

FACTUAL HISTORY

On September 16, 2004 appellant, then a 45-year-old receptionist,¹ filed an occupational disease claim alleging that she had developed stress and depression over the past several years due to harassment and false allegations by her supervisors, culminating in an attempted suicide. By letter dated November 9, 2004, the Office informed appellant of the type of evidence needed to support her claim. The Office also requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of her allegations. The Office informed the employing establishment that federal regulations found at 20 C.F.R. § 10.117(b) provided that, in the absence of a full reply from the employing establishment, the Office may accept the employee's allegations as factual.

In an undated statement, appellant noted that she sustained an employment-related rotator cuff tear on August 25, 1999 which required surgery, after which she was constantly harassed by management because she could not perform her usual job duties and was absent from work. She filed grievances and an Equal Employment Opportunity Commission (EEOC) claim. She noted that, on Father's Day 1999, while on duty as a telecommunications equipment operator, one of their park rangers was shot and killed. In January 2002, as chief union steward, she reported sexual harassment by a coworker, Duke Barr, and that, instead of dealing with her report of harassment, on February 25, 2002 management removed her from her telecommunications position and reassigned her to headquarters as a receptionist. While at headquarters she was harassed by a criminal investigator, John Mattox, who was investigating the alleged telephone call. She alleged that she was unfairly suspended and her good name discredited, noted the suicide attempt and stated that in October 2004 she sustained a mini stroke at work.

Appellant submitted medical evidence, including reports dated January 9 and April 2002, from Dr. Michael H. Young, Board-certified in internal medicine and neurology. He diagnosed a mixed headache disorder, chronic myofascial cervical pain, and some depressive symptomatology and anxiety. He stated that any "worsening of her job-related stressors may exacerbate" her condition. She also submitted records of her hospitalization from August 28 to September 6, 2004 following a medication overdose. The history, recorded by Dr. Sarah Peters, Board-certified in psychiatry, stated that appellant had multiple family stresses, financial stresses and had broken up with her boy friend. Dr. Peters further noted that appellant reported a stressful job which included answering 911 calls. On discharge, the physician diagnosed major depression without psychotic features with suicidal ideation and attempt by overdose, rule-out obsessive compulsive disorder. In a September 17, 2004 report, Dr. Peters advised that appellant had been hospitalized because "multiple stressors had worsened her depression." She advised that appellant had responded well to treatment and could return to work within one to two weeks. Dr. Peters diagnosed major depression, recurrent, with suicide attempt.

Appellant also submitted evidence regarding an investigation conducted on February 24, 2003 regarding allegations that she made an inappropriate telephone call to a coworker. She described how her job had changed since she was reassigned as a receptionist, noting that she

¹ Appellant was formerly a telecommunications equipment operator.

was no longer eligible for differential pay and alleging that the job change was in retaliation for writing letters as a union steward.

In an email dated February 18, 2004, appellant described inappropriate comments made to her by Mr. Barr, and the investigation concerning a telephone call she made to Mr. Barr's residence. She also submitted a November 3, 2003 notice of proposed suspension in which Daniel W. Brown, superintendent, advised appellant that she needed a doctor's report regarding her need for medication while at work. In an April 26, 2004 memorandum, Patricia L. Lockamy, chief of interpretation, described employing establishment leave policy and appellant's use of leave. A notice of reprimand signed by appellant on July 29, 2004 was issued to her regarding being absent without leave on July 22, 2004.

By letter dated August 9, 2004, John B. Boten, Sr., local union president, advised that a grievance was being filed on appellant's behalf regarding disparate treatment concerning leave usage. In an attached statement, appellant alleged that she was harassed regarding leave usage and implied that she had to use sick leave and was denied leave for work-related shoulder injuries.

Appellant provided an October 4, 2004 response to a proposed suspension, which she was given on August 13, 2004, for failure to follow appropriate leave procedures.² Appellant alleged that she followed proper procedures. She also stated that she was treated in a disparate manner regarding leave usage. Her sister, Barbara Prestwood, submitted a statement dated December 1, 2004, noting that appellant had been intimidated and harassed at work. In an email dated December 24, 2004, Edith B. Pritchett, a union nurse, advised Mr. Brown that the union disagreed with his decision concerning appellant's suspension and medication use at work.

By decision dated April 11, 2005, the Office found that appellant had not established any compensable factors of employment and therefore did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.³

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 her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.⁴

² A copy of the notice is not contained in the case record.

³ The record indicates that appellant simultaneously requested reconsideration with the Office and appealed to the Board. By letter dated May 12, 2005, the Office informed her that it would not proceed with the reconsideration request as she had filed an appeal with the Board.

⁴ *Leslie C. Moore*, 52 ECAB 132 (2000).

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁵ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁶ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁷ When an employee experiences emotional stress in carrying out his or her employment duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from a emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁸ 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 his or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁹

In emotional conditions claims, 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. 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.¹⁰

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.¹¹

Office regulations provide that an employer who has reason to disagree with an aspect of the claimant's report shall submit a statement to the Office that specifically describes the factual

⁵ 28 ECAB 125 (1976).

⁶ 5 U.S.C. §§ 8101-8193.

⁷ See *Robert W. Johns*, 51 ECAB 137 (1999).

⁸ *Lillian Cutler*, *supra* note 5.

⁹ *Kim Nguyen*, 53 ECAB 127 (2001).

¹⁰ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹¹ *James E. Norris*, 52 ECAB 93 (2001).

allegation or argument with which it disagrees and provide evidence or argument to support that position.¹² The applicable regulation further provides that the employer may include supporting documents such as witness statements, medical reports or records, or any other relevant information.¹³ If the employer does not submit a written explanation to support its disagreement, the Office may accept the claimant's report of injury as established.¹⁴

ANALYSIS

In this case, appellant alleged that she was harassed and improperly disciplined by the employing establishment regarding her use of leave and that she was improperly investigated and transferred by the employing establishment. While, 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,¹⁵ 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.¹⁶

The Board finds that in this case appellant has submitted a *prima facie* claim for compensation alleging that factors occurring in the performance of her duties and harassment by employing establishment management caused her claimed emotional condition. The Office undertook further development of this issue by requesting additional information from appellant and from the employing establishment by letters dated November 9, 2004. However, the employing establishment did not respond in any way to the Office's November 9, 2004 inquiry or otherwise address appellant's allegations. The record is not in posture for the Board to determine if error and/or abuse on the part of the employing establishment has been established.

The case will be remanded for the Office to request that the employing establishment provide comments on the accuracy of appellant's allegations relative to her claim. If the employing establishment does not respond to the Office's request, the Office may accept appellant's allegations as factual in accordance with its regulations.¹⁷ Following this and such other factual development as the Office deems necessary, the Office shall issue an appropriate decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

¹² 20 C.F.R. § 10.117(a).

¹³ *Id.*

¹⁴ 20 C.F.R. § 10.117(b). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Occupational Illness*, Chapter 2.806.4(d)(1) (October 1995).

¹⁵ *Felix Flecha*, 52 ECAB 268 (2001).

¹⁶ *James E. Norris*, *supra* note 11.

¹⁷ *See Alice F. Harrell*, 53 ECAB 713 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 11, 2005 be set aside and the case remanded to the Office for further proceedings consistent with this decision.

Issued: September 1, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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