

On December 31, 2002 the Office received information submitted by the employing establishment including a letter controverting the claim; supervisor comments for the period August to October 2002; an October 25, 2002 statement by Lynn Laube, section chief, accounts payable; a report for the period July 9 to December 13, 2002 by Tech Sergeant Roger W. Smith, a November 25, 2002 claim for compensation for the period October 25, 2002 and continuing; an October 25, 2002 report by Dr. Charles Cowan, a treating physician, regarding appellant's cardiac condition; an October 30, 2002 transfer summary report by Dr. My-Diem Tong; a November 25, 2002 statement by appellant; an October 26, 2002 echocardiogram; reports dated October 23 and December 5, 2002 by Dabney Blankenship, Ph.D. and a position description for accounting technician.

In an October 23, 2002 report, Dr. Blankenship noted that he evaluated appellant on October 23, 2002 and noted her employment history. Appellant related that her stress claim began in 1997 and that she filed a formal compensation claim in 1998. Dr. Blankenship diagnosed recurrent moderate major depression and generalized anxiety disorder. He opined that appellant was "partially temporarily psychologically disabled on an industrial basis and that she was "unable to return to her work duties at this time."

In an October 30, 2002 report, Dr. Tong diagnosed hypertension, hyperlipidemia and atypical chest pain. He noted cardiac enzymes were normal and the electrocardiogram "showed no acute changes."

The supervisory comments noted a complaint was made by James Torres in August 2002 regarding appellant's conducting union business at her desk and disrupting the certification area. Appellant was informed of the complaint, that if the union business required more than five minutes she needed to move away from her desk and that she need to get approval prior to conducting union business. On October 21, 2002 appellant was informed that she would be moving to another cubicle and she was counseled on her use of leave without pay (LWOP). Discussions were held with appellant on October 22, 24 and 25, 2002 regarding her move to her new cubicle. On October 25, 2002 appellant became upset when informed that her computer and heavy items were being moved that day and subsequently she submitted a leave slip for the remainder of the day due to chest pains and stress.

In an October 25, 2002 statement, Ms. Laube indicated that she counseled appellant "for her failure to correct timesheet" and that appellant took unauthorized administrative leave for the period October 9 to 11, 2002. She noted that, after talking with appellant, she "stormed out of the room" and about an hour later indicated she was incapacitated and was taking leave.

In an undated report, Tech Sergeant Smith detailed various incidents involving appellant, her use of union time, her work schedule, her failure to move to her new workstation as directed and problems with medical evidence regarding her inability to work.

In a November 25, 2002 statement, appellant alleged psychological abuse and harassment by Staff Sergeant Ana Lisa Mariano, Tech Sergeant Smith and Director Margie Ganger. She alleged that the harassment began in August 2002 and that her August 21, 2002 performance appraisal showed no problems. Appellant alleged adverse actions by Staff Sergeant Mariano which included restrictions placed on her, but not similarly situated employees; requiring

appellant to “report any and all instances away from” her desk. She alleged that on October 25, 2002 her supervisor threw her medical documentation for her disability at her and that her supervisor’s “tone was rude, unprofessional and condescending.” Next appellant stated that her accommodation request was made in order to move her away from Mr. Torres, a supervisor, whom she alleged “had recently made verbal threats, the latest threat being September 20, 2002.” Staff Sergeant Andre X.H. Morrison then approached appellant to find out if she was ready to move and Ms. Laube informed her that “she needed to counsel” appellant. During her counseling session with Ms. Laube, appellant was told she was being given a reprimand. After returning to her desk, appellant talked to the union president and asked if the move was approved, which he responded it was not. Appellant then tried to contact various individuals by telephone and email including Barbara McKown, Director; Ms. Ganger; Mary Coffey, secretary; and Michael Stacy requesting the agency to cease harassing her. She alleged that her new job location “would allow both visible and frequent contact with Mr. Torres who had made verbal threat.” Appellant then began feeling in pain, stressed, fearful and had chest pains. She then stated that she was informed that she had to have sick leave to use, which she did not have. Appellant was subsequently admitted to the emergency room of Loma Linda where she was admitted for seven days. On October 21, 2002 she stated she was given a reprimand by Staff Sergeant Mariano and that she was on restricted leave status due to her being “in a LWOP status.” A union representative was allegedly requested and denied.

