United States Department of Labor
Employees' Compensation Appeals Board

ADRIENNE GRICIUS, Appellant	)	
and	)	**Docket No. 05-533**
	)	**Issued: May 18, 2005**
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Miami, FL, Employer	)	

Appearances:
Edward L. Daniel, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On December 29, 2004 appellant filed a timely appeal of a November 24, 2004 decision of the Office of Workers' Compensation Programs, denying her claim on the grounds that no compensable factors of employment had been established. 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 has established an injury causally related to compensable factors of her federal employment.

FACTUAL HISTORY

On June 16, 2003 appellant, then a 49-year-old supervisory air traffic controller, filed a claim for a traumatic injury (Form CA-1) alleging that she sustained "anxiety, loss of appetite, headache, chest tightness, pains in chest, upset stomach disturbed sleep, unable to concentrate,

irritable" as a result of reprisal from several employees because she issued disciplinary action against two employees. The date of the injury was reported as June 12, 2003.

In a July 16, 2003 statement, an employing establishment operations manager stated that there were two employees assigned to appellant's team who had been given oral admonishments by appellant because they had failed to return to their worksite following a break as requested. The operations manager indicated that during counseling sessions on June 12, 2003 one of the employees told appellant "the meeting was a waste of time and money, and he wanted to know if he was being singled out?" The second employee appeared to be more confrontational and stated that "he would be paying closer attention to her work since no one is perfect and everyone makes mistakes." The operations manager stated that appellant perceived the remarks as a threat. An investigation was conducted by an assistant manager, and appellant stated that the employees did not make direct or indirect physical threats, but "she just didn't know what to expect" and feared reprisal. According to the operations manager, appellant felt that the employees did not like being disciplined by a woman.

By decision dated July 31, 2003, the Office denied the claim on the grounds that fact of injury was not established.

Appellant requested reconsideration by letter received on August 7, 2003. She noted that she did not file an Equal Employment Opportunity complaint, or other formal action. Appellant stated that on June 11, 2003 she issued an oral reprimand to David Rivero and Daniel Ullman in two separate meetings, for insubordination and failure to obey rules. Mr. Rivero stated that he felt the disciplinary action was a waste of time and that he was being singled out. Mr. Ullman told appellant to rescind the action, and when she did not, he stated that it was a welcome distraction to his family problems and he was going to pay closer attention to detail. Appellant asked him if he was threatening her and he stated, "I am just telling you like it is." According to appellant neither employee was remorseful or apologetic, and another supervisor told her that Mr. Ullman was very vocal in complaining about the disciplinary action. Appellant continued to have feelings of anxiety and received treatment. She submitted medical reports from Dr. Daniel Collins, a psychiatrist.

In a brief statement dated September 1, 2003, a coworker stated that on June 11, 2003 she overheard two employees "making threats about [appellant]." They stated they were going to take appellant "down." They also stated they were going to "get her out of the area." The coworker stated that she advised appellant the next morning that these two individuals sounded serious.

In a decision dated November 24, 2004, the Office reviewed the case on its merits and stated that "you have now established fact of injury but you have failed to establish performance of duty." The Office found that no compensable work factors had been established and therefore an injury in the performance of duty was not established.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely

affected by factors of her federal employment.[1] This burden includes the submission of detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[2] A claimant must also submit rationalized medical opinion evidence establishing a causal relationship between the claimed condition and the established, compensable work factors.[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 coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[4]

ANALYSIS

The initial question presented is whether appellant has substantiated compensable work factors with respect to her claim. If compensable work factors are established, then the medical evidence is examined to determine if causal relationship between a diagnosed condition and the compensable work factors is established.[5]

In this case, appellant is a supervisor and she issued oral admonishments to a pair of employees, Mr. Rivera and Mr. Ullman. The disciplinary action was performed as part of appellant's job duties as a supervisor, but her claim is not that the performance of her duties in the issuing of the oral admonishments resulted in an injury. Rather, she has alleged that she felt threatened and feared reprisal by the employees based on their stated responses to the disciplinary action. The Board has recognized the compensability of physical threats and verbal aggression in certain circumstances.[6] Appellant has acknowledged, however, that there was no actual physical threat made, nor is there any evidence of any verbal abuse or actual attempt at

[1] *Pamela R. Rice*, 38 ECAB 838 (1987).

[2] *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

[3] *See Bonnie Goodman*, 50 ECAB 139, 141 (1998).

[4] *Lillian Cutler*, 28 ECAB 125 (1976).

[5] Although the Office stated in the November 24, 2004 decision that "fact of injury" was established, the Board notes that "fact of injury" requires that appellant meet her burden of proof to establish her claim. *See John J. Carlone* 41 ECAB 354 (1989). It is clear from the decision that the Office did not accept the claim because no compensable work factors had been established, and therefore "fact of injury" has not been established.

[6] *See Anna C. Leanza*, *supra* note 2.

reprisal. Mr. Ullman apparently stated that he would be paying closer attention to appellant's work, without making any threat of reprisal.

A coworker indicated that she heard two employees discussing an attempt to take appellant "down," and she reported this to appellant. It is well established that not every statement uttered in the workplace will give rise to coverage under the Act.[7] The coworker's statement provides only a vague and generalized reference to statements by unidentified employees. This is not a sufficient basis to establish a compensable work factor.[8] Appellant's fear of reprisal in this case must be considered self-generated based on the evidence of record. The Board finds that appellant did not allege and substantiate a compensable work factor in this case. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.[9]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty as she did not substantiate a compensable work factor in this case.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 24, 2004 is modified to reflect that fact of injury has not been established, and affirmed as modified.

Issued: May 18, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[7] *Mary Sisneros*, 46 ECAB 155, 164 (1994). A negative comment about appellant from one coworker to another coworker that appellant became aware of was not sufficient to establish a compensable work factor.

[8] *See Michael A. Deas*, 53 ECAB 208 (2001).

[9] *See Margaret S. Krzycki*, 43 ECAB 496 (1992).