

interrogated for two and a half hours by postal inspectors over a private “bank error,” accused of stealing mail and asked to take a lie detector test. Appellant was escorted off the workroom floor by her supervisor and a postal inspector and told to go home until further notice. She indicated that the event was humiliating for her as she was innocent of the charges concerning the private “bank error” and the other accusations. On February 13, 2003 appellant received an emergency placement administrative leave letter, which instructed her not to come onto the employing establishment premises without prior authorization. On March 14, 2003 appellant received a certified letter from the employing establishment indicating that she was being removed due to improper conduct. Appellant stated that she prevailed in her May 28, 2003 arbitration in the matter.

On June 12, 2003 appellant stated that she had been informed by a notice in the mail that a warrant had been issued for her arrest for “uttering a forged instrument” with regard to the private bank matter. To avoid being arrested, appellant indicated that she turned herself into the sheriff’s office on June 14, 2003. On June 19, 2003 the employing establishment conducted an investigative interview with her union steward present about her June 14, 2003 arrest. Appellant stated that the questions were personal in nature and were about the same incident she had just won on arbitration. When asked whether she had been arrested on June 14, 2003 appellant stated that she responded “not to my knowledge.” She asserted that the only reason they asked that question was to try to catch her in a lie. Appellant stated that, after having been exonerated by the May 28, 2003 arbitration, she was once again escorted off the workroom floor. She became humiliated and demoralized.

On June 26, 2003 appellant stated that she received a letter from the employing establishment placing her on an indefinite suspension because she had been arrested and charged with a felony crime in the third degree. Appellant stated that she was acquitted of all charges on September 23, 2003 and returned to work thereafter.

Appellant alleged that postal inspector Robert Wright filed false statements against her on April 14, 2003 as an act of reprisal for winning the May 28, 2003 arbitration and abused his power. She alleged that the actions taken by the employing establishment had an adverse affect on her bipolar disorder as she was hospitalized on March 19, 2003 and had to undergo psychiatric treatment. Appellant alleged that she experienced stress and felt that the employing establishment was determined to remove her from service. She submitted a copy of the May 28, 2003 arbitration decision and the September 23, 2003 court order finding her not guilty of uttering a forged instrument. In October 8, 2003 report, Dr. Walter E. Afield, a Board-certified neurosurgeon, noted that appellant had faced the loss of 25 years of invested work and having to go through court to defend herself. He diagnosed a bipolar-II disorder, by history and acute stress disorder and advised that the action taken by the employing establishment had aggravated her psychological disorder resulting in her hospitalization, increased headaches and paranoid ideation. Appellant also submitted copies of material predating the February 2003 events, which documented her bipolar disorder and medical recommendations for regular daytime hours.

In a January 22, 2004 letter, the employing establishment controverted appellant’s claim. The employing establishment alleged that appellant had cashed a check that was mailed to her in error and was not in her name.

In an April 13, 2004 letter, the Office advised appellant of the deficiencies in her claim and afforded her 30 days in which to submit additional evidence. The Office asked whether appellant had cashed a check at a local credit union which she had received in error, which was not addressed to her and did not belong to her.

The employing establishment submitted copies of the investigative reports concerning the check, along with the arbitration and court decisions and the various letters regarding her work status.

By decision dated October 8, 2004, the Office denied appellant's claim, finding that the evidence did not support that she sustained an emotional condition in the performance of her duties. The Office found that the employing establishment's disciplinary actions arose out of an administrative function and was not erroneous.

By letter dated November 23, 2004, appellant requested reconsideration. She argued that the employing establishment erred by removing her from employment in 2003 after she was arrested and by changing her schedule on several occasions which aggravated her preexisting emotional condition of which the employing establishment had knowledge since 1986. Copies of arbitration decisions dated December 10, 1988 and May 28, 2003 were provided along with a September 23, 2003 judgment of not guilty from the 12th Judicial Circuit Court, a September 23, 2003 return to work letter and a January 5 and 30, 1990 reassignment letter.

In a December 17, 2004 letter, the employing establishment denied any attempt to disrupt appellant's work schedule. It noted that, although management may have been aware of her preexisting emotional condition since 1988, the Manasota Postal Distribution Center where appellant worked did not open its doors until January 1990. The employing establishment indicated that, when the Manasota location opened, the plant manager, Duane Allen, was not aware of appellant's medical history and sent her a letter dated January 30, 1990, informing her of her hours of duty. However, once the plant manager was informed of appellant's medical restrictions, another letter was sent to appellant on February 5, 1990 outlining her new duty hours and days off. The employing establishment indicated that appellant had worked the schedule, as noted in the February 5, 1990 letter, for nearly 15 years.

The employing establishment further advised that appellant's removal charges had nothing to do with her preexisting condition. Rather, the removal followed investigations into whether appellant had uttered a forged document which was a felony. The employing establishment indicated that appellant was brought back to work and charged with a 30-day disciplinary suspension for her actions after the arbitration decision. It further indicated that after appellant was arrested, the employing establishment followed procedures when initiating her removal based on the felony charge. After the court ruling, appellant was brought back to work with full back pay. Copies of documentation supporting the employing establishment's position were provided.