In a December 5, 2002 report, Dr. Blankenship diagnosed generalized anxiety and major depressive disorders and stated that appellant was disabled from her employment “due to continuous fear of being harmed by a supervisor she identifies as [Mr.] Torres.”

In a letter dated January 21, 2003, the Office informed appellant that the evidence of record was insufficient to support her emotional condition claim and advised her as to the factual and medical evidence required.

On February 24, 2003 the Office received a February 10, 2003 notice of hearing request and an order directing the employing establishment to produce appellant’s file by the Equal Employment Opportunity (EEO) Commission; a February 3, 2003 unfair labor practice complaint; a February 18, 2003 response by appellant to the January 21, 2003 correspondence; a September 23, 2002 leave request for the period September 23 to 24, 2002; Ms. Laube’s statement regarding incidents on October 21 and 25, 2002; an October 1, 2002 statement and an undated response to questions posed by the Office by Staff Sergeant Mariano; an October 25, 2002 accommodation request by appellant regarding being moved near Mr. Torres; an August 28, 2002 email from Tech Sergeant Smith requesting clarification of appellant’s grievance; a time and attendance sheet for the period October 6 to 19, 2002; a November 24, 2002 report by Dr. Mitchell Bhoopat; Tech Sergeant Smith’s response to the Office’s request for information; a statement by Ms. Ganger; emails regarding management’s request that appellant conduct union business in a private office instead of at her desk; email correspondence between appellant and Ms. Ganger regarding Mr. Torres’ cubicle being near appellant; medical bills; a leave slip for October 25, 2002 noting stress, headache and chest pain and a position description.

On February 24, 2003 the Office received a leave request for September 23 and 24, 2002 (no approval or disapproval checked); a statement by Ms. Laube regarding incidents on October 21 and 25, 2002; an October 21, 2002 report by Staff Sergeant Mariano regarding

incidents with appellant; statement by Staff Sergeant Mariano; an October 25, 2002 note by appellant regarding threats made by Mr. Torres for her request for accommodation and an allegation of harassment; an August 28, 2002 email from Tech Sergeant Smith requesting additional information from appellant regarding her harassment grievance; Office letters dated January 21, 2003; individual time and attendance records for the period October 6 to 19, 2002, a November 24, 2002 report by Dr. Bhoopat; a position description for account technician and a statement by Tech Sergeant Smith.

In his November 24, 2002 report, Dr. Bhoopat noted that he has treated appellant since September 18, 2002 for high blood pressure and that she received treatment from October 25 to 30, 2002. He stated that appellant's blood pressure was down since she was not working and that he would monitor her blood pressure once she returned to work "to try to determine if her work environment is truly contributing to her episodes of chest discomfort and elevated blood pressure."

On April 8, 2003 the Office received a March 26, 2003 progress report by Dr. Blankenship.

On April 14, 2003 the Office received an April 5, 2003 affidavit by Delores Pritchett; a May 14, 1997 leave request for 48 hours of sick leave for the period May 9 to 19, 1997 due to work-related stress; approval of appellant's 1997 leave request; an April 3, 2003 report by Dr. Bhoopat; a leave request for September 23 and 24, 2002 (no approval or disapproval checked); a January 27, 2003 report by Dr. Steve A. Moskowitz, a treating Board-certified internist, and an October 23, 2002 report by Dr. Blankenship.

On May 2, 2003 the Office received a certification of health care provider and April 2, 2003 report by Dr. Blankenship.

