

**United States Department of Labor  
Employees' Compensation Appeals Board**

---

SIMONETTA A. TUCKER, Appellant )  
and ) Docket No. 05-1111  
DEPARTMENT OF VETERANS AFFAIRS, ) Issued: August 5, 2005  
VETERANS ADMINISTRATION MEDICAL )  
CENTER, Philadelphia, PA, Employer )  
\_\_\_\_\_  
)

*Appearances:*  
*Simonetta A. Tucker, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
DAVID S. GERSON, Judge

**JURISDICTION**

On February 14, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' November 29, 2004 merit decision denying her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

**FACTUAL HISTORY**

On July 8, 2004 appellant, then a 60-year-old nurse, filed an occupational disease claim alleging that she sustained an emotional condition in the performance of duty. She alleged that she mainly experienced high blood pressure while being harassed by her superiors, Angela

Petraccia, Pat Green and Rose Hollis. Appellant claimed that this harassment had occurred since she returned to work in August 2001.

By letter dated July 22, 2004, the Office requested that appellant submit additional factual and medical evidence in support of her claim.

Appellant submitted an August 18, 2004 statement in which she stated that she first experienced high blood pressure on February 28, 2003 when she was “demoralized” by Ms. Green and noted that her physician then reduced her work hours to one day per week. She asserted that on August 7, 2003 she was falsely accused of leaving the work floor without permission and that on August 27, 2003 she was interrupted in the “midst of medications” and had to sign out on another computer which was a time-consuming task. Appellant claimed that on June 17, 2003 Ms. Petraccia snatched a paper from her hand and became verbally abusive; that on July 14, 2003 she “assaulted” her by pointing her fingers in face and threatening to classify her as absent without leave if she left the work floor; and that on August 19, 2003 she stood over her shoulder and stated, “You are too long on the computer, you don’t know what you are doing.” She claimed that since November 2003 she had applied for transfers to other positions, but alleged that Ms. Hollis told her that she would “use her power to keep me in the same position where I am constantly demoralized by Ms. Pat Green.” Appellant asserted that Ms. Green would not accommodate her physician’s recommendation to be transferred to another work unit.<sup>1</sup>

Appellant submitted several disability notes completed by Dr. Nicholas G. Palladino, an attending Board-certified internist.

The record also contains a July 13, 2004 statement in which Ms. Hollis controverted appellant’s claims. She stated that appellant “placed herself on one day per week” the prior summer and later requested to increase her work hours. Ms. Hollis indicated that the employing established decided not to increase appellant’s work hours due to her “work performance and behavior.” She stated that appellant had frequent absences and engaged in aggressive behavior towards staff members. Ms. Hollis stated that appellant circumvented the proper chain of command when she made her requests for transfer to other positions and indicated that several nurse managers stated that they did not want appellant in their work units due to the fact that other nurse managers expressed a poor opinion of her work performance. She indicated that management was in the process of recommending appellant’s termination from the employing establishment.

By decision dated November 29, 2004, the Office denied appellant’s claim on the grounds that she did not establish any compensable employment factors.

---

<sup>1</sup> Appellant also submitted another occupational disease claim form signed on July 8, 2004 in which she indicated that, when she tried to talk to Ms. Petraccia about medical documentation for her three-week absence, she was told that she was “no use to this place.” She claimed that Ms. Petraccia later stated, “Some people are bright, some are dumb, this man took one day to learn [illegible].”

## **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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>2</sup> On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>3</sup>

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 employment factors.<sup>4</sup> This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>5</sup>

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 conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>6</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>7</sup>

## **ANALYSIS**

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated November 29, 2004, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

---

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>5</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>6</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>7</sup> *Id.*

Appellant alleged that she was harassed and discriminated against since August 2001 by her superiors, Ms. Petraccia, Ms. Green and Ms. Hollis. She alleged that she first experienced high blood pressure on February 28, 2003 when she was “demoralized” by Ms. Green. Appellant claimed that in mid 2003 Ms. Petraccia harassed her by making various abusive comments, snatching a paper out of her hand and aggressively pointing her fingers in her face. For example, she claimed that Ms. Petraccia told her that she was “no use to this place” and stated, “You are too long on the computer, you don’t know what you are doing.”

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant’s performance of his regular duties, these could constitute employment factors.<sup>8</sup> 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.<sup>9</sup> In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors.<sup>10</sup> Appellant alleged that supervisors made statements and engaged in actions which she believed constituted harassment and discrimination, but she provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.<sup>11</sup> Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Appellant also claimed that since November 2003 she had applied for transfers to other positions at the employing establishment, but that Ms. Hollis unfairly used her power to prevent her from transferring to another position which would accommodate her physician’s recommendation to work in another work unit. She also suggested that her supervisors unreasonably monitored her work performance and alleged that on August 7, 2003 she was falsely accused of leaving the work floor without permission.

Regarding appellant’s allegations that the employing establishment engaged in improper disciplinary actions, improperly hindered her transfer to another position, and unreasonably monitored her activities at work, the Board finds that these allegations relate 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 Act.<sup>12</sup> Although the imposition of disciplinary actions, the handling of transfer requests, and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.<sup>13</sup>

---

<sup>8</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>9</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>10</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).

<sup>11</sup> See *William P. George*, 43 ECAB 1159, 1167 (1992).

<sup>12</sup> 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).

<sup>13</sup> *Id.*

However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>14</sup> However, appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters. With respect to appellant's transfer requests, Ms. Hollis indicated that several nurse managers stated that they did not want appellant in their work units due to the fact that other nurse managers expressed a poor opinion of her work performance.<sup>15</sup> Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.<sup>16</sup>

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.<sup>17</sup>

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

---

<sup>14</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>15</sup> Moreover, the Board has previously held that denials by an employing establishment of a request for a different job, promotion or transfer 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 appellant's desire to work in a different position. *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

<sup>16</sup> Appellant claimed that on August 27, 2003 she was interrupted in the "midst of medications" and had to sign out on another computer which was a time-consuming task, but she did not provide any further description of these alleged incidents and they must be considered to be vague and unsubstantiated.

<sup>17</sup> 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).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' November 29, 2004 decision is affirmed.

Issued: August 5, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board