

condition to him on October 16, 2003 the “day chief of service issued letter.” Appellant was off work on October 16, November 4 and 7 and December 3, 2003. It is not clear from the record when appellant returned to work or if she had additional absences related to the claimed emotional condition.

Appellant submitted employing establishment timekeeping records showing that on October 16, 2003 she was granted three-and-a-half hours of administrative leave in lieu of sick leave, pursuant to being issued a “disciplinary letter per director of pharmacy chief.” She also took 32 hours of sick leave on November 4, 2003 for “stress due to retaliation” and 5 hours sick leave on December 3, 2003 due to “stress.”

In an April 15, 2004 letter, the Office advised appellant of the type of additional medical and factual evidence needed to establish her claim. The Office requested that appellant submit a detailed description of the work factors alleged to have caused the claimed condition. Also, the Office explained the necessity of providing a comprehensive medical report from her physician explaining how and why the identified work factors would cause or contributed to the claimed emotional condition.

In a November 4, 2003 report, a physician whose signature is illegible noted appellant’s account of a two-year history of “problems” with an unnamed pharmacy director, including unreasonable, retaliatory reprimands on unspecified dates. The physician diagnosed an adjustment disorder with mixed features and prescribed anti-anxiety medication.¹

Appellant submitted personnel forms showing a November 2, 2003 periodic step increase but that she was not eligible for locality pay as her special salary rate exceeded the locality pay rate.²

By decision dated August 4, 2004, the Office denied appellant’s claim on the grounds that she submitted insufficient factual and medical evidence to establish the causal relationship asserted. The Office found that appellant’s factual allegations were too vague to establish any incidents of harassment or discrimination by management. The Office further found that the medical evidence submitted was insufficient to establish that work factors caused or contributed to any medical condition.

In a January 3, 2005 form, appellant requested reconsideration. She submitted additional evidence.

In a September 16, 2004 report, Dr. Teresita R. Cottrell, an attending licensed clinical psychologist, noted treating appellant for anxiety “allegedly resulting from ongoing traumatic

¹ Appellant also submitted a social history questionnaire, November 1 and 3, 2003 mental health intake forms signed by Mark Seiberling, a social worker, unsigned December 2003 and January 2004 chart notes and unsigned medication forms. As these notes and forms do not appear to have been reviewed or signed by a physician, they cannot constitute medical evidence in this case. *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

² Appellant also submitted a copy of her October 14, 1986 preemployment physical, job application and position description.

events” at work. Dr. Cottrell related appellant’s account of being a “target” for a supervisor as she functioned as a “spokesperson” for her colleagues. She noted appellant’s allegations regarding written and verbal reprimands, being passed over for promotions and pay raises and being denied union representation in a meeting with Brian Kawahara during the winter of 2001. Dr. Cottrell diagnosed post-traumatic stress disorder, generalized anxiety disorder and depressive order not otherwise specified.

Appellant also submitted a questionnaire relating to a 2004 Equal Employment Opportunity (EEO) complaint for discrimination on the basis of her religious identification as a Muslim and observing the Friday Sabbath. She also alleged discrimination by employing establishment officials Mr. Tekade, Mr. Kawahara, Sam Maiz and Jean Wiley, in reprisal for her prior EEO complaints regarding a pay adjustment, denial of sick leave, denial of union representation and denial of Friday leave in December 2002. Appellant also asserted that a July 31, 2003 reprimand issued by Mr. Tekade was in retaliation for EEO activity as two other pharmacists were not reprimanded for similar errors. She also asserted that she was a “spokesperson for other three pharmacists” as they performed GS-12 duties but were classified as GS 11.³ There are no final determinations of record regarding any of appellant’s EEO complaints.

By decision dated April 7, 2005, the Office denied modification on the grounds that the evidence submitted was insufficient to warrant such modification. The Office found that the additional evidence submitted failed to establish that appellant sustained an emotional condition in the performance of duty as alleged.

LEGAL PRECEDENT

The Federal Employees’ Compensation Act provides for payment of compensation for personal injuries sustained while in the performance of duty.⁴ Where disability results from an employee’s reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.⁵ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁶ 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.⁷

In cases involving emotional conditions, the Board has held that when working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed

³ Appellant also submitted a September 1, 2004 notice of rights regarding her 2004 EEO complaint.

⁴ 5 U.S.C. § 8102(a).

⁵ 5 U.S.C. §§ 8101-8193. *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁷ *Effie O. Morris*, 44 ECAB 470 (1993).

compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship.⁸ If a claimant implicates 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.⁹

ANALYSIS

In the present case, appellant alleged that she sustained a stress condition as a result of a number of employment incidents, which the Office found to be noncompensable. Therefore, the Board must review whether these alleged incidents and conditions are covered employment factors under the terms of the Act.

