



December 1999.<sup>1</sup> In its March 24, 2003 decision, the Board affirmed the Office's February 4, 2002 decision, finding that appellant did not establish that she sustained an emotional condition in the performance of duty and that the Office's hearing representative properly denied her requests for subpoenas.<sup>2</sup> In its November 15, 2004 decision, the Board reversed the Office's March 31, 2004 decision, which denied appellant's request for reconsideration without reopening the case for a merit review and remanded the case for further action.<sup>3</sup> The reversal was based on a copy of an October 9, 2003 final agency decision of the Equal Employment Opportunity Commission (EEOC), which the Board found constituted relevant and pertinent new evidence not previously considered by the Office and, thus, met the third standard for obtaining a merit review of the case. The October 9, 2003 EEOC decision found that the employing establishment discriminated against appellant when it rescinded her 1997 bid for a mark-up clerk position after they determined that she was not medically qualified for the position. The EEOC further found that the employing establishment discriminated against appellant when its physician violated the Rehabilitation Act's prohibition against the release of confidential medical information. The facts are accurately set forth in the Board's prior decisions and are incorporated herein by reference.

Upon further development the Office, in a February 15, 2005 decision, modified the December 15, 1999 decision in part to find that appellant established two compensable factors of employment but affirmed the denial of benefits as appellant failed to submit rationalized medical opinion evidence establishing a causal relationship between her diagnosed medical conditions and the compensable employment factors established. The Office found that the first established compensable employment factor was when appellant received a March 12, 1997 letter from the employing establishment, which rescinded her 1997 bid for a mark-up clerk position after they determined that she was not medically qualified for the position and informed her that her options were to apply for "permanent disability" or to retire. The Office found that the second compensable employment factor was an event which occurred on April 5, 1997, when appellant was told that the employing establishment would no longer accommodate her light-duty assignment and, if she did not take a new assignment being offered, her employment would be terminated. The Office found that, although appellant established two compensable factors of employment, the November 26, 1999 report of Dr. Reiland, a clinical psychologist, could not be

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<sup>1</sup> The Board notes that appellant also filed a claim for conditions pertaining to her left shoulder, left arm and upper back. In an April 16, 2004 decision, the Board found that the Office properly terminated appellant's entitlement to medical benefits for her accepted conditions effective November 23, 1998. Docket No. 03-722 (issued April 16, 2004). This claim is not at issue on the present appeal.

<sup>2</sup> Docket No. 02-1449 (issued March 24, 2003). The Board additionally notes that appellant had submitted medical evidence in support of her claim, which included a November 26, 1999 report from Dr. Margaret M. Reiland, a clinical psychologist, who diagnosed major depressive disorder and post-traumatic stress disorder and opined that such conditions were related to appellant's job experiences. She mentioned the March 12, 1997 incident by indicating that the employing establishment had notified appellant that her light-duty accommodations would no longer be accommodated and her options were to either apply for a permanent disability or retire. Dr. Reiland also alluded to the April 5, 1997 incident by noting that a supervisor had informed appellant again that she would no longer be accommodated and if she did not take a new assignment which was being offered, her employment would be terminated.

<sup>3</sup> Docket No. 04-1494 (issued November 15, 2004).

considered probative medical evidence establishing a causal relationship between appellant's diagnosed medical conditions and the compensable employment factors.

### **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.<sup>4</sup> To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>5</sup>

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 an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>6</sup> On the other hand the disability is not covered where it 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.<sup>7</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>8</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>9</sup>

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<sup>4</sup> *Edward C. Heinz*, 51 ECAB 652 (2000); *Martha L. Street*, 48 ECAB 641, 644 (1997).

<sup>5</sup> *Judy L. Kahn*, 53 ECAB 321 (2002); *Ray E. Shotwell, Jr.*, 51 ECAB 656 (2000); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>8</sup> *See Charles D. Edwards*, 55 ECAB \_\_\_\_ (Docket No. 02-1956, issued January 15, 2004); *Norma L. Blank*, 43 ECAB 384 (1993).

