



Appellant submitted a statement dated October 25, 2002 and alleged that, since filing an Equal Employment Opportunity (EEO) complaint in September 2001, against Bart Van Oostendorp, a supervisor, she experienced a continual pattern of harassment by her supervisors. On December 11, 2001 Irene Kent, her acting supervisor, spoke to her in a disrespectful manner and openly discussed her medical condition at the workplace. On October 25, 2002 Sakenia Williams, a supervisor, spoke to her in a hostile and disrespectful manner after appellant refused a reassignment noting that she had family medical leave paperwork limiting her work on heavy machines. Appellant further alleged that, on October 25, 2002, Anne Caldwell, manager of distribution operations, spoke to her in a high-pitched voice. Appellant alleged that on several occasions Mr. Van Oostendorp harassed her by continually entering her pay location and the employees swing room when she was present and making inappropriate statements regarding her bulging disc condition. Appellant was reassigned to several positions during her tenure with the employing establishment and not permitted to work on her preferred machines. On December 11, 2001 Ms. Kent suggested that appellant work in the managed mail program but appellant refused the transfer, noting that the position was for a mail handler and she was a clerk. Appellant generally alleged that she was forced to work beyond her tolerance and the employing establishment failed to provide her with light duty.

In support of her claim, appellant submitted a note from Dr. Ralph D'Agostino, a Board-certified internist and employing establishment physician dated October 25, 2002. He treated appellant for dizziness, blurred vision, headaches and diagnosed vertigo and stress. In an October 26, 2002 report, Dr. Joseph M. De Mayo, a Board-certified internist, treated appellant for stress and anxiety.

The employing establishment submitted a November 15, 2002 statement from Ms. Williams addressing appellant's allegations. She advised that on October 25, 2002 appellant was reassigned to the delivery bar code sorting machine and noted that mail processors could be reassigned to any machine within the pay location. Ms. Williams requested that appellant provide documentation of her light-duty illness and she would then be provided a position which would accommodate any restrictions. Appellant refused the reassignment, requested to be seen by the employing establishment physician and was escorted to his office. On November 14, 2002 Mr. Van Oostendorp opined that appellant was given preferential treatment because her father was a former supervisor at the employing establishment and indicated that her stress arose from an unstable family life. Mr. Van Oostendorp noted that he never sexually harassed and was never disciplined in any matter with regard to appellant. He stated that appellant was not continually reassigned, rather she was a clerk who bid for a particular tour and then requested transfers for promotion purposes. Mr. Van Oostendorp noted that appellant was returned from one detail because she could not perform the position. He noted that appellant was occasionally on light duty with restrictions and was accommodated with a position that conformed to her limitations. In a November 6, 2002 statement, Arlene Alford, a coworker, noted that appellant advised her supervisors that she had a back problem. In a November 6, 2002 statement, Kimberly Schenck, a coworker, noted that on October 25, 2002 Ms. Williams asked appellant to work at another machine and appellant responded that she had a back problem.

By letter dated November 19, 2002, the Office asked appellant to submit a detailed description of the employment factors or incidents which she believed had contributed to her

claimed illness, and a medical report explaining how specific work factors or incidents identified by appellant had contributed to her claimed emotional condition.

Appellant submitted several letters dated December 6, 2002 which detailed the occasions Mr. Van Oostendorp entered her pay location and the employees swing room between October 9, 2001 to October 22, 2002. She alleged that Mr. Van Oostendorp, Ms. Williams, Ms. Kent, Ms. Caldwell and William Camouso, caused her stress, anxiety and depression. Appellant submitted a statement from Y. Gil who noted that, on December 11, 2001, he witnessed Ms. Kent approach appellant and discuss her personal business. An EEO dispute resolution report dated April 1, 2002 and a final counseling interview dated March 19, 2002 summarized appellant's pending EEO complaint for sexual harassment against Mr. Oostendorp.

Appellant submitted various attending physician's reports prepared by Dr. De Mayo dated December 3, 2002 to January 20, 2003. He treated appellant for depression, anxiety and stress and noted with a checkmark "yes" that appellant's condition was caused or aggravated by her employment. In a January 31, 2003 report, Dr. Ora Limor, a psychologist, noted that appellant had been treated since 2001 for stress and anxiety which was caused by the harassment from Ms. Caldwell and Mr. Van Oostendorp.

