



her. Appellant left the premises after her meeting with Mr. Park and did not return. On the claim form Mr. Park stated that appellant reported to work and was emotionally traumatized upon hearing from her husband that he had been informed that coworkers had viewed nude pictures of her.

Dr. Joseph A. Zammuto, D.O, a general practitioner, examined appellant on May 17, 2002 and diagnosed severe depression and anxiety secondary to workplace issues. On June 4, 2002 Dr. William J. Feister, Ph.D., a clinical psychologist, diagnosed acute adjustment disorder with anxiety.

In a June 17, 2002 statement, appellant explained that, as she was driving to work on May 9, 2002 her husband called and said he heard there was something going on at work regarding some alleged photographs of her. When she arrived at work Mr. Park met her at the door and escorted her to his office where they remained for approximately 90 minutes. According to appellant, Mr. Park told her that an employee presented alleged nude photographs of her to a supervisor. She asked Mr. Park for the photographs and he explained that he and Tommy E. Barclay, the facility manager, tried to look at them, but they could not view the photographs. Appellant said she asked for the materials and Mr. Park refused. Also, he reportedly would not tell her who or how many people were involved. Mr. Park did, however, advise appellant that there would be an investigation. He also told her that he did not want her at work for now.

In a decision dated July 3, 2002, the Office denied the claim, finding that the May 9, 2002 incident did not arise out of the performance of appellant's duties. The Office explained that appellant's reaction to being told about the existence of the photographs was self-generated. The Office also found that the decision to place her off duty was an administrative matter and the record did not establish error or abuse on the part of the employing establishment.

Appellant requested an oral hearing, which was held on March 6, 2003. She submitted additional medical evidence regarding her ongoing psychiatric condition. Appellant testified that she had since learned that Jim Silk, her coworker, was the person responsible for providing management with a computer disk that allegedly contained nude photographs of her. She further testified that the employing establishment investigated the May 9, 2002 incident and prepared a report, but she had not received a copy of the investigative report.

Mr. Barclay reviewed the hearing transcript and, in a April 30, 2003 response, stated that when appellant arrived at work on May 9, 2002 management informed her that it was investigating an incident of an employee who allegedly had a computer disk with pictures of her obtained from the Internet. Mr. Barclay stated that management advised appellant that the disk had been confiscated from the employee and was later determined to be blank. She was also informed that a management official might not have handled the incident properly. Regarding the disclosure of the investigative findings, Mr. Barclay stated that agency policy did not permit sharing employee misconduct information with other employees and, because appellant was not a respondent to the investigation, she was not entitled to the information contained in the report.

On May 16, 2003 the hearing representative attempted to obtain a copy of the investigative report, however, the document was not released to the Office.

By decision dated May 21, 2003, the Office hearing representative affirmed the July 3, 2002 decision.

Appellant requested reconsideration on February 26, 2004. The Office received affidavits from Mr. Silk, Mr. Barclay and A. Taylor Pruitt, an employing establishment supervisor. Appellant submitted the June 6, 2002 investigative report concerning the May 9, 2002 incident and other documentation regarding disciplinary action taken against Mr. Pruitt. The documents provided additional details about what transpired at the worksite prior to appellant's arrival on May 9, 2002.

The affidavits reveal that on May 8, 2002 Mr. Silk learned from another coworker that pictures of appellant had been posted on the Internet. After his shift ended, Mr. Silk went home and accessed the website. The following morning, May 9, 2002, he brought his laptop computer to work and told Mr. Pruitt about the pictures of appellant he had viewed the night before. Mr. Silk reportedly told Mr. Pruitt that there were nude photographs of her in differing poses, but the photographs were not hard-core pornography. Mr. Pruitt indicated that his conversation with Mr. Silk occurred around 8:30 a.m. and he told Mr. Silk that this was not a proper topic for discussion in the workplace. Mr. Pruitt subsequently spoke with other supervisors and managers in an effort to squelch any further discussions. While on a break, Mr. Silk transferred the photographs from his personal computer to a disk. He then gave the disk to Mr. Pruitt and told him of its content. Mr. Pruitt placed the time of the exchange at approximately 12:30 p.m. He noted that when Mr. Silk approached him and handed him the disk he was unaware that it contained nude photographs of appellant. Mr. Pruitt went to his office and examined the contents of the disk and was "shocked and astounded" to see appellant posing in the nude. The disk reportedly contained approximately seven pictures. Mr. Pruitt returned the disk to Mr. Silk about a half hour after he received it. According to Mr. Silk, Mr. Pruitt told him to "get rid of it." Mr. Silk destroyed the disk a short while later and threw it in the trash.