On May 13, 2003 the Office received a May 3, 2003 claim for compensation (Form CA-7) appellant requested compensation for the period August 8, 2002 and continuing; emails dated August 28 and 29, 2002 regarding appellant's allegation of harassment and her request that it cease; a December 18, 2002 letter of reprimand for insubordination by Ms. Laube; an October 31, 2002 summary of employing establishment's EEO counselor's inquiry into appellant's complaint of harassment; a December 10, 2002 EEO counselor report; a performance appraisal for the period May 1, 2001 to April 30, 2002; April 2, 2002 union membership meeting minutes; a May 5, 2003 statement by appellant rebutting statements made by management; emails dated August 29, 2002 regarding her request for a harassment investigation and her allegation that she feels unsafe with Tech Sergeant Smith, Mr. Torres and Gerry Davis; October 22, 2002 email from appellant to Ms. Ganger regarding clarification; an October 21, 2002 report by Staff Sergeant Mariano regarding incidents with appellant; undated email to Ray Levy from appellant regarding harassment/hostile work environment; August 21, 2002 performance feedback form; March 5, 2003 memorandum regarding appellant's request for LWOP by Ms. Laube; October 2, 2002 note from appellant; earnings and leave statement for pay period ending March 8, 2003; and leave request for September 23 and 24, 2002, which contained no evidence of approval or disapproval.

In her statement, appellant alleged that she was harassed and subject to a hostile work environment. She also alleged that Mr. Torres made threatening remarks twice and that she was afraid of him. Appellant alleged that the employing establishment “malicious (sic) took steps in a short period to locate me closer to [Mr.] Torres.” She noted that she suffered chest pains and requested four hours of leave, which she alleged was denied. Appellant denied that any confrontation occurred. She then alleged that Ms. Ganger knew about her fear of Mr. Torres and “malicious (sic) took an action that caused harm.” Appellant also alleged that the employing establishment failed to investigate her allegations that Mr. Torres made threats. Next, she alleged that she “received harassment, reprisal in working conditions and for union activities, excessive monitoring and intimidation.” In concluding, appellant alleged that she was “fearful of management actions and their actions” which affected her health.”

In the October 31, 2002 report, the EEO counselor indicated management was not interested in mediation based on the belief that appellant was not subject to harassment.

In a report dated May 5, 2003, Dr. Moskowitz diagnosed elevated blood pressure due to work stress and “racially demeaning comments” by Ms. Grenier and Mr. Schilling.

By decision dated June 28, 2003, the Office denied appellant’s claim on the basis that she failed to establish any compensable factors of employment.

On July 1, 2003 the Office received a June 17, 2003 letter regarding appellant’s EEO Commission decision which remanded for investigation into allegations noted in the June 4, 2003 decision and the June 4, 2003 EEO decision.

In the June 4, 2003 decision, the EEO Commission found the employing establishment’s improperly fragmented appellant’s complaint by dismissing her appeal as moot and failing to state a claim. The EEO Commission affirmed the dismissal of appellant’s claims that the employing establishment harassed her with regards to her union activities, allowed appellant’s supervisors to harass her and failed to file documentation with the Office regarding the October 25, 2002 ambulance transport to the hospital. With regards to appellant’s remaining complaints regarding refusal to accommodate appellant’s request to be moved away from a supervisor who made threats against her; denying her request to receive her earnings and leave statements electronically as an accommodation; failure to provide sick leave on October 25, 2002 due to her being taken to the emergency room, which created a hostile work environment; allowing appellant “to be reprimanded for being in a LWOP status”; the restrictions of sick due as a punishment/reprimand for being in a LWOP status and requiring documentation for absences; the employing establishment “allowed LWOP restrictions without the supporting documentation;” issuing an order to appellant “to sign a ‘corrected’ timecard (that she believed was erroneous) that took away three days of claimed administrative leave for a court appoint related to ‘violence in the workplace’: and an incident on October 10, 2002 when the Director yelled at appellant after she informed the Director she would not be reporting for work. In concluding, the EEO Commission ordered the employing establishment “to process the remanded claims” and “submit its compliance report within thirty (30) calendar days of the completion of all ordered corrective action.” Appellant was also advised that she could file a civil action which would terminate any administrative processing by the employing establishment.

