United States Department of Labor
Employees' Compensation Appeals Board

BEVERLY A. SPENCER, Appellant	)	
and	)	**Docket No. 03-2033**
	)	**Issued: May 3, 2004**
RAILROAD RETIREMENT BOARD, OFFICE OF THE INSPECTOR GENERAL, Chicago, IL, Employer	)	

Appearances:
Beverly A. Spencer, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On August 7, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated May 5, 2003 which found that she had not established multiple chemical sensitivities or an emotional condition due to her federal employment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issues are: (1) whether appellant met her burden of proof in establishing that she developed multiple chemical sensitivities due to exposures in her federal employment; and (2) whether she developed an emotional condition due to her federal employment.

FACTUAL HISTORY

On May 11, 1999 appellant,[1] then a 47-year-old auditor, filed an occupational disease claim alleging that she developed multiple chemical sensitivities and stress due to exposures in her federal employment. Appellant stated, "Since construction began in the building … I have become ill every time I return to work inside the building. Management has continually harassed me for becoming ill and returning to work. I'm harassed for not being able to work and I'm harassed for working." On the reverse of the form, appellant's supervisor indicated that appellant stopped work on April 12, 1999.

The Office denied appellant's claim by decision dated March 14, 2000 finding that she failed to establish a compensable factor of employment. Appellant requested an oral hearing on April 4, 2000. Appellant testified at the oral hearing held on August 22, 2000. By decision dated November 6, 2000, an Office hearing representative found that appellant had not submitted sufficient factual and medical evidence to establish her claims for multiple chemical sensitivity or an emotional condition.

Appellant requested reconsideration on November 5, 2001. By decision dated January 31, 2002, the Office denied modification of the March 14 and November 6, 2000 decisions. Appellant again requested reconsideration on January 31, 2003. By decision dated May 5, 2003, the Office denied modification of the January 31, 2002 decision.

LEGAL PRECEDENT -- ISSUE 1

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.[2] The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent

[1] On February 5, 1998 appellant, then a 46-year-old auditor, filed a traumatic injury claim alleging that on January 29, 1998 she was exposed to toxic fumes in the performance of duty resulting in irritation of her eyes, nose, throat and skin. The Office accepted appellant's claim for conjunctivitis, but denied her claim for continuation of pay. By decision dated July 17, 2002, the Office reviewed appellant's claim on the merits and found that the evidence was not sufficient to require modification of its prior decisions. As this decision was issued more than one year prior to the date of the appeal to the Board, on August 7, 2003, the Board may not review this claim on appeal. 20 C.F.R. § 501.3(d)(2).

[2] *Lourdes Harris*, 45 ECAB 545, 547 (1994).

during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions is sufficient to establish causal relation.[3]

The fact that the etiology of a disease or condition is obscure does not shift the burden of proof to the Office to disprove an employment relationship. Neither does the absence of a known etiology for a condition relieve an appellant of the burden of establishing a causal relationship by the weight of the evidence, which includes affirmative medical opinion evidence based on the material facts with supporting rationale.[4]

ANALYSIS -- ISSUE 1

Appellant attributed her diagnosed multiple chemical sensitivity to construction at the employing establishment. She stated that construction was ongoing from her date of initial exposure on January 29, 1998. The Office previously accepted that she was exposed on January 29, 1998 to Sentinel 747, an emulsified organic hydrocarbon substance used to remove asbestos tile. However, the employing establishment asserted that Sentinel 747 had not been used since that date in the building. Appellant alleged that the smell of the chemical lingered after the usage ceased. She submitted a statement from Henry Valiulis, director of supply and service at the employing establishment, who noted that there was a faint smell near where the chemical was used on the first floor for a few days and that this smell was gone after a week had passed. The employing establishment provided two industrial air hygiene studies dated May 8, 1998 and June 16, 1999. The June 16, 1999 study found that hydrocarbons, such as Sentinel 747, were all below detectable levels as determined by the Occupational Safety & Health Administration (OSHA). The May 1998 study found that carbon dioxide and carbon monoxide were within accepted standards, that the total volatile organic compounds were at the lower baseline level at which objective effects had been documented and that airborne particulates were within OSHA standards. The May 1998 study found that fungi and bacteria were in the low range. Additional construction began at the employing establishment on February 22, 1999.