In a November 21, 2002 letter, Ms. Caldwell noted that when appellant was an acting supervisor, coworkers complained about her behavior and she was counseled in this regard. In September 2001, appellant requested that the employing establishment accommodate her light-duty status and place her in a position where she could sit down and case mail. Ms. Caldwell noted that appellant's physician had indicated that she was fit to work her current position without restrictions. Ms. Caldwell stated that she always addressed appellant in a professional manner and assisted appellant in her quest to be a supervisor and a window clerk; however, appellant repeatedly failed the examinations. Ms. Caldwell accommodated appellant's request for leave and light-duty positions on numerous occasions. She further indicated that appellant's position required that she be rotated to a number of machines. On December 30, 2002 Ms. Caldwell noted that Mr. Oostendorp was absent from work on several days that appellant alleged he had harassed her. Mr. Van Oostendorp was not transferred to another location due to appellant's allegations, but was relocated as supervisors were not guaranteed specific work sections. Ms. Caldwell advised that Mr. Oostendorp was never ordered to stay away from appellant but avoided her due to the allegations made against him.

In a January 14, 2003 statement, Mr. Camouso, a supervisor, noted meeting appellant on only one occasion and indicated that he did not treat her different from any other employee. Ms. Kent submitted a January 15, 2003 statement noting that she never discussed appellant's private medical condition in the workplace. In December 2001, she recommended that appellant perform another position because she was not feeling well; however, appellant refused the transfer.

In a February 7, 2003 decision, the Office denied the claim finding that the evidence did not establish that the claimed emotional condition arose while in the performance of duty.

In a letter dated November 5, 2003, appellant requested reconsideration and submitted a duplicate copy of the March 19, 2002 counseling interview. Also submitted was an evaluation dated June 26, 1999 prepared by Mr. Oostendorp which noted that appellant was an excellent employee and a good candidate for a supervisor. An April 15, 2001 witness statement from Manisha Patel, a coworker, noted that she experienced harassment and threats from Mr. Oostendorp. An attending physician's reports from Dr. De Mayo diagnosed work-related depression and anxiety.

In a January 22, 2004 decision, the Office denied modification of the February 7, 2003 decision.

By letter dated January 29, 2004, appellant requested reconsideration and submitted an EEO complaint settlement agreement dated March 14, 2003. It provided that appellant would return to work under another supervisor, that the employing establishment would make an effort to ensure that Mr. Oostendorp was not appellant's supervisor, that appellant could bid for other positions and that Ms. Caldwell would assist appellant in her quest to obtain training for a window clerk position.

In an April 20, 2004 decision, the Office denied modification of the January 22, 2004 decision.

### **LEGAL PRECEDENT**

To establish her claim that she 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.<sup>1</sup> Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.

In the case of *Lillian Cutler*,<sup>2</sup> the Board noted that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.<sup>3</sup> 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 under the Act.<sup>4</sup> When an employee experiences emotional stress in carrying out her employment duties, and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of an in the course of employment. This is true when the employee's disability

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<sup>1</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>2</sup> 28 ECAB 125 (1976).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *See Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

results from her emotional reaction to regular duties or a special assignment or other requirement imposed by the employing establishment or by the nature of his work.<sup>5</sup> 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 under the Act. 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>6</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>7</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>8</sup>

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>9</sup> However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.<sup>10</sup> General allegations of harassment are not sufficient.<sup>11</sup> The Board has recognized the compensability of physical threats or verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.<sup>12</sup>

### ANALYSIS

Appellant alleges that she was harassed and discriminated against by her supervisors. She alleged that, after she filed an EEO complaint in September 2001, she experienced continual harassment from her supervisors. She specifically indicated that on December 11, 2001 Ms. Kent spoke to her in a disrespectful manner and openly discussed her medical condition at

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<sup>5</sup> *Lillian Cutler*, *supra* note 2.

<sup>6</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, *supra* note 2.

<sup>7</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>8</sup> *Id.*

<sup>9</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>10</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>11</sup> See *Paul Trotman-Hall*, 45 ECAB 229 (1993).

<sup>12</sup> See *Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991).

the workplace. However, Ms. Kent denied in a statement dated January 15, 2003 that she ever discussed appellant's private medical condition in the workplace, and noted that appellant brought up her medical condition. Appellant also alleged that, on October 25, 2002, Ms. Williams spoke to her in a hostile and disrespectful manner after she refused reassignment. On October 25, 2002 Ms. Williams noted that mail processors could be reassigned and that she had requested that appellant provide documentation of her light-duty status in order to accommodate any restrictions. While appellant alleged that, on October 25, 2002, Ms. Caldwell spoke to her in a high-pitched voice, Ms. Caldwell refuted appellant's allegation noting that she addressed appellant in a professional manner, assisted her while she was her manager, accommodated her request for light duty, and provided a liberal leave policy because of personal and family issues. She also supported appellant in her quest to be a supervisor and a window clerk by preparing applications on her behalf.

