

August 27, 2002, Dr. Charles L. Johnson, D.O, a family practitioner, diagnosed chronic and episodic depression.

In an August 22, 2002 statement, appellant alleged constant and continued harassment by management that included drastic changes to her job duties and work schedule. Appellant also alleged that her facility manager, Sharon L. Duell, threatened to fire her and told coworkers not to trust appellant or speak with her. Ms. Duell also allegedly withheld positive customer feedback from appellant and did not include it in her personnel file. Appellant also alleged that a calendar had been removed from her desk. Additionally, she provided a chronology of events from December 2001 to September 2002. The noted incidents included the denial of a leave request for January 5, 2002 and alleged harassment by Ms. Duell on April 30, May 16 and June 7, 2002. Appellant also indicated that the employing establishment declined to process her request for overtime pay in June 2002. Additionally, Ms. Duell reportedly reneged on Equal Employment Opportunity (EEO) settlement agreements on July 2, 2002. Appellant also claimed that while she was on extended sick leave in July 2002 the employing establishment harassed her by requesting her to return her facility keys.

Ms. Duell, the complex fitness manager, provided an October 8, 2002 statement. She indicated that appellant had a history of perceived issues with her employers and that appellant caused the hostile environment within the facility. Ms. Duell stated that beginning in November 2001 appellant started writing harassing emails to the management team. She and other managers believed that appellant was trying to bait management in an attempt to receive money from the government. Ms. Duell denied harassing appellant on April 30, May 16 or June 7, 2002. She also stated that appellant had a problem with being told “no” and management initially did not want to reassign her because she would just cause problems in other sections of the squadron. With respect to the denial of overtime, Ms. Duell explained that appellant’s delayed departure was because she locked up the truck keys elsewhere and she had to wait for another employee to provide her with transportation. After reviewing the incident, management did not believe overtime pay was warranted. Regarding the alleged breach of EEO settlement agreements, Ms. Duell explained that to the best of her knowledge there were no written settlement agreements and she had not and would not sign a document she did not mutually agree to. Additionally, Ms. Duell acknowledged that appellant’s government-issued desk calendar had been removed. She explained that appellant’s calendar had statements written on it in huge black letters that were considered inappropriate and other staff members had submitted complaints about the rude statements on appellant’s calendar. Appellant was informed that she could have the calendar back if she blacked out the inappropriate statements, however, she reportedly responded in a rude and insubordinate manner. Ms. Duell also noted that appellant had been disciplined on several occasions for her inappropriate behavior with customers in the fitness center. Concerning the request to return the facility keys during appellant’s leave of absence, Ms. Duell explained that this was done because appellant was seen on the surveillance camera entering the facility after it was closed, which was against policy.

On October 25, 2002 appellant submitted 164 pages of documents in response to the Office’s request for additional information. The documentation included an October 21, 2002 statement from appellant, various emails, copies of appellant’s work schedule, job description

and position vacancy announcement, memoranda prepared by appellant regarding grievances and EEO complaints and proposed settlement agreements.

In a decision dated July 31, 2003, the Office denied appellant's claim because she failed to establish that her claimed emotional condition was the result of a compensable employment factor.

Appellant requested an oral hearing, which was held on April 29, 2004. She also submitted additional documentation that included personnel and performance records and emails and other written correspondence regarding various grievances. By decision dated August 17, 2004, the Office hearing representative affirmed the July 31, 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.¹

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.² 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.³

ANALYSIS

The majority of employment incidents appellant identified as the cause of her emotional condition fall into the category of administrative or personnel matters. As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Federal Employees' Compensation Act.⁴ However, to the extent the evidence demonstrates that the

¹ 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).

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁴ *Id.*

employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.⁵

Although leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.⁶ As such, the denial of appellant's various requests for annual and sick leave and the handling of her request for overtime fall outside the scope of the Act. Moreover, appellant has not demonstrated error or abuse on the part of the employing establishment in handling the various time and attendance matters.