Appellant established that she had an employment-related chemical exposure on January 29, 1998. Mr. Valiulis' statement supports that the smell of Sentinel 747 lingered in the employing establishment building through January 30, 1998, a date that appellant reported to work and perhaps on the first floor through February 4, 1998. An occupational disease or illness is a condition produced in the work environment over a period longer than a single workday or shift by continued or repeated conditions or factors of the work environment.[5] As appellant has established a workplace exposure of more than one date, she has established that this workplace exposures to Sentinel 747 could result as an occupational disease rather than a traumatic injury.

Dr. Mohammad Ghani, a physician Board-certified in asthma, allergy and clinical immunology, completed a report on April 7, 1999 and diagnosed hyperactive airway disease. He stated that appellant worked in an environment that exposed her to various types of fumes and

[3] *Judith A. Peot*, 46 ECAB 1036, 1041-42 (1995).

[4] *Id.*

[5] *William Taylor*, 50 ECAB 234, 238 (1999).

recommended that she not be exposed to any type of fumes at her job. In testimony before an administrative law judge regarding appellant's Equal Employment Opportunity (EEO) complaints, Dr. Ghani diagnosed hyperactive bronchial airway disease or bronchial asthma. He stated that appellant's diagnosed condition started when she inhaled chemical fumes due to construction at her workplace. Dr. Ghani stated that, once appellant's lungs had become sensitized, then different chemicals or different irritants could keep bothering her. He noted that it did not have to be the same chemical causing the reaction. Although Dr. Ghani attributed appellant's diagnosed condition of asthma to her workplace exposure and opined that she could have become sensitized as a result of this exposure resulting in reactions to a variety of other chemicals, he did not offer any medical reasoning in support of his stated conclusion that there was a causal relationship between appellant's asthma condition and her employment. Dr. Ghani did not cite any studies establishing that Sentinel 747 had been implicated in the development of asthma, he did not explain the process by which this chemical could cause or aggravate asthma and he did not indicate that he was aware of any other particular chemicals to which appellant had been exposed at work which would result in either her diagnosis or exacerbations of her diagnosed condition of asthma. Therefore, his medical opinion is not sufficient to meet appellant's burden of proof in establishing that she developed asthma as a result of her accepted employment-related exposures.

Dr. Ghani completed a report on September 16, 2000 noting appellant's history of exposure to Sentinel 747 and diagnosed hyperactive airway disease following a pulmonary function test. He opined that appellant's additional conditions of cysts on her liver, reflux and urethral stenosis were all related to her work exposure. Dr. Ghani concluded, "To put her back into this work environment where she will be exposed to all sorts of odors or irritants could become life threatening…." There is no factual evidence in the record supporting appellant's allegations that the employing establishment subjected her to odors or irritants after February 4, 1998 when the scent of Sentinel 747 had cleared the building. Dr. Ghani did not explain how he reached his conclusions and did not indicate that he had reviewed the air quality tests performed by the employing establishment. As there is no factual evidence to support appellant's continued exposure to odors or irritants, this report does not establish a causal relationship between these diagnosed conditions and her accepted employment exposures.

Dr. Robert M. Aronson, an osteopath, completed a report on February 27, 1998 noting appellant's work-related exposure to Sentinel 747 on January 29, 1998 and her return to the building on the following day. He diagnosed underlying allergic rhinitis, possible subclinical asthma and recent hydrocarbon exposure. In a note dated March 3, 1998, Dr. Aronson stated that appellant was sensitive to volatile hydrocarbons and should not be exposed to them. He stated that appellant should not work while construction was in progress. In a report dated June 25, 1998, Dr. Aronson found that appellant was sensitive to workplace antigens of unclear etiology. Appellant sought treatment on August 5, 1998 and reported that there was additional construction at the employing establishment with a film and dustiness in the air. Dr. Aronson diagnosed allergic rhinitis with postnasal drip and concluded that appellant was sensitive to dust or other antigens at work and potentially at home. On September 2, 1998 Dr. Aronson diagnosed asthma based on a methacholine challenge test. He further diagnosed chronic rhinitis with postnasal drip, apparently nonallergic and "workplace sensitivity, etiology not defined, resulting in facial swelling…."

