



By letter dated August 4, 2003, the Office asked appellant to submit additional information including a detailed description of the employment factors or incidents which she believed had contributed to her claimed illness and a comprehensive medical report from her treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to her claimed emotional condition.

Appellant submitted various statements dated August 31, 1999 to September 10, 2003 and a copy of the Equal Employment Opportunity (EEO) complaint. She alleged that she was subjected to ongoing discrimination and harassment by her peers and upper management because she was black and because she filed a prior EEO complaint. Appellant further alleged that she was denied job promotions in May 1998, September 16, 1993, August 13, 1999 and from May 10, 2000 to June 26, 2001, although her qualifications and experience were enough for her to obtain the position. She alleged that she recovered from cardiac problems and was ready to return to work on May 7, 2003, but her supervisor, Dr. Gerald F. Sabol, a dentist, advised her that she could not treat or see patients until she received a medical clearance and that on May 22, 2003 he restricted her duties in the dentistry clinic. Finally, appellant alleged that she received only partial payment for overtime worked on November 10 to 11, 2000.

In an undated note, appellant alleged incidents of harassment, including that her locker was broken into on September 1 and October 1, 1999, January 3 and November 8, 2000 and January 6, 2003. She specifically noted that the break-ins occurred after she filed her EEO complaint in 1999. Also submitted were employing establishment police reports dated September 1 and October 1, 1999, January 3 and November 8, 2000 and January 6, 2003, which revealed that there was no evidence of lock tampering in any of the instances where appellant alleged there was a locker break-in.

In a letter dated September 25, 2000, appellant alleged that she was forcibly detained by a coworker, Miguel Rodriguez, in the preventative dentistry room. She advised that she was in the preventative dentistry room discussing a test with colleagues when Mr. Rodriguez attempted to close the door advising them that the noise was disturbing the patients and he proceeded to block her exit; however, she noted that she was able to exit the room. In a statement dated September 25, 2000, appellant alleged that Mr. Rodriguez slammed doors in her face on two occasions, that on December 20, 2001 Mr. Rodriguez delivered 2002 calendars to the staff but failed to provide her with one and that he also failed to provide her with pay stubs but delivered them to other staff. She alleged that on December 21, 2001 she spoke to her supervisor, Dr. Sabol, regarding the incident with the calendar and he yelled at her and insinuated that she was lying. In several undated notes, appellant alleged that her mail was tampered with and withheld.

Appellant also submitted a statement from Dr. Hoa Thi Nghiem, a dentist, who noted that she was the subject of discrimination and was aware that racial discrimination was present at the employing establishment. A statement from Deborah Amon noted that she believed there was rampant favoritism at the employing establishment and that she was passed over for promotion.

Appellant submitted medical records from Dr. Barbara Justice, a specialist in psychiatry, dated April 10 to June 8, 2003. In her note of April 10, 2003, Dr. Justice indicated that appellant

was under her treatment for depression and anxiety and could not return to work until May 5, 2003. In an attending physician's report dated May 29, 2003, she diagnosed major depressive disorder and generalized anxiety disorder and noted that appellant's condition was caused or aggravated by stress due to an antagonistic interaction with her supervisor. Dr. Justice noted in her report of June 8, 2003, that appellant was cleared to resume her functions as a dental hygienist in the entirety and that she was stable and could function independently and perform patient treatment procedures. Also submitted were reports from Dr. Major Geer, an internist, dated January 29 to May 3, 2003, who advised that appellant was treated for cardiac arrhythmia due to stress and anxiety.

In his letter of December 4, 2000, Dr. Sabol noted that appellant charged into his office on December 4, 2000 and demanded to know why she was not paid for overtime on November 10, 2000. He advised her that there was a question as to her work time, but that he would explore the issue with the time keeper, Mr. Rodriguez. In a letter dated December 4, 2000, Mr. Rodriguez indicated that he overheard appellant yelling at Dr. Sabol in an unprofessional and threatening manner regarding receiving overtime pay for working on November 10 and 11, 2000 and that she proceeded to come into his office in a hostile manner disputing her time card. He advised that appellant never submitted the time request to him.