Appellant alleged that Mr. Van Oostendorp harassed her by entering into her pay location and the swing room and made inappropriate statements about her medical condition. However, Mr. Van Oostendorp denied any harassment of appellant. On December 30, 2002 Ms. Caldwell noted that Mr. Oostendorp was absent from work on several occasions in which appellant had alleged that he harassed her. Ms. Caldwell further noted that Mr. Oostendorp was not transferred to another location due to appellant's allegation but was relocated as supervisors were not guaranteed work sections.

General allegations of harassment are not sufficient<sup>13</sup> and in this case appellant has not submitted sufficient evidence to establish that she was harassed by her supervisor.<sup>14</sup> Although appellant alleged that her supervisors 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>15</sup> Additionally, the employing establishment refuted her allegations and explained the reasons for its actions. Appellant's vague allegations that her manager and supervisors verbally abused her and discriminated against her are insufficient to establish appellant's claim that she was harassed. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

Appellant also indicated that she filed an EEO claim for harassment and discrimination, however, the Board further notes that grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.<sup>16</sup> Appellant submitted a counseling interview dated March 19, 2002 which summarized her pending EEO complaint for sexual harassment against Mr. Oostendorp and a settlement agreement dated March 14, 2003. However, none of the information submitted establishes sexual harassment of appellant by

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<sup>13</sup> See *Paul Trotman-Hall*, *supra* note 11.

<sup>14</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>15</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>16</sup> *James E. Norris*, 52 ECAB 93 (2000).

Mr. Van Oostendorp. Thus, the evidence regarding the EEO matter does not establish a compensable employment factor under the Act.

Appellant's allegations regarding her work assignments condition fall into the category of administrative or personnel actions.<sup>17</sup> In *Thomas D. McEuen*,<sup>18</sup> the Board held that an employee's emotional reaction to administrative actions or personnel matters 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. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition would be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>19</sup>

Appellant alleged that she was reassigned to several positions during her tenure and not permitted to work on her preferred machines. She noted that on December 11, 2001 Ms. Kent, her acting supervisor, suggested that she work in the managed mail program and appellant refused the transfer. Appellant informed Ms. Kent that the job was for a mail handler and that she preferred to work on a machine where the work was lighter. Appellant further alleged that on July 19, 2002 she was scheduled to work on the bar code sorter machine but was transferred three times by Ms. Williams. However, Ms. Williams advised that mail processors could be reassigned to any machine within the pay location. Ms. Caldwell noted on January 22, 2003 that appellant's position required that she be rotated to a number of machines. Mr. Van Oostendorp noted that appellant was not continually reassigned, rather she bid for particular tours and requested details to other positions in hopes of a promotion. The Board finds that appellant has not submitted sufficient evidence to establish error or abuse regarding her work assignments. The evidence does not establish that the employing establishment acted unreasonably. The Board has also 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.<sup>20</sup> The employing establishment has either denied appellant's allegations or explained the reasons for its actions in these administrative matters. Appellant has presented no corroborating evidence to support that the employing establishment acted unreasonably. She has not established a compensable factor of employment in this regard.

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<sup>17</sup> Although the assignment of work duties is generally related to the employment, it is an administrative function of the employer and not a duty of the employee. *Lori A. Facey*, 55 ECAB \_\_\_\_ (Docket No. 03-2015, issued January 6, 2004).

<sup>18</sup> See *Thomas D. McEuen*, *supra* note 6.

<sup>19</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>20</sup> *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

Appellant also made a general allegation that she was forced to work beyond her work limitations and that the employing establishment failed to provide her with light duty. The Board notes that the assignment of duties beyond an employee's work tolerance limitations can be a compensable factor of employment.<sup>21</sup> However, appellant has not provided any specific evidence establishing that the employing establishment assigned her to duties beyond her limitations. Instead, the evidence indicates that the employing establishment sought to accommodate appellant's restrictions. The record establishes that the employer provided appellant with light duty when presented with medical documentation from her physician. Therefore, the Board finds that there is insufficient evidence to establish that appellant worked beyond her restrictions.

### **CONCLUSION**

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.<sup>22</sup>

### **ORDER**

**IT IS HEREBY ORDERED THAT** the April 20 and January 22, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 9, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>21</sup> See *Kim Nguyen*, 53 ECAB \_\_\_\_ (Docket No. 01-505, issued October 1, 2001).

<sup>22</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).