These reports do not establish that appellant developed an occupational disease as a result of her accepted employment exposure to Sentinel 747. Dr. Aronson opined that appellant was sensitive to "workplace antigens of unclear etiology." This opinion is based on an incomplete factual background as Dr. Aronson did not identify the accepted employment exposure of Sentinel 747 as causing or contributing to appellant's condition. He merely implicated construction, workplace antigens and volatile hydrocarbons without identifying any specific workplace exposures which he believed resulted in appellant's condition. Dr. Aronson did not explain how such a sensitivity to various unidentified compounds could cause or aggravate an underlying allergic rhinitis or result in asthma or facial swelling. Without medical reasoning explaining how appellant's condition could be caused or exacerbated by chemical agents established in the workplace, especially given the negative air studies submitted by the employing establishment, Dr. Aronson's reports do not provide a complete factual background for his conclusions and are insufficient to meet appellant's burden of proof.

In a note dated April 6, 1998, Dr. Ellen M. Hennecke, an osteopath, noted that appellant was exposed to toxic chemicals and experienced respiratory difficulties. She diagnosed exacerbation of asthma, improving. On April 28, 1998 Dr. Hennecke found that appellant was sensitive to volatile hydrocarbons and should not be exposed to these compounds. She further stated that appellant should not work on any floor of the building while construction was in progress. In a note dated July 24, 1998, Dr. Hennecke described appellant's employment exposure to chemicals and marble dust. She found that appellant's periorbital area was mildly swollen and diagnosed toxic exposure. The Board notes, however, that Dr. Hennecke failed to provide an adequate factual background for her report. She did not provide a clear opinion on the causal relationship between appellant's accepted employment exposures and the diagnosed conditions. Moreover, she failed to provide any medical explanation in support of her stated conclusions. Without an accurate factual background, a clear opinion on the causal relationship between appellant's diagnosed conditions and her accepted work exposures as well as medical reasoning explaining how and why these exposures could result in the various diagnoses, these reports are not sufficient to meet appellant's burden of proof.

Dr. Donna L. Johnson, a Board-certified ophthalmologist, completed a report on September 21, 1998 and stated that she had treated appellant since February 2, 1998 for an eye condition diagnosed as blepharoconjunctivitis with conjuctival papillae. Dr. Johnson noted that appellant reported that her symptoms worsened when she entered her work environment. She stated, "The clinical course that I have observed on [appellant's] examinations suggest[s] that she is being exposed to an agent or agents that trigger allergic reactions affecting her eyes. As her history is that she had entered her work environment just before she has an acute exacerbation of her condition, I must conclude that something in her work environment is triggering these reactions in this patient. The patient should, therefore, avoid working in the environment which is irritating her eyes." Neither the fact that a condition became apparent during a period of employment nor the belief of a claimant that a condition was caused or aggravated by the employment is sufficient to establish causal relation.[6] Although the Office previously accepted appellant's traumatic injury claim for conjunctivitis due to exposure to Sentinel 747, Dr. Johnson's report is not sufficient to establish that appellant has an additional employment-

[6] *Donald E. Ewals*, 51 ECAB 428, 434 (2000).

related condition due to any employment exposures. Dr. Johnson did not identify any specific allergens or provide any medical reasoning in support of her opinion.

Dr. David Hinkamp, an employing establishment physician Board-certified in preventative medicine, reviewed appellant's medical history on October 19, 1998 and concluded that the origins of appellant's current complaints were unclear and that her symptoms did not appear to be totally disabling or clearly related to work exposures. Dr. Hinkamp noted that appellant's symptom history was not consistent with respiratory irritant disorder, asthma, due to the Sentinel 747 exposure, eye allergies due to workplace exposure, reactive airways dysfunction syndrome or paradoxical motion of the vocal cords. He recommended further testing but concluded that appellant could return to work without restriction under careful observation. This report contradicts any finding of a work-related condition due to appellant's employment exposures and does not support her claim.

On November 18, 1998 Dr. Anne Krantz, a Board-certified internist, noted appellant's history of injury including exposure to Sentinel 747. She stated, "I believe that it is likely that you had symptoms of fatigue, nausea and eye, nose and throat irritation during the period of January when Sentinel 747 was being used, resulting from the use of that compound. There also may have been some eye, nose and throat irritation due to exposure to other construction dusts during the period that construction was going on. Based on the known toxicology of solvents and construction dusts, I do not think that it is possible for persistence or recurrence of symptoms to occur once these exposures have ceased. Thus, the etiology of your continued symptoms when you reenter the building is less clear." This report does not support appellant's claim for a continued medical condition causally related to her employment exposure to Sentinel 747 or any other identified compound. Although Dr. Krantz suggested that appellant's symptoms in January could be due to exposure to Sentinel 747, she did not offer any medical studies or reasoned medical explanation for her conclusion. Therefore this report does not establish that appellant sustained a compensable condition as a result of her employment exposure.

