

**United States Department of Labor  
Employees' Compensation Appeals Board**

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<b>CAROLYN J. SAPP, Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 03-1885</b>
	)	<b>Issued: May 23, 2005</b>
<b>U.S. POSTAL SERVICE, BEAUMONT</b>	)	
<b>REMOTE ENCODING CENTER,</b>	)	
<b>Beaumont, TX, Employer</b>	)	
	)	

<i>Appearances:</i> <i>Carolyn J. Sapp, pro se</i> <i>Miriam D. Ozur, Esq., for the Director</i>	Oral Argument April 21, 2005
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**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chairman  
DAVID S. GERSON, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On July 16, 2003 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated September 19, 2002 and February 20 and July 7, 2003, in which the Office denied her claim that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of her employment. At the oral argument appellant questioned the validity of each Office decision, generally contended that it was improper to send her for a second opinion evaluation and argued that the statement of accepted facts presented to Dr. Raichman, the second opinion examiner, was incorrect and incomplete because the Office later accepted an additional compensable factor of employment. The Director argued that the medical evidence submitted by appellant was

insufficient to establish that her condition was caused by the accepted employment factors or to create a conflict with the opinion of Dr. Raichman.

### **FACTUAL HISTORY**

On December 18, 2001 appellant, then a 41-year-old supervisor of remote encoding operations, submitted an occupational disease claim alleging that she worked in an abusive, hostile work environment for years which caused major depression, anxiety attacks, panic disorder and poor sleep. She stopped work on September 16, 2001. In a letter dated January 18, 2002, the Office advised appellant of the type evidence needed to support her claim.

Appellant thereafter submitted supportive evidence including a personal statement in which she alleged that the following employment factors caused her condition: (1) management improperly counseled her regarding her supervisory techniques on several occasions; (2) the employees she supervised were insubordinate and verbally abused her; (3) received disparate treatment from management; (4) Pam Tant said she would “kick my ass;” (5) was exposed to a crude, somewhat pornographic cartoon; (6) filed an Equal Employment Opportunity (EEO) complaint; (7) management did not respond or follow-up regarding her reported concerns and complaints; (8) management improperly tried to transfer her; (9) management improperly asked her to seek counseling with the employees’ assistance program; (10) her schedule was improperly changed; and (11) generally alleged that she had been harassed for “years.”

Appellant also submitted a report dated February 8, 2002 in which Dr. Ramaswamy Lakshmanan, Board-certified in psychiatry, stated that she provided a history that she was threatened at her workplace and that employees and management were hostile and intimidated her such that she feared for her life. He advised that appellant appeared anxious, tense, depressed, agitated, fearful and afraid and diagnosed major depression and panic disorder. Dr. Lakshmanan recommended medication and psychotherapy and concluded that her “job stress and the exposure to the hostile, threatening work environment appears to have caused [her] anxiety attacks and depressive illness.” In an April 11, 2002 report, Dr. Rajen Desai, also a Board-certified psychiatrist, noted that appellant was seen that day with diagnoses of major depression, recurrent and panic disorder.

On June 19, 2002 the employing establishment submitted a number of statements submitted by employees and union representatives regarding appellant’s supervisory methods and copies of emails and other documentation regarding her, including information regarding a National Labor Relations Board (NLRB) claim filed by appellant on October 10, 2001. In a letter dated January 7, 2002, the NLRB found that appellant’s claim was not warranted.

By decision dated June 21, 2002, the Office denied the claim, finding that appellant failed to establish that she sustained an emotional condition in the performance of duty. She requested reconsideration and submitted additional evidence, including a duplicate of Dr. Lakshmanan’s April 3, 2002 report and a letter indicating that he had terminated their professional relationship. Appellant also submitted a letter dated November 28, 2001, indicating that the EEO Commission had accepted her complaint.

