

hypertension and severe back pain due to years of stress, a hostile work environment and other medical problems.

Appellant alleged that she was harassed and discriminated against during her employment but she did not provide any details of specific instances to support her allegation.

On March 4, 2003 appellant alleged that, when she started working at the employing establishment from 1978 to 1980, “it became clear” that her supervisor, Paul Gerrish was not going to “advance her” in her position. She alleged that he had no cause to criticize her work, so on annual evaluations he falsely made allegations that she had a problem with management, since he could not mark her down on her performance. Appellant then transferred positions and was promoted, but found that her new supervisor Stu Croll did not actively promote, recognize or support her as she thought he should.

Appellant alleged that in 1991 a new superintendent was appointed and Mr. Fink, her immediate supervisor, made conditions “pure hell” working under him. He rated her as fully successful. Appellant alleged that, when two coworkers wrote to her supervisor making false, “slanderous” statements against her, he canceled her scheduled training opportunity.

In 1994 appellant also complained that several coworkers were presenting false allegations against her to the superintendent.

Appellant claimed that in 1996 she was not promoted as she had expected, which devastated her. She also claimed that she had to perform three jobs and get paid one low salary, which she alleged was discrimination. Appellant claimed that the workload was overwhelming. She described the computer problems and the three to four years of filing backlog that she corrected, but she was upset that her employer did not recognize her tremendous effort. Appellant claimed that she felt discriminated against with no advancement in salary.

Appellant claimed that she had been labeled as a “trouble maker” by management. She alleged that stress, emotional distress, advancement denial and injury to her reputation caused her condition which occurred on October 18, 2001. Appellant claimed that her stress began approximately in the 1979 to 1980 period and slowly developed to become severe. She implicated lack of recognition, lack of promotion in a timely fashion, lack of awards, lack of support or adequate training, and the toxic and hostile work environment which existed for a long time. Appellant also implicated unsupportive supervisors who did not advance her, and a hostile work environment where coworkers used libel, slander and malice against her to further their own positions.

However, appellant did not provide specific factual details of, or witnesses for, any of these alleged incidents. Although requested by the employing establishment, appellant failed to provide a list of tasks that she felt were overwhelming and were filling up her time. On March 25, 2003 the Office requested more detail about how appellant was harassed and discrimination, but she did not provide any details concerning her allegations.

By decision dated May 20, 2003, the Office reviewed appellant's alleged factors in the causation of her emotional conditions. The Office found that she had not identified compensable factors and/or had not proved that any of the compensable factors occurred as alleged with supportive corroborating evidence. Therefore, the Office found that appellant had not implicated a compensable factor of employment in the causation of any of her emotional conditions.

On June 19, 2003 appellant requested an oral hearing on the denial of her claim. She argued that her medical evidence was not properly considered.

An oral hearing was held on November 18, 2003, at which appellant testified. In a supplemental statement, appellant's supervisor stated that her job was not of a stressful nature and that she could work at her own pace. She further noted that appellant did not make her aware that she was having any health problems.

By decision dated March 18, 2004, the hearing representative affirmed the prior May 20, 2003 decision finding that none of the evidence submitted to the record or testified to at the hearing established that appellant sustained an emotional condition in the performance of duty causally related to compensable factors of her employment. These factors included disputes over leave, supervision, performance appraisals, management, promotion, work environment and false accusations. The hearing representative found that some of the factors were not compensable factors of employment, and some were not proven to have occurred as alleged by corroboration, witness statements or other supportive evidence.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.¹

To establish appellant's occupational disease claim that she has sustained an emotional condition in the performance of duty, appellant must submit the following: (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 or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.² Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and

¹ *Elaine Pendleton*, 40 ECAB 1143 (1989).

² *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.³

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 illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Act. Generally speaking, when an employee experiences an emotional reaction to her regular or special assigned employment duties or to a requirement imposed by her employment or has fear or anxiety regarding her ability to carry out assigned duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.⁴ Conversely, if the employee's emotional reaction stems from employment matters which are not related to her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment, and does not come within the coverage of the Act.⁵ Noncompensable factors of employment include administrative and personnel actions, which are matters not considered to be "in the performance of duty."⁶

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 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.⁷ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁸ When the matter asserted is a compensable factor of employment, and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.⁹ If the evidence fails

³ *Id.*

⁴ *Donna Faye Cardwell, supra note 2, see also Lillian Cutler, 28 ECAB 125 (1976).*

⁵ *Id.*

⁶ *See Joseph DeDonato, 39 ECAB 1260 (1988); Ralph O. Webster, 38 ECAB 521 (1987).*

⁷ *See Barbara Bush, 38 ECAB 710 (1987).*

⁸ *Ruthie M. Evans, 41 ECAB 416 (1990).*

⁹ *See Gregory J. Meisenberg, 44 ECAB 527 (1993).*

to establish that any compensable factor of employment is implicated in the development of the claimant's emotional condition, then the medical evidence of record need not be considered.¹⁰