On July 7, 2003 the Office received an April 2, 2003 report and a certification of health care provider by Dr. Blankenship. He diagnosed major depression and generalized anxiety disorder. Dr. Blankenship opined that appellant had been totally disabled since November 9, 2002 “due to continuous fear of being harmed by a supervisor she names [Mr.] Torres.”

On July 8, 2003 the Office received a June 9, 2003 progress note by Dr. Blankenship.

In a letter dated July 22, 2003, appellant’s representative requested an oral hearing. The Office also received a brief from another representative requesting an oral hearing and contending that appellant was entitled to both compensation and back based upon an EEO Commission decision which was attached.¹

On August 7, 2003 the Office received a July 14, 2003 progress note by Dr. Blankenship.

On August 8, 2003 the Office received an August 3, 2003 progress note by Dr. Blankenship.

On October 6, 2003 the Office received progress notes dated September 24, 2003 by Dr. Blankenship.

On November 21, 2003 the Office received progress reports dated November 20, 2002, January 16, February 6, March 12 and 26, May 22, June 9, July 14, August 3, September 17 and 24 and October 8, 2003 and an October 23, 2002 report by Dr. Blankenship and reports dated January 27, February 3 and 24, March 17, May 5 and August 18, 2003 by Dr. Moskowitz.

On May 21, 2004 the Office received an April 28, 2004 progress note by Dr. Blankenship which indicated appellant would be disabled from work until May 28, 2004.

On June 11, 2004 the Office received a June 4, 2003 EEO Commission decision on appellant’s harassment and discrimination complaints, a January 30, 2004 email from appellant requesting a copy of the investigative inquiry; a December 18, 2003 memorandum of understanding; request for administrative leave on September 23 and 24, 2002 for “work violence in workplace;” January 15, 2004 email from appellant regarding delaying her pay and not receiving “credit for credit hours worked”; February 26, 2004 email from Samuel Robinson regarding representing appellant; an October 27, 2003 email from appellant regarding investigation into appellant’s duty performance; March 15, 2004 note to security from appellant regarding presence of Mr. Torres at meeting on February 26, 2004; August 19, 2003 letter of counseling; March 2, 2004 email from Mr. Robinson regarding appellant and the February 26, 2004 meeting; a January 5, 2004 email from Tech Sergeant Smith regarding voids and work counts; November 25, 2003 email from Ms. Ganger regarding appointment of investigator to investigate appellant’s workplace violence allegations; and a September 3, 2003 step 1 response noting letter of counseling had been rescinded on August 20, 2003 by Staff Sergeant Morrison.

¹ Appellant filed a letter terminating representation by this individual. The decision referred to is the June 4, 2003 EEO decision which remanded the claim to the employing establishment to initiate an investigation into appellant’s allegations.

On July 19, 2004 the Office received a July 30, 2003 email by Mr. Torres regarding a July 30, 2004 incident with Mr. Robinson and Ms. Laube; an October 23, 2003 request for an investigation in to her performance appraisal by appellant; an August 8, 2004 email from appellant regarding allegations of hostile work environment and continuing harassment by Tech Sergeant Smith as well as harassment by Mr. Torres and Ms. Ganger; a September 23, 2002 email from Ms. Ganger regarding move of certification branch included Mr. Torres; a January 5, 2004 email from Tech Sergeant Smith regarding work count and voids; appellant's rebuttal to Ms. Ganger's statement; a January 20, 2004 email from Ms. Morrison stating she does not want to "make any statement or comment about anything that goes on with you and [appellant]"; an October 21, 2003 email from appellant regarding her request for evaluation by an employing establishment physician to address her fear due to allegations of workplace violence; October 25, 2002 Loma Linda University Medical Center emergency room report; emergency response form by Colleen A. Augustine, RN; leave request form for October 25, 2002; February 26, 2004 memorandum by Ms. Laube regarding February 26, 2004 meeting with appellant; February 19, 2003 statement by Ms. Ganger; October 25, 2002 note by appellant regarding her fear of Mr. Torres due to alleged threats he made; received a response regarding Mr. Torres' move and noting "no specific accommodation was requested except to be moved away from Supervisor Torres"; and a September 3, 2003 step 1 response noting letter of counseling had been rescinded on August 20, 2003 by Staff Sergeant Morrison.