Dr. Kathy Duvall, Board-certified in occupational medicine, completed a report on June 3, 1999 noting appellant's history of exposure to Sentinel 747 on January 29, 1998 and finding that more likely than not appellant had reactive airway disease syndrome. She stated that this condition could make appellant more susceptible to respiratory irritants such as bleach, chlorine and cigarette smoke. Dr. Duvall concluded, "There is unlikely to be an acute new sensitizer in your workplace at this time to cause your respiratory symptoms but you may remain susceptible to the odors stated above. We recommend restricting your work environment to no exposures to fumes, vapors, gases, smoke and dust and to avoid any other respiratory irritants." This report noted appellant's accepted employment exposure and provided an opinion on the causal relationship between that exposure and appellant's diagnosed condition of asthma. However, Dr. Duvall did not offer any medical reasoning in support of her stated conclusion. A mere conclusion without the necessary medical rationale explaining how and why the physician believes that appellant's accepted chemical exposure could result in a diagnosed condition is not sufficient to meet appellant's burden of proof.[7] The medical evidence must also include

[7] *See Albert C. Brown*, 52 ECAB 152, 155 (2000) (a medical conclusion unsupported by medical rationale is of diminished probative value).

rationale explaining how the physician reached the conclusion he or she is supporting. Dr. Duvall did not provide such an explanation. Due to the foregoing deficiencies this report is insufficient to establish appellant's claim.

In a report dated November 26, 2002, Dr. Raymond Singer, a psychologist, diagnosed organic brain dysfunction and toxic encephalopathy. He noted appellant's accepted exposure to Sentinel 747 and reviewed the employing establishment air quality surveys. Dr. Singer concluded that these surveys were not sufficient to establish that the chemical was no longer present in the building. On testing Dr. Singer found that appellant had deficits in abstract thinking, visual spatial perception and cognitive processing speed. He concluded that appellant's current disabling symptoms began on January 29, 1998 and further diagnosed multiple chemical sensitivity. Dr. Singer stated that this condition could be caused by one significant exposure and that appellant's exposure at work was sufficient to cause multiple chemical sensitivity. Although this report was based on a proper history and concluded that the employing establishment's air quality surveys were not sufficient, the Board notes that Dr. Singer is not a medical doctor. Therefore, his opinion regarding appellant's physical conditions is beyond his area of expertise and is of little probative value.[8] The report of Dr. Singer is not sufficient to meet appellant's burden of proof in establishing that appellant's exposure to Sentinel 747 resulted in an occupational disease.

The medical evidence included in the record does not contain the necessary factual background nor the necessary medical reasoning to establish a causal relationship between appellant's various diagnosed conditions and her employment.

LEGAL PRECEDENT -- ISSUE 2

To establish appellant's occupational disease claim that she has sustained an emotional condition in the performance of duty appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.[9] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[10]

[8] *See Bertha Parker*, 32 ECAB 328, 332 (1980) (a report of a physician whose specialty is not in a germane area of medicine is entitled to lesser weight). Furthermore, to the extent that Dr. Singer is not a licensed clinical psychologist, he is not a physician under the Act and his opinion is of no probative value. *Arnold A. Alley*, 44 ECAB 912, 921 (1993); 5 U.S.C. § 8101(2).

[9] *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

[10] *Id.*

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 concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or to a requirement imposed by the employment, the disability is 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 to hold a particular position.[11]

ANALYSIS -- ISSUE 2

Appellant alleged her emotional condition arose when the employing establishment improperly refused to accept medical documentation submitted in support of her leave requests and improperly denied her requests for leave. She also alleged that she improperly received discipline, that the employing establishment did not maintain her in the voluntary leave transfer program; that she received improper performance appraisals; that her supervisor, Richard Erickson, improperly contacted her physicians; that he improperly followed her and monitored her in the office; that he improperly criticized her work; that he accused her of working only six and a half hours on February 2, 1999 and that Mr. Erickson would not communicate with her verbally. Appellant alleged that she was improperly removed from the employing establishment and improperly denied early retirement. She also alleged that someone destroyed a computer disk with her work on it.