By decision dated March 8, 2005, the Office denied modification of its previous decision finding that appellant had not provided sufficient evidence to support a compensable work factor.

LEGAL PRECEDENT

For a claimant to establish that she has sustained an emotional condition in the performance of duty she 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 her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.¹

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. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is 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 to hold a particular position.²

In cases involving emotional conditions, when working conditions are alleged as factors causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensation 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.³ 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. Only when the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, should the Office consider the medical evidence of record to determine the causal relationship between the accepted factors and the diagnosed condition.⁴

As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁵

¹ *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

² *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

³ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

⁴ *Id.*; *Fred Faber*, 52 ECAB 107, 110 (2000).

⁵ *Martha L. Watson*, 46 ECAB 407 (1995).

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination 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. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁶

ANALYSIS

Appellant contended that she was interrogated by the postal inspectors on February 12, 2003, placed on emergency administrative leave on February 13, 2003, informed by letter dated March 14, 2003 that she would be removed from her duties due to improper conduct on April 25, 2003. Appellant asserted that these disciplinary actions had nothing to do with the employing establishment and stemmed from her wrongfully cashing a check which did not belong to her outside of working hours. The employing establishment indicated that, after the May 28, 2003 arbitration decision, appellant was brought back to work and charged with a 30-day disciplinary suspension. Reactions to disciplinary matters such as letters of warning and inquiries regarding conduct pertain to actions taken in an administrative capacity and are not compensable unless it is established that the employing establishment erred or acted abusively in such capacity.⁷ In the May 28, 2003 arbitration decision, the arbitrator found that it was reasonable for the employing establishment to have placed appellant in an off-duty status pending a complete investigation and decision by management as to her ultimate status with respect to the charges of uttering a forged instrument. This supports that the employing establishment did not act abusively with regard to the February 12, 2003 investigation or placing appellant on emergency administrative leave on February 13, 2003. The Board notes, however, that the arbitrator found that the employing establishment improperly disciplined appellant with removal for her conduct. The arbitrator found that removal was excessive discipline where there was no convincing evidence that appellant showed any intent to be dishonest. He directed that the removal be changed to a disciplinary suspension from March 14 to April 14, 2003. Thus, appellant has established a compensable factor with regard to the employing establishment's March 14, 2003 letter advising that she would be removed from her duties on April 25, 2003.

Appellant also contended that she was reinvestigated by the employing establishment on June 19, 2003 and received a June 26, 2003 letter placing her on indefinite suspension because of her arrest on a felony charge. The employing establishment advised that it followed its established procedures when initiating a charge of removal based on "uttering a forged document," a felony. There is insufficient evidence to support that the employing establishment erred when it investigated appellant on June 19, 2003 pertaining to her arrest and initiated the removal procedure on June 26, 2003. Thus, appellant has not established a compensable work factor in this regard.

To the extent that appellant is claiming harassment by the employing establishment in the issuance of the disciplinary actions concerning her wrongful cashing of a check not belonging to

⁶ *Alice M. Washington*, 46 ECAB 382 (1994).

⁷ *Sherry L. McFall*, 51 ECAB 436, 440 (2000).

her, appellant did not submit any supporting evidence that management discriminated against or harassed, intimidated or humiliated her. The employing establishment generally denied any disparate treatment. Appellant had not established a compensable factor of employment in this regard.

Appellant also alleged that the employing establishment had initiated schedule changes on several occasions even though management knew it would aggravate her preexisting emotional condition. The Board has held that, although the handling of leave requests, attendance matters and schedule changes are generally related to the employment, they are administrative functions of the employer and not duties of the employee.⁸ Although the employing establishment indicated that appellant was initially given an assignment outside her restrictions on January 30, 1990, she was provided another assignment within her restrictions on February 5, 1990 and has had no disruption of her schedule since. Accordingly, the record is devoid of evidence that the employing establishment erred in handling appellant's schedule and assignment's within her medical restrictions since it corrected her schedule on February 5, 1990. Accordingly, appellant has not established a compensable factor of employment in this regard.

As noted, appellant has established a compensable factor with regard to the employing establishment's removal letter of March 14, 2003. Accordingly, the Board will address the medical evidence.

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which 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. 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.⁹

In an October 8, 2003 report, Dr. Afield mentioned the events concerning the forged check incident and the employing establishment's actions. Although Dr. Afield opined that the employing establishment's actions aggravated appellant's emotional condition, he failed to specifically relate the removal letter of March 14, 2003 as a cause of appellant's disability. Thus, there is insufficient rationalized medical opinion evidence of record addressing how the March 14, 2003 removal letter may have caused or aggravated appellant's condition. Appellant's burden includes providing rationalized medical opinion evidence showing that the compensable factor of employment occurring on March 14, 2003 specifically caused or contributed to her emotional condition. The Board finds that the Office properly denied appellant's claim for compensation benefits.

⁸ See generally *Dinna M. Ramirez*, 48 ECAB 308 (1997); *Lillie M. Hood*, 48 ECAB 157 (1996).

⁹ *Id.*

CONCLUSION

The Board finds that, although appellant established one compensable factor, the medical evidence of record was insufficient to support that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the March 8, 2005 and October 8, 2004 decisions of the Office of Workers' Compensation Programs are affirmed, as modified.

Issued: November 7, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board