On July 12, 2002 the Office referred appellant, a statement of accepted facts, a set of questions<sup>1</sup> and the medical record, to Dr. Jorge A. Raichman, Board-certified in psychiatry, for a second opinion evaluation. In a work capacity evaluation dated August 8, 2002, he advised that she could work for eight hours a day, but should not work with her previous supervisors and coworkers because they had become “sensitized” to each other, advising that appellant should not work closely with others. In a September 3, 2002 report, Dr. Raichman noted his review of the statement of accepted facts and medical record and appellant’s complaints of job-related harassment and abuse. He diagnosed a chronic paranoid personality disorder but advised that this predated her employment problems and was not caused by employment, stating that her employment suffered because of her condition, not vice versa. Dr. Raichman opined that the fact that appellant focused on her work as causing her problems was a coincidence of timeliness and concluded that she should not be in contact with the public and should have a relatively isolated job.

In a September 19, 2002 decision, the Office modified the prior decision to show that three factors had been accepted as compensable, *i.e.*, that several employees made racial blatant, disrespectful and malicious comments toward management, specifically against appellant, that on one occasion two employees showed her a cartoon of a naked woman and appellant was told that she was the woman in the cartoon which caused her to feel denigrated and offended and that there was communication between other members of management in which the idea of forcing her to accept another shift via subjective methods was discussed. The Office, however, denied the claim, crediting the opinion of Dr. Raichman and finding that the medical evidence did not establish that appellant’s condition was caused by employment.

On September 23, 2002 appellant again requested reconsideration and submitted additional statements and other evidence including a December 4, 2002 medical report in which Dr. Ravikumar Kanneganti, a psychiatrist, diagnosed major depression, dysthemia and panic disorder which he opined was work related, advising that appellant should not have any further contact with her previous supervisors or coworkers and should work relatively isolated from peers and supervisors. He stated that her disability began on September 16, 2001 and that appellant could return to work on December 16, 2002.

By decision dated February 20, 2003, the Office accepted that a coemployee, Ms. Tant, made an inappropriate remark to appellant but denied modification. Appellant again requested reconsideration and submitted a June 10, 2003 report in which Dr. Kanneganti noted that he first saw her on October 8, 2002 with a several-year history of job-related stress. He reported appellant’s description of the compensable factors of employment and additional complaints that management treated her unfairly and stated that her symptoms “seem to stem from working in a threatening and hostile work environment,” noting that appellant felt that her work environment was intolerable and unjustified and that management failed to take reasonable care to correct the problems. Dr. Kanneganti diagnosed major depression, dysthemia, anxiety disorder and occupational problem, advising “I believe that [appellant] felt harassed and felt that she received acts of reprisal because of her emotional condition and due to the filing of an occupational

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<sup>1</sup> The statement of accepted facts indicated that the Office accepted three employment factors as compensable and the questions provided to Dr. Raichman asked him to review the statement of accepted facts and medical record and provide a diagnosis and advise whether he considered the diagnosed condition employment related. He was also asked whether appellant had limitations that would prevent her return to work.

disease and EEO claim and that this caused significant emotional distress for this fairly compulsive woman.”<sup>2</sup> He concluded that she should have no contact with specific former supervisors and should work a modified schedule in which she supervised approximately 15 to 20 employees.

In a decision dated July 7, 2003, the Office denied modification of the prior decisions.

### **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 his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>3</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>4</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>5</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>6</sup> If the evidence demonstrates that the employing establishment erred or acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered. However, a claimant must support his or her allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>7</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>8</sup> The

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<sup>2</sup> Additional evidence was submitted through a Congressional inquiry.

<sup>3</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>4</sup> *See Dennis J. Balogh*, 52 ECAB 232 (2001).

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

<sup>6</sup> 5 U.S.C. §§ 8101-8193; *see Michael A. Salvato*, 53 ECAB 666 (2002).

<sup>7</sup> *Andrew J. Sheppard*, 53 ECAB 170 (2001).