On July 26, 2004 the Office received a response regarding Mr. Torres' move and noting "no specific accommodation was requested except to be moved away from [Mr.] Torres."

On August 9, 2004 the Office received a May 27, 2005 report by Dr. Blankenship.

Appellant requested an oral hearing, which was held on September 13, 2004.

On September 28, 2004 the Office received a January 15, 2004 designation of investigator for appellant's allegations of harassment and a report of the investigation conducted December 18, 2003 to January 16, 2004 by Dean M. Boswell. He found the evidence insufficient to support appellant's allegations of harassment and a hostile work environment. In his concluding analysis, Mr. Boswell noted that appellant was a minority with a prior history of EEO activity and she alleged that she was treated differently than Ms. McCree, who was also a minority. He noted that both appellant and Ms. McCree "received counseling for excessive LWOP" which Ms. McCree granted her request for advance sick leave while appellant's request was denied. Mr. Boswell noted that appellant "failed to provide the required medical documentation" with her request. With regards to appellant's prior EEO activity, Mr. Boswell noted none of her current supervisors were involved in her prior EEO complaints or were unaware of her prior complaints. Next, he noted that appellant alleged that she was "disabled with major depression," although her supervisors testified appellant "was not impeded in any way from performing her duties and responsibilities." Mr. Boswell noted that appellant failed to provide the requested information although she had requested on "numerous occasions to address how her medical condition affected her ability to perform the essential duties of her position." Appellant subsequently submitted evidence which opined appellant's "Generalized Anxiety Disorder only precluded her from working for specific individuals, which did not render her substantially limited in the major activity of working." With regards to appellant's allegations of

harassment and hostile work environment, Mr. Boswell noted the standard to prove her allegations and found:

“In the instant case, the complainant has outlined instances where she and several members of management have disagreed on numerous issues, nothing more. Aside from complainant’s perceived obstinate mode of dealing with management, as is evident by requesting every bit of direction be put in writing via email, management has a track record of at least attempting to work with her. It is noted that the complainant precipitated many of the incidents of disagreement by being difficult to work with on a daily basis.

“Of note are Ms. Ganger’s efforts to alleviate the complainant’s dissatisfaction. Even though Ms. Ganger’s investigation of the alleged threat by Mr. Torres revealed there was no threat, management went out of their way to attempt to placate the complainant. The complainant was given the opportunity to relocate to a different cubicle and refused. Rather than directing her relocation, management moved Mr. Torres and his whole team.”

Lastly, he found no evidence to support appellant’s belief that she should have received a highly successful performance appraisal in 2003. Mr. Boswell noted that, while appellant did receive a highly successful for her 2002 performance appraisal, she had been out of the office for 10 months during the 2003 appraisal when she received a fully successful evaluation and “failed to provide any evidence to demonstrate how she exceeded the standard to achieve the higher summary rating.”

On November 23, 2004 the Office received a June 24, 2004 report by Dr. Bhoopat and emergency response form by Ms. Augustine, RN; leave request form for October 25, 2002.

On November 29, 2004 the Office received a physician’s certification by Dr. Bhoopat and a December 22, 2003 attending physician’s report by Dr. Lewis.

On November 30, 2004 the Office received a November 8, 2002 report by Dr. Lewis and a June 24, 2004 report by Dr. Bhoopat.

In a decision dated January 12, 2005, the Office hearing representative affirmed the denial of appellant’s emotional condition claim. The hearing representative found the evidence of record failed to contain any evidence supporting her allegations of harassment or discriminatory treatment by Staff Sergeant Mariano, Tech Sergeant Smith, Ms. Ganger or Mr. Torres.

On March 2, 2005 the Office received a May 27, 2004 report and April 28, 2004 progress notes by Dr. Blankenship.