<sup>9</sup> *Lori A. Facey*, 55 ECAB \_\_\_\_ (Docket No. 03-2015, issued January 6, 2004); *Norma L. Blank*, *supra* note 8.

As a general rule, an employee's emotional reaction to administrative or personnel actions taken by the employing establishment is not covered because such matters pertain to procedures and requirements of the employer and are not directly related to the work required of the employee.<sup>10</sup> An administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.<sup>11</sup> An employee's frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable.<sup>12</sup>

### ANALYSIS

Appellant's primary allegation in her emotional condition claim was that of harassment and discrimination by the employing establishment. As noted in the Board's previous decision of March 24, 2003 in which appellant's allegations were addressed, 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.<sup>13</sup> In this case, appellant submitted a copy of an October 9, 2003 EEOC decision which found that she was subjected to unlawful employment discrimination when the employing establishment rescinded her 1997 bid for a mark-up clerk position and when its physician released confidential medical information. In its February 15, 2005 decision, the Office analyzed the October 9, 2003 EEOC decision in light of appellant's allegations and found that she established two compensable work factors. The compensable work factors were based on appellant's allegations that she had received two notices from the employing establishment on March 12, 1997 stating that it was no longer able to accommodate her heart condition and was unable to locate a permanent light-duty position to accommodate her heart condition and that she was told by a supervisor on April 5, 1999 that the employing establishment would no longer accommodate her condition. With regard to allegations concerning requests for reassignment and accommodation, the Board has generally held that such matters relate to the administration of personnel matters rather than appellant's regular or specially assigned duties. Coverage will not be afforded unless there is affirmative evidence of error or abuse in the administration of personnel matters.<sup>14</sup> In this case, the EEOC decision found that the employing establishment erred when it rescinded appellant's 1997 bid for a mark-up clerk position after they determined that she was not medically qualified for the position and erred when it told her on April 5, 1997 that they would no longer accommodate her light-duty assignment. Thus, the EEOC decision constitutes affirmative evidence that the employing establishment erred in an administrative matter.<sup>15</sup> Accordingly, the Board finds that appellant had established her allegations pertaining to the assignment of light duty to be sufficiently related

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<sup>10</sup> *Felix Flecha*, 52 ECAB 268 (2001).

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

<sup>12</sup> *Barbara J. Latham*, 53 ECAB 316 (2002).

<sup>13</sup> *Donna J. DiBernardo*, 47 ECAB 700 (1996).

<sup>14</sup> *See Larry J. Thomas*, 44 ECAB 291, 300 (1992).

<sup>15</sup> *See Constance I. Galbreath*, 49 ECAB 401 (1998).

to her regular or specially assigned employment duties so as to arise in the course of employment.

Appellant's burden of proof, however, is not discharged by the fact that she has established employment factors, which may give rise to a compensable disability under the Act. As noted above, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric condition and that such condition is causally related to the compensable factors.

The medical opinion evidence of record contains a November 26, 1999 report from Dr. Reiland, in which the March 12 and April 5, 1997 incidents pertaining to appellant being notified by the employing establishment that it would no longer accommodate appellant in a light-duty position for her heart condition were mentioned. Dr. Reiland's report, however, generally states that appellant was traumatized by the events which had occurred at the employing establishment and that appellant developed a major depressive episode along with post-traumatic stress disorder in response to them. Although Dr. Reiland mentioned the two compensable employment factors, her report does not rationally explain how the specific compensable factors caused or aggravated appellant's diagnosed conditions. Accordingly, Dr. Reiland's report cannot be considered as probative medical evidence.

Thus, appellant has failed to meet her burden of proof in establishing an emotional condition due to her federal employment.

### **CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 15, 2005 is affirmed.

Issued: November 17, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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