Appellant also took exception to management's adjustments to her job description, work assignments and work schedule. She alleged that management wrongly denied her several requests for a transfer. An employee's frustration from not being permitted to work in a particular environment is not compensable.⁷ Additionally, an employee's dissatisfaction with perceived poor management is not compensable under the Act.⁸ Complaints about the manner in which a supervisor performs her duties or the manner in which a supervisor exercises her discretion fall, as a rule, outside the scope of coverage provided by the Act.⁹ This principle recognizes that a supervisor or manager in general must be allowed to perform her duties and employees will, at times, dislike the actions taken, but mere disagreement or dislike of a supervisory or managerial action will not be actionable, absent evidence of error or abuse.¹⁰ The removal of appellant's desk calendar because of its offensive conduct and the decision to have appellant return her keys during her absence also fall outside the scope of the Act's coverage.

For harassment to give rise to a compensable disability there must be evidence that harassment did, in fact, occur.¹¹ A claimant's mere perception of harassment is not compensable.¹² The allegations of harassment must be substantiated by reliable and probative evidence.¹³ Appellant claimed that Ms. Duell regularly harassed her, which Ms. Duell denied. Appellant identified an April 30, 2002 incident when Ms. Duell allegedly pulled two staff members appellant had been talking with into her office and told them not to speak to appellant because she was a liar and a back stabber. Ms. Duell specifically denied that the alleged April 30, 2002 incident occurred. She also indicated that an Inspector General's investigation of

⁵ *Id.*

⁶ *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997).

⁷ *See Lillian Cutler*, *supra* note 2.

⁸ *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

⁹ *Marguerite J. Toland*, 52 ECAB 294, 299 (2001).

¹⁰ *Id.*

¹¹ *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

¹² *Id.*

¹³ *Joel Parker Sr.*, 43 ECAB 220, 225 (1991).

appellant's harassment complaint found no substantiation for any of her "bogus claims and allegations."

Appellant also claimed that Ms. Duell harassed her on May 16, 2002 when she disclosed to the entire staff an email appellant had written to a manager regarding alleged inconsistent enforcement of the cellular telephone policy. Appellant characterized this as a deliberate attempt by Ms. Duell to discredit her among her coworkers. Ms. Duell indicated that she told appellant when she was hired that she would be responsible for everything she said and did and that all employees were considered to be adults. She also stated that she informed all employees that if they had complaints about other employees, they would be made aware of it. Thus, the disclosure of appellant's concerns and criticisms to the entire staff was in keeping with Ms. Duell's stated policy.

Ms. Duell also allegedly harassed appellant by contacting her outside employer on June 7, 2002 and attempting to gather information about her. Appellant indicated that she was on sick leave that day due to her depression. Ms. Duell stated that appellant's other employer was contacted because it was believed that she was performing other work while claiming sick leave. She also indicated that upon further investigation it was learned that on another occasion, April 1, 2002, appellant had worked for her other employer while on sick leave.¹⁴ The June 7, 2002 incident does not constitute harassment. The employing establishment was discharging its duties with respect to the administration of time and attendance matters.

With respect to appellant's allegation that favorable customer feedback was not included in her personnel file, Ms. Duell explained that comment cards and letters do not have to be placed in an employee's folder and they were not placed in other fitness center employees' folders. She indicated that this was left to the immediate supervisor's discretion. Ms. Duell also noted that appellant began harassing customers by asking them to write favorable comment cards and letters. The exclusion of customer comments, either solicited or unsolicited, from appellant's personnel file does not constitute harassment.

Appellant also claimed Ms. Duell harassed her on July 2, 2002 when she allegedly reneged on EEO settlement agreements. Ms. Duell stated that she was unaware of the existence of written settlement agreements. Appellant has not submitted proof of any EEO settlement agreements in effect on July 2, 2002 that Ms. Duell either reneged on or breached.

Appellant has failed to establish her various allegations of harassment and she has not otherwise demonstrated a compensable factor of employment as the cause of her claimed emotional condition. The vast majority of incidents identified by appellant were administrative in nature, and the record does not demonstrate that the employing establishment either erred or acted abusively in discharging its administrative duties. While appellant filed a number of grievances and EEO complaints, by themselves, they do not establish that workplace harassment

¹⁴ Appellant's chronology of events indicates that she took eight hours of sick leave on April 1, 2002 for her claimed depression.

or discrimination occurred.¹⁵ Because appellant failed to establish a compensable employment factor, the Office properly denied her claim for an emotional condition.

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 August 17, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 3, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

¹⁵ *James E. Norris*, 52 ECAB 93, 101 (2000).