On March 16, 2005 the Office received appellant’s request for reconsideration and received emails dated September 20, 2002 by Mr. Torres, Debra Moran, Mr. Davis and Julie Bixler regarding cubicle move; August 27, 2003 allegation of workplace violence by appellant; position description for accounting technician; October 25, 2002 note by appellant regarding her fear of Mr. Torres and alleged threats made by him; note that Mr. Torres was moved to another

section to accommodate appellant; January 12, 2005 Office letter; information on high blood pressure; May 21, 2004 request for donated leave by appellant; October 3, 2003 denial of appellant's request for reasonable accommodation by Staff Sergeant Morrison; a February 12, 2004 email by Deborah McCree which forwarded a February 11, 2004 email by Ms. Ganger regarding three-way switch of jobs and cross-training; a January 24, 2004 email from Ms. Ganger regarding move and cross-training; performance plan information; a November 25, 2003 letter of requirement for a Ms. McCree regarding leave problems; an undated note from appellant regarding her hostile environment and harassment complaints; a August 19, 2003 note by Staff Sergeant Morrison regarding letter of counseling and meeting; a February 26, 2004 email from Mr. Robinson regarding union representation for appellant; disability notes dated January 30 and February 13, 2003, reports dated December 5, 2002, April 2, July 14 and September 25, 2003 and May 27, 2004, and progress notes dated March 26, 2003 by Dr. Blankenship; an October 24, 2002 emergency room report; a January 20, 2004 email from Ms. McCree, a coworker; emails dated December 29, 2003 and January 7, 2004 from appellant regarding reporting and leaving time for December 29, 2003 to January 8, 2004; appellant's statement of disability; position description for accounting technician; leave requests for September 23 to 24 and October 25, 2002; emergency response form by Ms. Augustine, RN; leave request form for October 25, 2002; August 21, 2002 performance feedback; October 25, 2002 denial of request to change supervisors as an accommodation by Ms. Laube; performance appraisals for the periods July 19, 1999 to April 30, 2000, May 1, 2000 to April 30, 2001, May 1, 2002 to April 30, 2003, May 1, 2002 to April 30, 2003 and May 1, 2003 to April 30, 2004; attachments regarding problems with appellant's work during 2002, 2003 and 2004; a May 20, 2004 supervisor's statement regarding appellant's disability retirement application by Ms. Laube; an August 1, 2003 request for location reassignment as a medical accommodation; January 5, 2004 email by Tech Sergeant Smith regarding work counts and voids; a September 3, 2003 step 1 response noting that the letter of counseling had been rescinded on August 20, 2003; an August 19, 2003 letter of counseling for appellant for failing to use proper chain of command by Staff Sergeant Morrison; a November 25, 2003 email from Ms. Ganger indicating an investigator would be appointed to investigate appellant's allegations of workplace violence; definition of traumatic injury; a November 23, 2002 email from Ms. Ganger stating that she had asked Mr. Torres to move to another cubicle and that she has no "proof of actual harassment at this time;" a November 23, 2002 email from appellant to Ms. Ganger requesting an investigation into a comment made by Mr. Torres which she alleged caused her to feel threatened; a restraining order by Ms. Laube against Mr. Robinson; documentation of medical impairment by Kaiser Permanente for various periods in 2002, 2003 and 2004; a disability retirement application checklist; copy of the September 13, 2004 hearing representative's decision; physician's statement in regards to disability retirement application; February 26, 2004 five-day suspension decision by Ms. Laube; workplace violence policy; August 8, 2003 email by appellant regarding harassment by Mr. Torres, Ms. Ganger and Tech Sergeant Smith; an August 26, 2003 email by William Hooven regarding letter of counseling given to appellant for failure to follow chain of command; December 18, 2003 memorandum of understanding; February 26, 2004 memorandum for record by Ms. Laube; December 30, 2003 emails from appellant alleging harassment and continuing intimidation; a May 24, 2004 application for immediate retirement; October 2003 San Bernardino operating instructions; a memorandum detailing incident on July 30 with Mr. Robinson; certification of health care provider and reports dated April 3, 2003 and June 24, 2004 by Dr. Bhoopat; July 17, 2004 Loma Linda University

