

return. On the back of the form, a supervisor indicated that neither appellant nor her physician cited any work factors as the cause of her condition.

In a form report dated September 11, 2002, an emergency room physician noted examining appellant that date and diagnosed stress due to anxiety. He checked “yes” as to whether the condition was caused or aggravated by her employment.¹

By letter dated November 18, 2002, the Office requested that appellant submit additional evidence in support of her claim, including a description of the employment factors to which she attributed her emotional condition.

Appellant replied in an undated letter received by the Office on December 2, 2002. She alleged that she had been sexually harassed by a coworker in February 2002. She also alleged that a formal complaint had been filed at that time and she was subjected to “severe retaliation,” and a male coworker threatened to shoot her. She alleged verbal harassment and humiliation by friends of the coworker. She attributed the harassment and humiliation to her race, Caucasian, and identified her harassers as African-American. After appellant transferred to a new facility, she stated all was going well until “two supervisors and one shop steward (all males)” called her into an office and made false accusations against her, asked personal questions and “used profanity and vulgar words describing some supposed incidents.” Appellant alleged that she was falsely accused of sexually harassing a male coworker and given a seven-day suspension. She became fearful for her safety and job and began “getting dizzy spells at work,” elevated blood pressure and had stomach problems, requiring medical treatment.

In a report dated May 22, 2003, Dr. Thomas G. Tudor, Ph.D., a clinical psychologist, stated that appellant reported a history of severe psychological stress, specifically anxiety and depression, due to the experiences of being sexually harassed and verbally abused by a coworker in February 2002, who later threatened her life. Dr. Tudor concluded that appellant had not recovered from these experiences. He attributed her gastrointestinal problems to these incidents and recommended that she be moved to a new work location where no one knew her or about the described incidents.

In an April 21, 2003 report, Dr. Andrew M. Alloy, a treating osteopathic Board-certified gastroenterologist, diagnosed irritable bowel syndrome and stated it was possible that this condition could be “exacerbated by a stressful condition at work.”

By decision dated May 27, 2003, the Office denied appellant’s claim. The Office found that appellant failed to establish a compensable factor of employment. The Office found appellant’s allegations regarding the meeting with two supervisors and a shop steward during which personal questions were asked, profanity and vulgarity was used, she was accused of sexually harassing a coworker and given a seven-day suspension was unclear and vague as there were no specific details. The Office found appellant’s allegations regarding the incidents in February 2002 were not compensable as she failed to submit any evidence verifying these allegations. Her allegation of sexual harassment by a coworker who also threatened to shoot her

¹ The signature is illegible.

and verbal harassment by friends of this coworker were vague and nonspecific as to what occurred, who was involved, where it took place or when it took place.

In a June 10, 2003 statement, Angelo M. Brophy noted that he had worked with appellant. He related as follows:

“[O]n March of 2002 she went through some problems there with a guy name[d] Steve Johnson, he made some sexual advances at her and in two instances told me he was going to bring a gun in and shoot some one, one of the people he said he was going to shoot to miss was [appellant]. She was a very scared lady and when she had the opportunity to get out of there she did. I also have fears of this guy coming back so I can see how she feels.”

In a June 12, 2003 statement, appellant indicated that Mr. Johnson began sexually harassing her on a regular basis in February 2002. She noted that Mr. Johnson asked what she did sexually with her boyfriend commented on her needing “some chocolate meat” in her life. Appellant alleged that on one occasion Mr. Johnson stood behind her licked his lips at her buttocks and made facial and hand motions at her back end which was witnessed by Joseph Tortoreto, a coworker. She noted the next day that someone told her Mr. Johnson threatened to shoot her with a gun. Appellant alleged that she was subjected to constant harassment for the next two months. She alleged that she has “been called names by supervisors, employees pick fights with me and I have been made fun of because of my weight by my supervisors.”