Mr. Pruitt left the facility without reporting the incident to his immediate supervisor. On the ride home he thought better and attempted to contact Mr. Park, but was unable to reach him at the time. Mr. Pruitt then telephoned Mr. Barclay and reported the incident. He returned to the office with the intent to retrieve the disk, but Mr. Barclay instructed him not to contact Mr. Silk upon his return. Mr. Pruitt was absent from the office for less than an hour. He subsequently received a seven-day suspension for his delay in reporting the May 9, 2002 incident.

When Mr. Silk was later asked to relinquish the disk, he knowingly gave Mr. Park a substitute disk which he believed to be blank. With the aid of a computer software utility, the employing establishment was able to restore previously deleted pornographic images from Mr. Silk's disk. However, these photographs were not of appellant.

In a decision dated May 28, 2004, the Office denied modification of the May 21, 2003 decision.

## 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 argued that her injury was due to the circulation at work of a disk, which she was told contained nude photographic images of herself. She characterized the May 9, 2002 incident as sexual harassment. Appellant also argued that her injury was the result of Mr. Pruitt's inappropriate handling of the matter. She was disturbed by Mr. Pruitt having viewed the content of the disk and took exception with his decision to return the disk to Mr. Silk. At the March 6, 2003 hearing appellant testified that when she met with management on May 9, 2002, she was agitated and wanted to view the disk in order to verify whether they were photographs of her or some other blonde.

For harassment to give rise to a compensable disability there must be evidence that harassment did, in fact, occur.<sup>4</sup> Claimant's mere perception of harassment is not compensable.<sup>5</sup> The allegations of harassment must be substantiated by reliable and probative evidence.<sup>6</sup> The May 9, 2002 incident does not constitute harassment; sexual or otherwise. Appellant was not on

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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> *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

<sup>5</sup> *Id.*

<sup>6</sup> *Joel Parker Sr.*, 43 ECAB 220, 225 (1991).

duty when Mr. Silk spoke with Mr. Pruitt and later provided him with the computer disk. There is no evidence that any nude photographs of appellant were publicly displayed or disseminated throughout the workplace. The record reveals only that Mr. Silk provided Mr. Pruitt a computer disk, which he in turn viewed in the privacy of his office.

Appellant could not have been harassed by her coworkers because she was not at work on the morning of May 9, 2002. What transpired after her arrival did not constitute harassment. Appellant did not have any direct contact with Mr. Silk or any other coworkers except for the managers involved in the initial stage of the investigation. The employing establishment exercised its administrative authority to investigate the incident and prevent it from escalating. The fact that an investigation involving materials of a sexual nature occurred does not constitute harassment; sexual or otherwise.

Appellant also attributed her emotional condition to what she perceived as the flawed investigation of the May 9, 2002 incident. An investigation is generally related to the performance of an administrative function of the employer and not to the employee's regular or specially assigned work duties.<sup>7</sup> As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Federal Employees' Compensation Act.<sup>8</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>9</sup>

Appellant claims that Mr. Pruitt violated Federal regulations by viewing the contents of the disk on his office computer. She also alleged error in Mr. Pruitt's failure to preserve the evidence. According to appellant, Mr. Pruitt's decision to return the disk to Mr. Silk denied her the opportunity to verify personally whether she was in the photographs. She has failed to establish error or abuse on the part of the employing establishment in conducting its investigation of the May 9, 2002 incident. The employing establishment investigated Mr. Pruitt's actions on May 9, 2002 and he received a seven-day suspension. However, the suspension had nothing to do with either the use of his office computer to view the photographs or his decision to return Mr. Silk's personal property to him. The fact that appellant was unable to personally view the disk's contents does not establish error or abuse on the part of the employing establishment. She has not presented any evidence that Mr. Pruitt abused or exceeded his authority when he utilized his computer to further the investigation of the May 9, 2002 incident.

Mr. Pruitt received a seven-day suspension because he delayed in reporting the May 9, 2002 incident to his superiors. However, appellant did not specifically allege that Mr. Pruitt's delay in reporting the incident to Mr. Barclay caused or contributed to her claimed emotional condition. Furthermore, the employing establishment's decision to reprimand Mr. Pruitt for his delay in reporting the incident does not represent the type of error or abuse that would warrant including the entire investigation as a compensable factor.

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<sup>7</sup> *Ernest St. Pierre*, 51 ECAB 623, 624 (2000).

<sup>8</sup> *Ruthie M. Evans*, *supra* note 3.

<sup>9</sup> *Id.*

As appellant failed to establish a compensable factor of employment as the cause of her claimed emotional condition, the Office was not obligated to consider the medical evidence of record.<sup>10</sup>

**CONCLUSION**

The Board finds that appellant failed to establish that she sustained an emotional condition in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 28, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 7, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>10</sup> *Garry M. Carlo, supra* note 1.