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions, issued unfair performance evaluations, wrongly addressed leave, improperly assigned work duties, improperly conducted investigations[12] and unreasonably monitored her activities at work, the Board finds that these allegations related to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Federal Employees' Compensation Act.[13] As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. However, error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[14]

Mr. Erickson stated that appellant returned to work on June 16, 1998 and that he provided her with a work list on that date. He asked appellant to let him know if she went anywhere other

[11] *Lillian Cutler,* 28 ECAB 125, 129-31 (1976).

[12] *Jimmy B. Copeland,* 43 ECAB 339, 345 (1991).

[13] 5 U.S.C. §§ 8101-8193; *see Janet I. Jones,* 47 ECAB 345, 347 (1996); *Jimmy Gilbreath* , 44 ECAB 555, 558 (1993); *Apple Gate,* 41 ECAB 581, 588 (1990); *Joseph C. DeDonato,* 39 ECAB 1260, 1266-67 (1988).

[14] *Martha L. Watson,* 46 ECAB 407 (1995).

than the fourth floor, noting that he made this request because appellant's work was on the fourth floor and because of the ongoing air quality study at that site. Mr. Erickson noted that he had never made such a request of another employee. He stated that he did not unduly criticize appellant's work, denied ceasing verbal communication with her and stated that he did not unreasonably monitor her activities in the office. Mr. Erickson stated that, based on his observations, he felt that appellant did not work a full eight-hour day on February 2, 1999. He created a document asking for appellant's starting, ending and lunch times on that date. Mr. Erickson noted that he never asked another employee to document time in this manner. He asserted that appellant failed to discuss her time with him or to use a leave slip and that it was necessary to clarify her time and attendance in written form. Mr. Erickson stated that appellant told him on February 3, 1999 that some of her computer files were missing, but she did not report any problems as a result of this situation. Martin Dickman testified that appellant's leave requests were denied due to her failure to provide sufficient medical documentation. The employing establishment denied any improper actions in regard to these personnel matters and offered reasonable explanations for the actions taken. The Board finds that appellant did not submit sufficient evidence establishing error or abuse on the part of the employing establishment and has not established these incidents as compensable factors of employment.

Appellant alleged that the employing establishment issued disciplinary actions to prevent her from being eligible for early retirement. The employing establishment noted that she was not entitled to early retirement because she received a notice of involuntary separation. Appellant did not submit any documentation to substantiate her allegation and there is no evidence that the employing establishment acted unreasonably in this personnel matter.

Appellant further alleged that the employing establishment improperly sent investigators to her home, who then proceeded to knock violently on her door, peer in her windows and question her neighbors, and improperly placed documents in her mailbox. Appellant alleged that her telephones were tapped and the employing establishment placed listening devices in her home. The employing establishment stated that agents were utilized to deliver time-sensitive official correspondence to appellant's home. The investigators were directed to attempt to deliver the documents to appellant personally, to wait for a time if appellant was not home, and to give the documents to a neighbor if appellant was not available. The employing establishment denied that the investigators interviewed appellant's neighbors, that appellant's home was ever damaged, that listening devices were used or that appellant's telephone communications were intercepted. Appellant submitted evidence from Michael P. Washington, a neighbor, asserting that twice he was asked to pass mail on to appellant and that the agent asked if he knew appellant and if he knew where she was. The agents submitted statements regarding delivery activities on July 17, 21, August 4, September 3 and October 2, 1998. On August 4, 1998 an agent left a copy of several documents in appellant's mailbox. William H. Tebbe, Assistant Inspector General for Investigations, stated that he instructed the agents to deliver documents to appellant. Appellant has not established error or abuse on the part of the employing establishment in utilizing employees to provide appellant with time-sensitive documents. The employing establishment stated that agents were used as these employees were not restricted to working within business hours. The employing establishment has offered a reasonable explanation for its activity and appellant has not established that these incidents constitute a compensable factor of employment.

Mr. Tebbe stated that he contacted the Ford Motor Company to determine if appellant was involved in a training program while still employed at the employing establishment. Investigations, which are an administrative function of the employing establishment, that do not involve an employee's regular or specially assigned employment duties are not considered to be an employment factor where the evidence does not disclose error or abuse on the part of the employing establishment. In this case, the investigation did not involve appellant's regular or specially assigned duties, but instead whether she was in fact working for another employer while still employed at the employing establishment. Although appellant alleged error or abuse in this administrative action, she did not submit any evidence to establish that Mr. Tebbe acted improperly in contacting a private sector employer. Therefore she has not established that this investigation was a compensable factor of employment.