On June 13, 2003 Dr. Tudor noted that he had treated appellant since June 11, 2003 and that she could return to work on June 19, 2003. In a report dated June 14, 2003, he attributed appellant’s stress and other health problems to verbal abuse and sexual harassment by a coworker in February 2002. On June 20, 2003 the psychologist indicated that appellant was totally disabled since June 1, 2003 “due to a recurrence and worsening of her psychological symptoms” which he attributed to her traumatic experiences in her work environment during February 2002. He indicated that appellant would return to work on June 21, 2003.

Appellant requested a hearing, which was held on March 3, 2004. At the hearing, she submitted an undated statement from Mr. Tortoreto who noted that appellant “was sexually harassed by another employee” and that he had witnessed the harassment. He stated that appellant “told of the times that I was not witnessed to by [appellant].” Mr. Tortoreto stated that the man harassing appellant was friends with her supervisor and that she was afraid for her job. He stated that appellant’s harasser “threatened to shoot her with a gun, and we were all pretty scared he would come back and harm someone.” She also submitted an undated letter to Mr. Fleury from appellant; a June 10, 2002 notice of 7-day suspension; a letter dated May 31, 2002 titled “Day in Court for”: appellant which noted the names of Bob Johanson, supervisor, and Bob Bastion, steward, listed interview questions and responses; return to work slips dated June 22 and July 28, 2002 by Dr. Joseph Berger, a treating osteopathic physician; and an April 27, 2002 letter to Mr. Cappie from appellant requesting that she provide a recommendation for her to move to another facility.

In a decision dated June 17, 2004, the Office hearing representative affirmed the May 27, 2003 decision finding that appellant failed to establish her allegations of harassment and sexual discrimination.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of her federal employment.² 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.³

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*⁴ the Board explained 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.⁵ There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under the Act. 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 and in the course of employment. This is true when the employee's disability results from her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of her work.⁶

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.⁷ This includes matters involving the training or discipline of employees.⁸ However, the Board has held that where the

² *Edward C. Heinz*, 51 ECAB 652 (2000); *Martha L. Street*, 48 ECAB 641, 644 (1997).

³ *Phillip L. Barnes*, 55 ECAB ____ (Docket No. 02-1441, issued March 31, 2004); *Judy L. Kahn*, 53 ECAB 321 (2002); *Ray E. Shotwell, Jr.*, 51 ECAB 656 (2000); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ 28 ECAB 125 (1976).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ See *Anthony A. Zircon*, 44 ECAB 751 (1993).

⁷ See *Charles D. Edwards*, 55 ECAB ____ (Docket No. 02-1956, issued January 15, 2004); *Gregory N. Waite*, 46 ECAB 662 (1995); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

⁸ *Charles D. Edwards*, *supra* note 7.

evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.⁹ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.¹⁰

For harassment or discrimination to give rise to a compensable disability, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹¹ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.¹²

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 actors of employment and may not be considered.¹³ 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.¹⁴

ANALYSIS

Appellant attributed emotional condition, in part, to receiving a suspension for seven days due to a false accusation of sexually harassing a male coworker. However, matters involving discipline are considered administrative in nature and are not compensable factors of employment.¹⁵ An administrative or personnel matter will be considered an employment factor only where the evidence discloses error or abuse on the part of the employing establishment.¹⁶ In this case, appellant has not provided sufficient evidence to establish that the employing establishment erred in imposing disciplinary action. She submitted the proposed suspension

⁹ See *William H. Fortner*, 49 ECAB 324 (1998).

¹⁰ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹¹ 5 U.S.C. §§ 8101-8193.

¹² *James E. Norris*, 52 ECAB 93 (2000).

¹³ See *Phillip L. Barnes*, 55 ECAB ____ (Docket No. 02-1441, issued March 31, 2004); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁴ *Lori A. Facey*, 55 ECAB ____ (Docket No. 03-2015, issued January 6, 2004).

¹⁵ *Cyndia R. Harrill*, 55 ECAB ____ (Docket No. 04-399, issued May 7, 2004); *Roger Williams*, 52 ECAB 468 (2001).