In a letter dated February 4, 2003, Dr. Sabol notified appellant that she was placed off duty with pay and without charge to her leave. He advised that this action was being taken based on medical documentation from Dr. Justice, which raised concerns about appellant's ability to perform her duties without risk of harm to herself or others. Dr. Sabol indicated also that Dr. Justice recommended that appellant be given a medical leave of absence for one month and then a determination would be made on whether she was able to return to her normal duties. In a letter to appellant dated May 7, 2000, Dr. Sabol noted that appellant had returned to her regular duties on May 6, 2003; however, he advised that she would be assigned nonpatient care duties until they receive a medical clearance statement from Dr. Justice indicating that appellant could resume her patient care duties as a dental hygienist. In a letter dated August 26, 2003, Dr. Sabol advised that the letter from Dr. Justice dated June 8, 2003 was unacceptable and that appellant would continue in her position performing nontechnical tasks.

Also submitted was a letter dated February 6, 2003 from the employing establishment, which indicated that on February 4, 2003 appellant provided medical documentation from Dr. Justice along with a request that she be placed on leave. The employing establishment noted that Dr. Justice's report of January 5, 2003 diagnosed depression and anxiety, with symptoms of insomnia, irritability, palpitations, nausea and passive suicidal ideation. The employing establishment noted that, because of Dr. Justice's report of January 5, 2003 and their concern for patient safety, appellant was issued a letter placing her off duty with pay and without charge to leave pending a determination of her fitness for duty.

In a decision dated October 22, 2003, the Office denied appellant's claim on the grounds that the evidence of record failed to demonstrate that the claimed emotional condition occurred in the performance of duty.

## 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.<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup>

## ANALYSIS

Appellant alleged that she was subjected to ongoing discrimination and harassment by her peers and upper management. The Board finds that her allegation that she worked in a hostile environment and was harassed by coworkers and management is not supported by the evidence in the record. To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.<sup>4</sup> However, for harassment to give rise to a compensable disability under the Federal Employees' Compensation Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.<sup>5</sup> General allegations of harassment are not sufficient<sup>6</sup> and in this case, appellant has not submitted sufficient evidence to establish that she was harassed by her supervisor.<sup>7</sup>

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<sup>1</sup> 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).

<sup>2</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>4</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>5</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>6</sup> See *Paul Trotman-Hall*, 45 ECAB 229 (1993).

<sup>7</sup> See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

Appellant alleged that her locker was broken into several times from September 1, 1999 to January 6, 2003. However, the record reveals that in police reports dated September 1, 1999 to January 6, 2003, the police found no evidence of lock tampering in any of the instances where she alleged there was a locker break in. With regard to appellant's allegation that she was forcibly detained by a coworker, Mr. Rodriguez, that he slammed doors in her face on two occasions, that he delivered 2002 calendars to the staff but failed to provide her with one, that he also failed to provide her with pay stubs, that Dr. Sabol yelled at her and that her mail was tampered with, there is no evidence or witness statements to support that these incidents occurred as alleged. Although appellant alleged that her supervisors and coworkers made statements and engaged in actions which she believed constituted harassment, she provided no corroborating evidence or witness statements to establish that the statements actually were made or that the actions actually occurred.<sup>8</sup>

Appellant submitted statements from Dr. Nghiem and Ms. Amon, which addressed their specific grievances and denials of job promotions, but neither individual witnessed the alleged harassment of appellant. The Board notes that vague allegations of a supervisor berating and taunting appellant are insufficient to establish her claim that she was harassed. A claimant's own feeling or perception that a form of criticism by or disagreement with a supervisor is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under the Act absent evidence that the interaction was, in fact, erroneous or abusive. This principle recognizes that a supervisor or manager must be allowed to perform his or her duties and that, in performing such duties, employees will at times dislike actions taken.<sup>9</sup> Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

