

FACTUAL HISTORY

On June 21, 2001 appellant, a 47-year-old part-time flexible window/distribution clerk, filed an occupational disease claim (Form CA-2) alleging that her anxiety, depression, insomnia and nervousness were employment related.¹ She alleged that, on March 8, 2001, after being injured, Ron Roy, a supervisor, informed her that he would make her doctor's appointments. Appellant alleged that Mr. Roy made derogatory comments to her. Appellant made several requests for information on contact information for doctor's tests and approval for physical therapy. Mr. Roy was either late in posting the work schedule which was due by 10:00 a.m. on Friday or did not post the schedule at all. He scheduled her nonscheduled days on the days she had physical therapy appointments. Appellant was refused union representation and her supervisors denied her the continuation of pay she "was entitled to for a traumatic injury." She has denied her a cash advance until she filed a grievance; and the employing establishment failed to timely submit the paperwork for her traumatic injury. Appellant alleged that Mr. Roy humiliated and embarrassed her while she was in a cast by saying "Look at you, what am I going to do with you." She alleged that her paycheck was short on April 28, 2001 and that it took a grievance to get her continuation of pay, which was late. On April 17, 2001 Mr. Roy approached appellant with a job offer which had not been seen by her physician and which she alleged did not conform with the physical restrictions set by her physician. Appellant also alleged harassment and intentional infliction of emotional distress and pain by Alice Strasser, Officer in Charge, and Mr. Roy.

Mr. Roy denied harassing appellant or that he made the statement "Look at you, what can I do with you," as alleged by appellant.

In a July 11, 2001 report, Dr. Jon J. Ernstoff, an attending Board-certified internist, diagnosed depression, which he attributed to "considerable psychological stress at work." He opined that appellant's work injury had been exacerbated by the hostile working environment.

In a letter dated July 20, 2001, the Office advised appellant of the factual and medical evidence required to support her claim. In response, she indicated that on June 11, 2001 she had filed an Equal Employment Opportunity (EEO) complaint alleging harassment. Appellant also stated that she filed a grievance on the continuation of pay issue which was resolved on June 8, 2001. On June 20, 2001 she filed a grievance of denial of union representation by Mr. Roy. She also submitted a copy of a grievance she filed on June 20, 2001 on management's denial of her right to union representation.

In a December 20, 2001 letter, Ms. Strasser responded to appellant's June 20, 2001 letter and noted her disagreement with appellant's allegations.

By decision dated December 28, 2001, the Office denied appellant's claim on the basis that she failed to establish an injury in the performance of duty.

¹ This was assigned claim number 01-200815. The record contains evidence that appellant filed a claim for an injury sustained on March 8, 2001. The Office assigned this claim number 01-200815 and accepted the claim for right shoulder sprain.

In a letter dated January 17, 2002, appellant requested an oral hearing which was held on January 26, 2002.

Appellant subsequently submitted statements by coworkers, including Neva L. Sanders, Mario Mauriello, Donald Stowe, Alex Pappas and Kathy Mastriani. In a January 26, 2002 statement, Ms. Sanders noted that she assisted appellant on May 2, 2001 when appellant had spasms in her shoulder. In a January 29, 2002 statement, Mr. Mauriello, Mr. Pappas, Mr. Stowe and Ms. Mastriani all checked “No” that Mr. Roy did not call to make an appointment with the employee’s doctor of choice when they were injured on the job.

By decision dated October 21, 2002, the hearing representative affirmed the Office’s December 28, 2001 decision denying appellant’s claim.

LEGAL PRECEDENT

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.² 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.³

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.⁴ 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.⁵

ANALYSIS

Appellant alleged that harassment and discrimination on the part of her supervisors contributed to her claimed stress-related condition to the extent that disputes and incidents

² 5 U.S.C. §§ 8101-8193.

³ *Roger W. Robinson*, 54 ECAB ____ (Docket No. 03-348, issued September 30, 2003).