¹⁶ *Dennis J. Balogh*, 52 ECAB 232 (2001).

letter and letter dated May 31, 2002 titled "Day in Court" which noted the names of Mr. Johanson and Mr. Bastion listing interview questions and responses. The May 31, 2002 letter is not signed nor is it on employing establishment stationary and thus cannot be properly identified. Appellant has not submitted any sufficient evidence to support that the employing establishment either erred or acted abusively with regard to the above-noted disciplinary actions. She has not established that either incident represents a compensable factor of employment under the Act.

In this case, appellant has not provided a description of the harassing and discriminatory events with necessary specificity to establish harassment or discrimination by Mr. Johnson, a coworker, to substantiate her allegation that she was called names or made fun of by my supervisors. In a June 12, 2003 statement, she alleged that Mr. Johnson started sexually harassing her in February 2002. She stated that he inquired about her sex life with her boyfriend, commented that she needed "some chocolate meat" in her life and licked his lips at her buttocks. Appellant noted this was seen by Mr. Tortoreto. He stated that he witnessed appellant being sexually harassed by another employee who was friends with her supervisor and that appellant had related instances of sexual harassment that he had not witnessed. However, Mr. Tortoreto did not identify Mr. Johnson as the perpetrator or identify with specificity the actions alleged to constitute sexual harassment. Mr. Brophy noted that appellant had problems with a Mr. Johnson in March 2002 when he made sexual advances to appellant. He also noted that Mr. Johnson twice related that "he was going to bring a gun in and shoot someone" and that appellant was one of the people. Mr. Brophy also failed to provide any specific dates or describe specific instances of discriminatory statements or sexually explicit actions on the part of Mr. Johnson, other coworkers. While she believed she was subjected to racial harassment the witness statements do not describe any actions to support this contention. The lack of specificity regarding the alleged discriminatory actions and remarks undermines appellant's allegations.¹⁷ Appellant submitted insufficient evidence of harassment based on sex or discrimination found on race. She therefore failed to substantiate that harassment and discrimination occurred as alleged and failed to establish a factual basis for her allegation.

Appellant also asserted that she was verbally and physically threatened by her supervisors and a coworker. She alleged that Mr. Johnson threatened to shoot her in February 2002. With regard to her supervisors, she alleged that in February 2002 she was called names and made fun of because of her weight. After transfer to a new location she was subjected to profanity and vulgar words by a supervisor and a union steward. Verbal altercations, when sufficiently detailed by appellant and supported by the evidence of record, may constitute a compensable factor of employment.¹⁸ However, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.¹⁹ Mr. Brophy stated Mr. Johnson told him he was going to shoot some people, including appellant. However, Mr. Brophy did not provide any evidence when Mr. Johnson made this comment or that it was made directly to appellant or that she was present when he made this remark. In making his allegation, Mr. Brophy does not

¹⁷ *Jesse J. Starcher*, 51 ECAB 314, 317-18 (2000).

¹⁸ *Janet D. Yates*, 49 ECAB 240 (1997).

¹⁹ *Christophe Joliocoeur*, 49 ECAB 553 (1998).

provide enough specifics as to when Mr. Johnson allegedly made threats to shoot appellant or other people. The Board finds that there is insufficient evidence in the record to establish that appellant was present at the time Mr. Johnson allegedly threatened to shoot anyone or that he made the comment attributed to him. With regard to her allegations of being subject to profanity and vulgar words by a supervisor and a steward, the Board finds that the evidence is seriously vague as to when and where the comments were made and the specific remarks made. It is not established as verbal abuse as the context and words allegedly used have not been specified.²⁰

CONCLUSION

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.²¹

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 17, 2004 is affirmed.

Issued: February 22, 2005
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

²⁰ See, e.g., *Alfred Arts*, 45 ECAB 530, 543-44 (1994) and cases cited therein (finding that the employee's reaction to coworkers' comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction). Compare *Abe E. Scott*, 45 ECAB 164, 173 (1993) and cases cited therein (finding that a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

²¹ As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record. See *Lori A. Facey*, *supra* note 15; *Roger Williams*, 52 ECAB 468 (2001); *Margaret S. Krzycki*, 43 ECAB 496 (1992).