<sup>8</sup> *Myrna Parayno*, 53 ECAB 593 (2002).

fact that the claimant filed EEO complaints and/or grievances does not substantiate the allegations contained therein<sup>9</sup> and while the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to compensability.<sup>10</sup>

For harassment or discrimination to give rise to a compensable disability under the Act, 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. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. Rather, the issue is whether the claimant, under the Act, has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>11</sup>

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>12</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The 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 must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>13</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>14</sup>

### ANALYSIS

In this case, the Board agrees that appellant established the three compensable factors of employment found by the Office. She also alleged that she was treated in a disparate manner by management who improperly counseled her, did not respond or follow-up to her reported concerns and improperly changed her schedule. The Board finds that these factors are not compensable.

An employee's complaints concerning the manner in which a supervisor performs his or her duties as a supervisor or the manner in which a supervisor exercises his or her supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act<sup>15</sup> unless the evidence

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<sup>9</sup> *Michael A. Salvato, supra* note 6.

<sup>10</sup> *Michael A. Deas*, 53 ECAB 208 (2001).

<sup>11</sup> *James E. Norris*, 52 ECAB 93 (2000).

<sup>12</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>13</sup> *Leslie C. Moore, supra* note 3; *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>14</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>15</sup> *Marguerite J. Toland*, 52 ECAB 294 (2001).

demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities.<sup>16</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>17</sup> The Board has long held that an employee's frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable<sup>18</sup> and absent error or abuse, any change in a work assignment would not be a compensable factor of employment.<sup>19</sup> In this case appellant submitted no evidence to indicate that the employing establishment committed error and abuse regarding the above allegations and, therefore, failed to establish these as compensable employment factors.

Appellant also generally alleged that she was harassed by employing establishment management. The Board, however, finds that she has submitted insufficient evidence to establish that she was treated in a harassing manner. An EEO complaint, by itself, does not establish that workplace harassment or unfair treatment occurred<sup>20</sup> and the case record before the Board does not include an EEO decision. Furthermore, the issue is not whether the claimant has established harassment or discrimination under EEO standards. Rather, the issue is whether she has submitted sufficient evidence to establish a factual basis for the claim under the Act by supporting her allegations with probative and reliable evidence.<sup>21</sup> In this case, appellant has submitted no probative, reliable evidence to indicate that the employing establishment management harassed her in any way. The Board, therefore, finds that she did not establish harassment on the part of the employing establishment.

Nonetheless, as appellant has established three compensable factors of employment, the medical evidence must be analyzed.<sup>22</sup> The Board initially notes that section 8123(a) of the Act authorizes the Office to require an employee who claims disability as a result of federal employment to undergo a physical examination, as it deems necessary.<sup>23</sup> The determination of the need for an examination, the type of examination, the choice of locale and the choice of medical examiners are matters within the province and discretion of the Office. The only limitation on the Office's authority, with regard to instructing a claimant to undergo a medical examination, is that of reasonableness.<sup>24</sup> In this case, the Office found three factors of

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<sup>16</sup> *Barbara J. Latham*, 53 ECAB 316 (2002).

<sup>17</sup> *Myrna Parayno*, *supra* note 8.

<sup>18</sup> *Barbara J. Latham*, *supra* note 16; *Peggy R. Lee*, 46 ECAB 527 (1995).

<sup>19</sup> *Id.*

<sup>20</sup> *James E. Norris*, *supra* note 11.

<sup>21</sup> *Id.*

<sup>22</sup> *See Dennis J. Balogh*, *supra* note 4.

<sup>23</sup> 5 U.S.C. § 8123(a).

<sup>24</sup> *Dorothy Dillard*, 53 ECAB 688 (2002).

employment as compensable. The Board, therefore, finds that it was reasonable for the Office to refer appellant to Dr. Raichman for a second opinion evaluation.