Appellant did not allege that she developed an emotional condition arising out of her regular or specially assigned duties, or out of specific requirements imposed by her employment. She alleged, for the most part, that her condition was caused by supervisory harassment. The Board has held that actions of an employee's supervisor which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.¹¹ However, in order for harassment to give rise to a compensable disability under the Act, there must be some evidence that such harassment did in fact occur. Mere perceptions of harassment alone are not compensable under the Act.¹²

The Board has also held that an employee's frustration at not being permitted to work in a particular environment is not a covered factor of employment under the Act.¹³ It has additionally found that where a disability 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, the emotional condition is not covered under the Act. Disabling emotional conditions resulting from an employee's feelings of job insecurity or from the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.¹⁴

ANALYSIS

In the present case, the Office properly and repeatedly found that none of the causative factors appellant implicated were compensable factors of employment in the development of her emotional conditions.

Appellant alleged that she was harassed and discriminated against by her supervisors, but she failed to submit any specific dates, times, details of incidents of alleged harassment or discrimination, or the identification of persons involved to establish that they occurred as alleged, and she failed to provide any corroboration to establish occurrence as alleged.

The Board, therefore, finds that appellant has failed to submit any specific, reliable, probative and substantial evidence in support of her allegations of harassment or discrimination. Appellant claimed that it was discrimination that she had to perform three jobs while being paid for only one; however, she did not provide specifics of each of the three jobs or time sheets noting the hours worked for each job. She claimed that she corrected computer problems and a three-year-old

¹⁰ See *Donna Faye Cardwell*, *supra* note 2; see also *Lillian Cutler*, *supra* note 4.

¹¹ *Sylvester Blaze*, 42 ECAB 654 (1991).

¹² *Ruthie M. Evans*, *supra* note 8.

¹³ *Tanya A. Gaines*, 44 ECAB 923 (1993); *Donald W. Bottles*, 40 ECAB 349 (1988) (appellant's frustration at not being able to work in the physical environment which he preferred is not a compensable factor of employment).

¹⁴ *Lillian Cutler*, *supra* note 4.

filing backlog but received no advancement in salary and no recognition which was discrimination. However, appellant provided no details of her duties accomplished or what other employees were being paid for accomplishing their duties or extra work, such that no disparity in treatment could be ascertained to establish discrimination. Therefore appellant has not established discrimination rising out of those circumstances.

Appellant alleged that supervisor Mr. Gerrish did not advance her in her position and made false statements on her annual appraisal. However no details were provided regarding the facts involved, the treatment of similar employees, time in grade, eligibility for promotion, or offending appraisal remarks. As no further expansion of this allegation was provided, appellant has not established that harassment or discrimination occurred in this incident.

When appellant was transferred, she alleged that her new supervisor, Mr. Croll did not actively promote, recognize or support her as she thought he should. However, no specific facts were provided, and appellant's desire for another position is not a compensable factor of employment.¹⁵ Therefore appellant has not established a compensable factor of employment, at this time or at later times where she desired promotions but did not get them as expected.

Appellant alleged that working under Mr. Fink was pure hell, but no details or specifics were provided. Therefore appellant has not established a compensable factor of employment.

Appellant also alleged that two coworkers wrote to her supervisor making false, slanderous statements against her, which caused him to cancel a training opportunity. However, the coworkers were not identified, the statements were not provided, and appellant's training opportunity cancellation was not demonstrated to be the actual result of these supposedly unfavorable comments. As no further details were provided, appellant has failed to implicate any compensable factors of her employment. This same finding applies to appellant's other allegations of coworker false statements.

Although appellant claimed that she was overwhelmed by tasks required, which took up all her time, she failed, although specifically requested by the employing establishment and the Office, to provide a list of such tasks that were filling up her time. Therefore overwork has not been proven by factual evidence.

Appellant implicated lack of recognition, lack of promotion or adequate training, lack of awards, lack of support, a toxic and hostile work environment full of libel, slander and malice, in the causation of her emotional condition, but she failed to provide details of or corroboration of any of these allegations, such as they were not established as occurring or of rising to compensability.

Appellant has the burden of establishing a factual basis for her allegations, however, the allegations in question are not supported by specific, reliable, probative and substantial evidence and have been refuted by statements from appellant's employer. Accordingly, the Board finds that these allegations cannot be considered to be compensable factors of employment since appellant has not established a factual basis for them.

¹⁵ See *Lillian Cutler*, *supra* note 4.

As no compensable factors of employment were established as occurring as alleged, the medical evidence submitted need not be considered.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an emotional condition in the performance of duty, causally related to compensable factors of her employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 18, 2004 is hereby affirmed.

Issued: January 5, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member