Appellant's other allegations of employment factors that caused or contributed to her condition fall into the category of administrative or personnel actions. As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Act.<sup>10</sup> 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.<sup>11</sup>

Appellant alleged that she was denied job promotions to the position of Expanded Function Dental Auxiliary in May 1998, September 16, 1993, August 13, 1999 and from May 10, 2000 to June 26, 2001 and was restricted in her duties by her supervisor and thereafter placed off duty. Regarding her allegation of denial of promotions, the Board has previously held that denials by an employing establishment of a request for a different job, promotion or transfer

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<sup>8</sup> See *William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

<sup>9</sup> See *Michael A. Deas*, 53 ECAB \_\_\_\_ (Docket No. 00-1090, issued November 14, 2001) (while the Board has recognized the compensability of threats in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to compensability). In this case appellant did not submit evidence or witness statements in support of her allegation.

<sup>10</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>11</sup> *Id.*

are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform her regular or specially assigned work duties, but rather constitute her desire to work in a different position.<sup>12</sup> Thus, appellant has not established a compensable employment factor under the Act in this respect.

With regard to her allegation that she was improperly placed off duty, Dr. Sabol indicated in a letter dated February 4, 2003, that appellant was placed off duty with pay and without charge based on medical documentation from Dr. Justice that raised concerns about her ability to perform her duties without risk or harm to herself or others. Dr. Sabol indicated that Dr. Justice recommended that appellant be given a medical leave of absence for one month and treatment notes from January 3 to April 10, 2003 indicated that she developed poor concentration. He noted that appellant returned to her regular duties on May 6, 2003 but was assigned nonpatient care duties until receiving a medical clearance from Dr. Justice stating that appellant could resume her patient care duties as a dental hygienist. The employing establishment noted, in a letter dated February 6, 2003, that she requested that she be placed on leave on February 4, 2003 and submitted a report from Dr. Justice dated January 5, 2003, which diagnosed depression and anxiety, with symptoms of insomnia, irritability, palpitations, nausea and passive suicidal ideation. The employing establishment also noted that, because of Dr. Justice's report of January 5, 2003 and their concern for patient safety, appellant was issued a letter placing her off duty with pay and without charge to leave pending a determination of her fitness for duty. The Board finds that a review of the evidence indicates that appellant has not shown that the employing establishment's actions in connection with placing her off duty were unreasonable.<sup>13</sup> Additionally, the Board recognizes that a supervisor or manager must be allowed to perform his or her duties and that, in performing such duties, employees will at times dislike actions taken.<sup>14</sup> Appellant did not submit evidence supporting her claims that the employing establishment committed error or abuse.

Finally, appellant alleged that she received only partial payment for overtime worked on November 10 to 11, 2000. Proper pay is an administrative or personnel matter and an employee's emotional reaction to the actions 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 relation to the work required of the employee.<sup>15</sup> The Board notes that appellant submitted no evidence to substantiate her claim that she was not paid for overtime and appellant admitted that she was properly paid overtime in February 2001.

Appellant also indicated that she filed an EEO complaint for harassment and discrimination, however, the Board further notes that grievances and EEO complaints, by themselves, do not establish that work place harassment or unfair treatment occurred.<sup>16</sup>

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<sup>12</sup> *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

<sup>13</sup> *See Larry J. Thomas*, 44 ECAB 291, 300 (1992).

<sup>14</sup> *Michael A. Deas*, *supra* note 9.

<sup>15</sup> *See Joel Parker, Sr.*, *supra* note 7.

<sup>16</sup> *James E. Norris*, 52 ECAB 93 (2000).

**CONCLUSION**

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.<sup>17</sup>

**ORDER**

**IT IS HEREBY ORDERED** that the October 22, 2003 decision of the Office is affirmed.

Issued: May 20, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>17</sup> As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).