Appellant alleged that supervisory discrimination and retaliation on the basis of religion and prior EEO activity caused or contributed to her claimed stress condition. She alleged specifically that a July 31, 2003 reprimand by Mr. Tekade, a supervisor, was in retaliation for prior EEO activity. Appellant also asserted that November 4 and December 3, 2003 absences were due to stress from unspecified retaliation. Incidents of discrimination or retaliation by supervisors and coworkers, if established as occurring and arising from the employee's performance of his or her regular duties, could constitute employment factors.¹⁰ However, the issue is not whether the claimant has established discrimination under standards applied by the EEO Commission. Rather the issue is whether the claimant, under the Act, has submitted evidence sufficient to establish an injury arising in the performance of duty.¹¹ For discrimination to give rise to a compensable disability under the Act, there must be probative and reliable evidence that harassment or discrimination did in fact occur.¹² Mere perceptions of harassment, retaliation or discrimination are not compensable under the Act.¹³ Appellant did not submit evidence, such as witness statements, corroborating her allegations of retaliation and discrimination. Additionally, the results of appellant's EEO complaints regarding alleged discrimination and retaliation are not in the record. The absence of such documentation diminishes the validity of appellant's contentions in this case, where there is no evidence to document that she was discriminated or retaliated against. As she has not established these incidents as factual, she has not established a compensable employment factor under the Act with respect to the claimed discrimination and retaliation.

Appellant also attributed her condition, in part, to an October 16, 2003 disciplinary letter. However, the Board has characterized supervisory discussions of job performance and reprimands as administrative or personnel matters of the employing establishment, which are

⁸ See *Norma L. Blank*, 43 ECAB 384 (1992).

⁹ *Marlon Vera*, 54 ECAB ____ (Docket No. 03-907, issued September 29, 2003).

¹⁰ *Janice I. Moore*, 53 ECAB 777 (2002). See *David W. Shirey*, 42 ECAB 783 (1991).

¹¹ See *Martha L. Cook*, 47 ECAB 226 (1995).

¹² *Marlon Vera*, *supra* note 9.

¹³ *Kim Nguyen*, 53 ECAB 127 (2001).

covered only when a showing of error or abuse is made.¹⁴ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁵ To support such a claim, a claimant must establish a factual basis by providing probative and reliable evidence.¹⁶ In this case, appellant did not submit a copy of the October 16, 2003 disciplinary letter or any evidence corroborating her allegation that it was issued improperly. As she did not establish that the disciplinary letter constituted error or abuse, she has thus failed to establish a compensable factor of employment in this respect.

Appellant also attributed her condition, in part, to denial of unspecified pay increases including locality pay, denial of leave for Fridays in December 2002, related to her Sabbath observance and denial of unspecified promotions. The Board has held that the determination of pay rates.¹⁷ And handling of leave matters¹⁸ are administrative actions not considered compensable employment factors in the absence of error or abuse.¹⁹ In this case, appellant has not submitted any evidence indicating that the employing establishment erred in denying a pay increase or corroborating that her December 2002 leave request was denied. Thus, she did not establish any error or abuse in the employing establishment's handling of her leave request or pay rate.²⁰ Therefore, she has not established a compensable factor of employment regarding either of these administrative matters.

Appellant also attributed her condition, in part, to being denied unspecified promotions. However, the Board has held that self-generated frustration arising from not being allowed to work in a particular position or to hold a particular job is not compensable under the Act.²¹ Thus, appellant has not established a compensable factor of employment in this regard.

Appellant also alleged that she was denied union representation in winter 2001 meeting. However, she did not submit evidence establishing the date of the meeting, its purpose or that she was denied the assistance of a union representative. The Board has held that mere allegations, in the absence of factual corroboration, are insufficient to meet a claimant's burden of proof.²² Thus, appellant has failed to establish this allegation as factual.

¹⁴ *Roger W. Robinson*, 54 ECAB ____ (Docket No. 03-348, issued September 30, 2003).

¹⁵ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁶ *See Barbara J. Nicholson*, 45 ECAB 843 (1994).

¹⁷ *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).

¹⁸ *Judy L. Kahn*, 53 ECAB 321 (2002).

¹⁹ *Lori A. Facey*, 55 ECAB ____ (Docket No. 03-2015, issued January 6, 2004).

²⁰ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably. *Brian H. Derrick*, 51 ECAB (2000).

²¹ *Lori A. Facey*, *supra* note 19; *see Katherine A. Berg*, 54 ECAB ____ (Docket No. 02-2096, issued December 23, 2002).

²² *Bonnie Goodman*, 50 ECAB 139 (1998).

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.²³

CONCLUSION

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty as alleged as she failed to substantiate any compensable factors of employment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 7, 2005 and August 4, 2004 are affirmed.

Issued: August 15, 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

²³ 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, 503-03 (1992).