⁴ *Linda K. Mitchell*, 54 ECAB ____ (Docket No. 03-1281, issued August 12, 2003).

⁵ *Marlon Vera*, 54 ECAB ____ (Docket No. 03-907, issued September 29, 2003).

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.⁶ However, 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.⁷ 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.⁸

In support of her claim, appellant submitted copies of EEO complaints, grievances and resolutions of such disputes. However, the fact that she filed EEO complaints and grievances does not substantiate the allegations contained therein and the settlement of grievances does not establish error or abuse by the employing establishment.⁹ Appellant has submitted insufficient evidence to support her claim of harassment or discrimination by Mr. Roy or Ms. Strasser. She has submitted no witness statements or other evidence that Ms. Strasser or Mr. Roy discriminated against her. Both Mr. Roy and Ms. Strasser denied the allegations. In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and she has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors.¹⁰ Therefore, she has failed to establish harassment or discrimination as a compensable factor of employment.

Appellant has also cited specific administrative actions by her supervisors as contributing to an emotional condition. She has alleged, for example, that she was denied union representation, that on March 8, 2001 her supervisor stated that he would make her medical appointments and that Mr. Roy was late in posting the schedule. It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.¹¹ The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.¹² In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹³

⁶ *Paul L. Stewart*, 54 ECAB ____ (Docket No. 03-1107, issued September 23, 2003); *David W. Shirey*, 42 ECAB 783 (1991); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁷ *Penelope C. Owens*, 54 ECAB ____ (Docket No. 03-1078, issued July 7, 2003); *Jack Hopkins, Jr.*, 42 ECAB 818 (1991).

⁸ *Alice M. Washington*, 46 ECAB 382 (1994).

⁹ *Michael A. Salvato*, 53 ECAB ____ (Docket No. 01-1790, issued July 16, 2002).

¹⁰ See *Kathleen A. Donati*, 54 ECAB ____ (Docket No. 03-1333, issued August 13, 2003); *Joel Parker, Sr.*, 43 ECAB 220 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹¹ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

¹² See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, *supra* note 6.

¹³ *Anna C. Leanza*, 48 ECAB 115 (1996).

In support of her contentions, appellant submitted affidavits by Ms. Sanders, Mr. Mauriello, Mr. Stowe, Mr. Pappas and Ms. Mastriani, who noted that they were not required to have Mr. Roy make appointments with their physician of choice after sustaining an employment injury. These affidavits are insufficient to show that the employing establishment acted abusively as they are not specific to appellant's allegations that Mr. Roy informed her he would make her medical appointments. Rather, they merely describe Mr. Roy's actions regarding her coworkers and their employment injuries. Although appellant filed grievances regarding union representation and the medical documentation requirement, no probative evidence of error or abuse in an administrative matter was submitted. Thus, she has not established a compensable factor with regard to administrative actions.

Appellant further expressed disagreement with the handling of her prior traumatic injury claim. She stated that she was denied continuation of pay and a cash advance. The Board notes, however, that the development of an emotional condition related to the Office's or the employing establishment's handling of her compensation claim would not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially-assigned duties.¹⁴ The record here contains no evidence of error or abuse on the part of the employing establishment in processing appellant's compensation claim.¹⁵ Thus, she has not established a compensable factor with regards to this allegation.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹⁶

CONCLUSION

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

¹⁴ See *Janet L. Terry*, 53 ECAB ____ (Docket No. 00-1673, issued June 5, 2002); *George A. Ross*, 43 ECAB 436 (1991).

¹⁵ *Myrna Parayno*, 53 ECAB __ (Docket No. 01-1101, issued June 12, 2002).

¹⁶ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992). Furthermore, the Board notes that she submitted additional evidence with her appeal to be Board. The Board cannot consider this evidence, however, as its review is limited to the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 21, 2002 is hereby affirmed.

Issued: May 5, 2004
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member