At the oral argument appellant contended that Dr. Raichman had been furnished an incorrect statement of accepted facts. The record, however, indicates that Dr. Raichman was furnished with a statement of accepted facts dated August 22, 2002 which pertains to appellant and which includes the three accepted factors of employment. Appellant also contended that, after Dr. Raichman's examination, the Office accepted as compensable that Ms. Tant made an inappropriate comment to appellant. The Board, however, notes that the Office had previously accepted as compensable that disrespectful and malicious comments had been made toward her. The Board finds that Ms. Tant's comment is of the type that would be included in this factor and, as Dr. Raichman had considered the accepted factors in making his report, a supplementary evaluation was not needed.

The Board finds that the medical reports submitted by appellant are insufficient to establish her claim. The relevant medical evidence includes reports from appellant's attending psychiatrists Dr. Lakshmanan and Dr. Desai. While each diagnosed depression and panic disorder, Dr. Desai did not provide an opinion regarding the cause of appellant's condition and medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>25</sup> The Board also finds Dr. Lakshmanan's report insufficient to establish entitlement. He advised that appellant's condition appeared to have been caused by a threatening work environment, but couched his opinion regarding causal relationship in equivocal terms and while the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.<sup>26</sup> Furthermore, neither Dr. Lakshmanan nor Dr. Desai mentioned the compensable factors of employment in their reports and other than Dr. Lakshmanan's general description of a threatening work environment, neither described any specific employment incidents as causing appellant's condition or advised that she was totally disabled from work. The Board, therefore, finds that their reports are insufficient to meet appellant's burden to establish that she sustained an emotional condition causally related to the accepted factors of employment.

Likewise, Dr. Kanneganti's reports are insufficient to meet appellant's burden. He too diagnosed depression and panic disorder and advised that appellant was totally disabled from September 6, 2001 to December 16, 2002. While he described the compensable factors of employment, he too couched his opinion in equivocal terms, stating that appellant's symptoms "seem to stem from working in a threatening and hostile work environment" and noted his belief that she felt harassed and felt that she received acts of reprisal because of her emotional condition and due to the filing of an occupational disease and EEO claim and that this caused

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<sup>25</sup> *Willie M. Miller*, 53 ECAB 697 (2002).

<sup>26</sup> *Patricia R. Glenn*, 53 ECAB 159 (2001).

significant emotional distress for this fairly compulsive woman.” As stated above, a medical opinion that is speculative or equivocal is of diminished probative value.<sup>27</sup> Appellant did not establish that she was harassed or that management committed acts of reprisal. The Board, therefore, finds that Dr. Kanneganti’s opinion is insufficient to establish that appellant sustained an emotional condition causally related to the accepted factors of employment.

In assessing medical evidence, the number of physicians supporting one position or another is not controlling. The weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of physical examination, the accuracy and completeness of the physician’s knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician’s opinion.<sup>28</sup>

Dr. Raichman, who provided a second opinion evaluation for the Office, noted his review of the statement of accepted facts and medical record and appellant’s complaints of job-related harassment and abuse. He diagnosed a chronic paranoid personality disorder but advised that this predated her employment problems and was not caused by employment, stating that her employment suffered because of her condition, not vice versa. The Board has carefully reviewed Dr. Raichman’s opinion and finds it to have reliability, probative value and convincing quality with respect to his finding that appellant’s emotional condition predated her problems at work and was not causally related to the compensable factors of employment.

An award of compensation may not be based upon surmise, conjecture or upon appellant’s belief that there is a relationship between his or her medical conditions and his or her employment.<sup>29</sup> The Board finds that she has not submitted sufficient probative medical evidence and, therefore, failed to discharge her burden of proof.

### **CONCLUSION**

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an employment-related emotional condition causally related to the accepted employment factors.

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<sup>27</sup> *Id.*

<sup>28</sup> *Anna M. Delaney*, 53 ECAB 384 (2002).

<sup>29</sup> *Patricia R. Glenn*, *supra* note 26.



**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated July 7 and February 20, 2003 and September 19, 2002 be affirmed.

Issued: May 23, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member