal with the harassment and discrimination from her supervisor; she indicated that she had not filed an Equal Employment Opportunity (EEO) complaint because she had no faith in the system and feared retaliation.

In a statement dated December 16, 2002, Mr. Gordon denied that he had verbally abused or harassed appellant. Mr. Gordon noted that appellant had not filed an EEO complaint. He attached a report of contact dated June 12, 2002, in which appellant requested that supervisor Rita Fuentes refrain from discussing appellant's son.

In a decision dated January 14, 2003, the Office denied appellant's claim. The Office found that appellant had not alleged and substantiated any compensable work factors as contributing to an emotional condition.

In a letter dated August 22, 2003, appellant requested reconsideration of her claim and she submitted affidavits from six witnesses. The affidavits were from four coworkers, Leila Castillo, Pamela Lopez, Estella Eras and Frances Dennison, and two patients, Carlos Gonzalez and Arsenio Sanchez. All of the witnesses discussed their observation of the interaction between appellant and Mr. Gordon.

By decision dated September 16, 2003, the Office denied modification of the prior decision. With respect to the witness statements, the Office found that "none of these coworkers took any reasonable action regarding reporting these alleged stressors or verbal assaults on the claimant to persons of authority within the [employing establishment], and in addition there was no evidence provided by the employing establishment or EEO findings that there was evidence supporting any untoward behavior by Mr. Gordon directed at the claimant or any other employee."

LEGAL PRECEDENT

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 factors are deemed compensable factors of employment and are to be considered by a physician, and which working factors are not deemed factors of employment and may not be considered.²

² *Elizabeth Pinero*, 46 ECAB 123, 131 (1994).

ANALYSIS

In the present case, appellant submitted six witness statements in support of her claim that she was subject to verbal abuse and degrading comments by her supervisor. The Board finds that the Office's finding of facts with respect to these statements is inadequate. The September 16, 2003 decision does not discuss the content of the specific statements or make any findings as to the probative value of the statements. The Office stated that the coworkers had not taken "reasonable action" in reporting the allegations to persons of authority, but the Board has never held that a witness must have taken formal action with respect to a statement submitted to the Office. Moreover, the lack of EEO evidence does not absolve the Office of making its own findings with respect to the evidence of record. The issue is not whether appellant has established a claim pursuant to EEO standards; the Board has held that the issue is whether, under the Federal Employees' Compensation Act, appellant has submitted sufficient evidence to establish a factual basis for the claim by supporting her allegations with probative and reliable evidence.³ It is the Office's obligation, as part of its adjudicatory function, to consider the witness statements and make findings based on the content of the statements themselves as to whether a compensable work factor has been substantiated.

CONCLUSION

The case will be remanded to the Office for proper findings of fact with respect to the evidence of record. After such further development as the Office deems necessary, it should issue an appropriate decision.

³ *James E. Norris*, 52 ECAB 93, 101 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 16 and January 14, 2003 be set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Issued: February 6, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
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