In regard to appellant's 1999 performance appraisal, it was to be based on a minimum appraisal of 90 days. Appellant worked only 74-calendar days during the period of February 2 to April 16, 1999. The employing establishment stated that appellant's evaluation for the 1999 fiscal year was rescinded because of a difference in understanding regarding the minimum day requirement. Her 1999 performance appraisal was altered from unacceptable to "unobserved." The Board finds that the evidence in the record establishes that, under *McEuen*,[15] the employing establishment erred in issuing the 1999 performance appraisal of unacceptable when appellant had not worked for the minimum period required to be rated. Therefore, appellant has established error or abuse in this administrative action and has established a compensable factor of employment.

Appellant has alleged that the employing establishment harassed her through the above-mentioned activities and by interfering with her medical treatment. For harassment or discrimination to give rise to a compensable disability under the 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. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[16]

Appellant alleged that the employing establishment interfered with her medical treatment on June 18, 1998. Mr. Tebbe asserted that it was normal practice to send someone with an employee who was going to an emergency room and that he sent Kelly Popovits with appellant. He stated that Agent Popovits provided the emergency room physicians with the name of appellant's attending physician as appellant was unable to speak. Mr. Tebbe denied interfering with appellant's medical treatment on that date. Agent Popovits stated that she did not interfere with appellant's medical treatment and did not in any way imply that appellant was faking her illness. Appellant has not established through probative and reliable evidence that the employing establishment's decision to send an employee to the hospital with appellant was harassment. As appellant has not established that the actions taken by the employing establishment were

[15] *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon*, 42 ECAB 566 (1991).

[16] *Alice M. Washington*, 46 ECAB 382 (1994).

harassment or discrimination rather than her mere perceptions of the same, she has failed to establish this compensable factor of employment.

Appellant alleged that she was ordered to exceed her physician's restrictions. Being required to work beyond one's physical limitations may constitute a compensable employment factor if it is substantiated by the record.[17] The evidence in the record establishes that appellant's physician restricted her on various occasions from working at the employing establishment. However, as noted previously, these reports did not support the findings of disability based on an accurate history of injury or detailed medical reasoning. Therefore, the medical evidence of record was not sufficient to establish that appellant could not return to work in the employing establishment building and the employing establishment's directives do not constitute a compensable factor of employment.

In the present case, appellant has established a compensable factor of employment with respect to her erroneous 1999 performance appraisal. However, appellant's burden of proof is not discharged by the fact that she has established an employment factor which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.[18]

In support of her claim, appellant submitted a series of reports from Dr. Clarissa E. Steffen, a clinical psychologist, who opined on April 20, 1999 that appellant experienced stress due to the ongoing investigation of her case and financial loss. These allegations are not compensable factors of employment and do not establish that appellant's emotional condition is due to her accepted employment factors.

In a form report dated May 26, 1999, Dr. Steffen diagnosed acute stress disorder but did not provide an opinion on the cause of this condition. On September 5, 2000 Dr. Steffen stated that appellant was experiencing extreme stress and was prone to episodes of depression. She noted that appellant reported that her supervisors perceived her work to be inadequate. Appellant's allegation that her supervisor was unduly critical of her work has not been accepted as factual and therefore this allegation is not considered to be a compensable employment factor.

In testimony before an administrative law judge regarding appellant's EEO complaint, Dr. Steffen stated that appellant felt that her supervisor was unjustly criticizing her work. She also noted that appellant asserted that her coworkers felt that she was lying and exaggerating her symptoms. Dr. Steffen diagnosed acute stress disorder. However, she did not attribute appellant's diagnosed condition to the accepted factor of employment and therefore her reports are not sufficient to meet appellant's burden of proof.

Although appellant has substantiated a compensable factor of employment, that the employing establishment improperly issued her 1999 performance appraisal as unacceptable, she

[17] *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

[18] *See William P. George*, 43 ECAB 1159, 1168 (1992).

did not submit sufficient rationalized medical opinion evidence to establish a causal relationship between her diagnosed condition of acute stress disorder and her employment.

CONCLUSION

The Board finds that appellant has not submitted sufficient rationalized medical opinion evidence based on an accurate factual background to establish a causal relationship between her established employment exposures and her diagnosed conditions including multiple chemical sensitivity. The Board further finds that appellant did not submit rationalized medical opinion establishing that her emotional condition was due to the accepted compensable employment factor.

ORDER

IT IS HEREBY ORDERED THAT the May 5, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: May 3, 2004
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member