Medical Center emergency room progress notes; an undated page from Rita M. Stockman, investigator, regarding appellant's claim of hostile work environment and harassment; a September 23, 2002 email noting move of certification branch including Mr. Torres; a July 30, 2003 email from Mr. Torres regarding comment and encounter by Mr. Robinson with Ms. Laube on August 30, 2003; an August 14, 2003 statement by Mr. Robinson regarding encounter with Ms. Laube on July 30, 2003; a November 7, 2003 decision denying appellant's request to change her supervisor as a reasonable accommodation by Staff Sergeant Morrison; and April 19, 2004 disability note by Dr. Lewis; September 12, 2003 email from Staff Sergeant Morrison regarding assigned work.

On March 29, 2005 the Office received a November 26, 2003 performance feedback form; a November 7, 2003 memorandum by Staff Sergeant Morrison regarding appellant's failure to follow procedures and guidelines; a November 7, 2003 decision denying appellant's request to change her supervisor as a reasonable accommodation by Staff Sergeant Morrison; testimony by Staff Sergeant Morrison, Ms. Laube and Ms. Ganger with appellant's rebuttal; an October 23, 2003 email by Stephan Thompson, appellant's representative regarding meeting to discuss appellant's duty performance; a January 15, 2003 memorandum regarding the earning and use of credit time and review of letter stating appellant's depression was a valid reason to transfer appellant to another division by Staff Sergeant Morrison; a June 3, 2004 disability retirement application checklist; a June 2, 2004 regarding initiation of removal action; a September 3, 2003 response to step 1 grievance finding appellant grievance regarding the removal of a letter of counseling was moot as the letter had been rescinded on August 20, 2003; performance plan information; a March 2, 2004 email from Mr. Robinson regarding appellant's request for union representation; a February 19, 2003 response to questions by Ms. Ganger; a community newsletter article; a February 26, 2004 email by Mr. Torres regarding February 26, 2004 meeting with appellant; and a February 26, 2004 memorandum by Ms. Laube regarding a meeting that date with appellant.

On July 11, 2005 the Office received a 1998 arbitration decision sustaining a grievance by a postal claimant regarding retraining.

By decision dated September 15, 2005, the Office denied appellant's request for modification.

On January 10, 2006 the Office received appellant's September 15, 2005 request for reconsideration and evidence in support of her request. The evidence included November 25, 2003 and September 20, 2004 emails from Ms. Ganger; a September 20, 2002 email response from Mr. Davis to Mr. Torres September 20, 2002 email; a September 20, 2002 email from Ms. Moran; a July 29, 2003 statement by Tech Sergeant Smith; an October 25, 2002 statement by Ms. Laube; a July 2002 civilian performance plan; an undated certification of health care provider by Dr. Bhoopat; a civilian performance rating for the periods May 1, 2001 to April 30, 2002, May 1, 2002 to April 30, 2003 and May 1, 2003 to April 30, 2004; emails dated October 15 and 17, 2003 by appellant; emails dated July 30, 2003 by Mr. Torres; an October 23, 2003 email by Mr. Thompson; a November 26, 2003 performance feedback form; a September 20, 2002 email from Ms. Bixler; a September 15, 2003 decision denying her request for modification; an October 6, 2003 email from Mr. Thompson regarding official time for President, San Bernadino; September 20, 2002 email from Mr. Davis; copy of attachment to a

Form CA-1 by Staff Sergeant Mariano; an October 25, 2002 an employing establishment emergency response form by Ms. Augustine, RN; leave request form for October 25, 2002; a February 5, 2005 email from Staff Sergeant Morrison; a November 7, 2003 memorandum by Staff Sergeant Morrison regarding appellant's failure to follow procedures and guidelines; a January 29, 2004 proposed suspension by Staff Sergeant Morrison; a February 26, 2004 five-day suspension decision by Ms. Laube; a May 20, 2004 notice of proposed removal; by Ms. Laube; a statement by Ms. Ganger; a reports dated February 25, 2003 and May 27, 2004 by Dr. Blankenship, Ph.D.; a December 5, 2003 email from John Pannozzo regarding settlement discussion concerning two counseling incidents involving appellant; an undated page from Ms. Stockman; a June 24, 2004 report by Dr. Bhoopat; and a December 18, 2003 memorandum of understanding.

