

her from joining by lying to her and causing emotional distress. In support of her claim, appellant filed a medical report by Dr. George Demetrius Karalis, a psychiatrist, who noted that she had two employment-related stressors. Specifically, he noted that the first stressor occurred when appellant was denied admission to a vanpool and that this made her have numerous symptoms consistent with major depression. The second stressor listed by Dr. Karalis occurred when appellant went to file an EEO complaint about the carpool situation and was falsely informed that a coworker had filed a sexual harassment complaint against her. Dr. Karalis indicated that each stress, in its own right, would be enough to precipitate the major depression in appellant and that the combined effect of the two stressors would be more than enough to cause the major depression.

By letter dated December 1, 2003, the Office asked appellant to answer various questions. She responded by letter dated December 16, 2003 and indicated, *inter alia*, that there were no nonindustrial stresses at the time of her injury.

In a letter dated December 18, 2003, the employing establishment controverted appellant's claim. The employing establishment noted that appellant's supervisor observed an incident where appellant caressed a colleague's hand and that the colleague told the supervisor that appellant had told her that she wanted to give her a "hickey." The supervisor also indicated that, when appellant went to give this colleague a hug, appellant pulled the colleague's face directly into her breasts. The EEO counselor then met with the aforementioned colleague, who confirmed appellant's actions, but the colleague indicated that she did not wish to file a complaint and just wished that appellant would leave her alone. Thereafter, nondisciplinary counseling occurred between the EEO counselor and appellant in response to her supervisor's observation of her inappropriate conduct towards the other employee. Further action was never taken and the EEO counselor indicated that she never made any comment otherwise. With regard to the vanpool incident, the employing establishment noted that while appellant was inappropriately denied an available seat in the vanpool, neither the vanpool arrangement nor the vanpoolers denial of a seat to appellant were job-related activities. The employing establishment contends that the fact that vanpoolers used commuter checks supplied by the employing establishment does not change the private nature of the vanpool. The employing establishment also contended that it investigated appellant's claim, determined that appellant had been denied an available seat because of her sex and that, when the vanpoolers persisted in denying appellant a seat, the employing establishment withdrew the commuter check benefit for vanpoolers and the vanpool was dissolved.

The Board notes that the record also contains a memorandum regarding a telephone contact with the aforementioned colleague who indicated that, although she signed a statement at appellant's request, the letter she signed did not include the statement that appellant had never harassed her and that appellant did sexually harass her even though she did not file a complaint. The record also contains a note from the EEO counselor wherein she indicated that nondisciplinary action was taken with regard to the alleged harassment, but that no official complaint had been filed. Finally, the record contains a January 17, 2003 note from appellant's supervisor wherein he indicated that he observed the contact between appellant and her colleague and that appellant's colleague appeared very uncomfortable with the behavior.

With regard to the vanpool situation, the record includes a letter wherein the employing establishment indicated that it was withholding commuter checks for the aforementioned vanpool until such time as they offered appellant a seat.

By decision dated January 6, 2004, the Office denied appellant's claim. The Office noted that the incident wherein she was denied a seat in the vanpool was not compensable as it was not in the performance of duty. The Office further found that the EEO counselor did not falsely state that appellant was accused of sexual harassment.

LEGAL PRECEDENT

In order to establish that an employee sustained an emotional condition in the performance of duty, the employee must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence sufficient to establish compensable employment factors or incidents alleged to have caused or contributed to the emotional condition; and (3) rationalized medical opinion evidence establishing that a compensable employment factor caused or contributed to the emotional condition.¹

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. When disability results from an employee's emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act. On the other hand disability is not covered when 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 work environment or to hold a particular position.²

As a general rule, an employee's emotional reaction to an administrative or personnel action 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 relationship to the work required of the employee.³ However, the Board has held that coverage under the Act may attach if the factual circumstances surrounding the administrative or personnel action establishes error or abuse by the employing establishment personnel in dealing with a claimant.⁴ In determining whether the employing establishment erred or acted abusively, the Board will examine whether the employing establishment has acted reasonably.⁵

¹ *Andy J. Paloukos*, 54 ECAB ___ Docket No. 02-1500 (issued July 15, 2003); *see also Donna Faye Cardwell*, 41 ECAB 730 (1990).

² *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler* 28 ECAB 125 (1976).

³ *See Michael L. Malone*, 46 ECAB 957 (1995); *Gregory N. Waite* 46 ECAB 662 (1995).

⁴ *See Elizabeth Pineor*, 46 ECAB 123 (1994).

⁵ *Ruth S. Johnson*, 46 ECAB 237 (1994).

ANALYSIS

The Board finds that appellant has not met the criteria for establishing that she sustained an emotional condition as a result of a compensable factor of federal employment. The fact that she was improperly denied a seat in the vanpool is not a compensable factor of employment. The employing establishment claimed that it did not deny appellant a seat in the vanpool. The fact that the vanpool members denied appellant a seat in the vanpool does not establish error or abuse by the employing establishment in dealing with this matter. Although the vanpool was not run by the employing establishment, commuter checks were issued to help with the expenses. When the employing establishment became aware of the fact that appellant had been denied a seat, they gave the members of the vanpool the opportunity to accept appellant as a member. When they did not, the employing establishment stopped the commuter checks for this vanpool. These actions constituted reasonable actions on the part of the employing establishment and there is no evidence of error or abuse by the employing establishment in dealing with this matter. Accordingly, the fact that appellant was denied a seat in the vanpool was not a compensable factor of employment.

With regard to the matter of the alleged charges of sexual harassment, appellant contends that she was falsely informed by the EEO officer that a complaint had been filed against her, thereby contributing to her emotional condition. There is no evidence in the record to support appellant's allegation that the EEO counselor made this comment to her. The evidence indicates that appellant's alleged behavior in the incident was dealt with in a nondisciplinary manner. Accordingly, the Office properly determined that there was no false allegation made. The Board further notes that the manner in which the allegations with regard to sexual harassment were handled were reasonable. There is evidence in the record of unwelcome sexual contact by appellant with a colleague and the employing establishment properly investigated the matter and dealt with it in a nondisciplinary manner. Accordingly, this administrative action is not a compensable factor of employment.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 6, 2004 is hereby affirmed.

Issued: July 23, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member