By decision dated January 30, 2006, the Office denied appellant's request for modification.

LEGAL PRECEDENT

To establish a claim of an emotional condition in the performance of duty, a claimant 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.²

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*,³ 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.⁴ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁵ When an employee experiences emotional stress in carrying out 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 an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁶ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a

² *Leslie C. Moore*, 52 ECAB 132 (2000).

³ 28 ECAB 125 (1976).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *See Robert W. Johns*, 51 ECAB 137 (1999).

⁶ *Lillian Cutler*, *supra* note 3.

reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁷

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.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.⁹ 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.¹⁰ An employee's frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable.¹¹ Similarly, an employee's dissatisfaction with perceived poor management is not compensable under the Act.¹²

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 her allegations with probative and reliable evidence.¹³

ANALYSIS

Appellant attributed her emotional condition to a number of employment incidents and conditions. The Board must therefore initially review whether the alleged incidents and conditions of employment are compensable under the terms of the Act.

⁷ *Kim Nguyen*, 53 ECAB 127 (2001).

⁸ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁹ *Felix Flecha*, 52 ECAB 268 (2001).

¹⁰ *Kim Nguyen*, *supra* note 7.

¹¹ *Barbara J. Latham*, 53 ECAB 316 (2002).

¹² *Id.*

¹³ *James E. Norris*, 52 ECAB 93 (2000).

Appellant attributed her emotional condition to an alleged pattern of harassment, verbal threats and retaliation by her supervisors, Staff Sergeant Mariano, Tech Sergeant Smith and Ms. Ganger. She submitted EEO and other grievance documents regarding these allegations. Incidents of harassment by supervisors and coworkers, if established as occurring and arising from the employee's performance of her regular duties, could constitute employment factors.¹⁴ However, the issue is not whether the claimant has established harassment or discrimination under standards applied by the EEO Commission. Rather, the issue is whether the claimant, under the Act, has submitted evidence sufficient to establish an injury arising in the performance of duty.¹⁵ For harassment to give rise to a compensable disability under the Act, there must be probative and reliable evidence that harassment or discrimination did in fact occur.¹⁶ Mere perceptions of harassment are not compensable under the Act.¹⁷

The evidence in this case does not contain probative evidence sufficient to establish a compensable work factor regarding the actions of appellant's supervisors. It is clear that appellant has filed grievances with respect to actions of her supervisors, but there are no findings of error, no admission of error or other probative evidence that would establish a compensable work factor. With respect to grievances, the record contains a September 3, 2003 step 1 response, which found her grievance moot due to the rescission of the letter of counsel, and does not provide any admission or evidence of error. Appellant filed an EEO complaint and a decision was issued on June 4, 2003. In its decision, the EEO Commission found the employing establishment's improperly fragmented appellant's complaint by dismissing her appeal as moot and failing to state a claim and remanded for the employing establishment to investigate appellant's allegations. Appellant was also advised that she could file a civil action instead of continuing with the administrative processing. Pursuant to the order by the EEO Commission an investigation was conducted from December 18, 2003 to January 16, 2004 by Mr. Boswell. The investigator found the evidence of record insufficient to support appellant's allegations of harassment and hostile work environment. He also found that appellant failed to submit any evidence to support her contention that she was entitled to a higher performance evaluation in 2003 in view of the fact that she had been out of the office for 10 months of the evaluation period. The record contains no witness statements or other evidence supporting appellant's allegations of harassment and a hostile work environment. An allegation itself is not sufficient; there must be probative evidence in support of the allegation. The Board finds that appellant has not established a compensable work factor as to actions of her supervisors.

Appellant also submitted her performance appraisals for the period 1999 to 2003, asserting that she was given an unfairly low rating for the 2003 performance appraisal. However, performance appraisals are administrative and are not compensable unless error or abuse is shown.¹⁸ The Board finds that, under the circumstances of this case, the performance

¹⁴ *Janice I. Moore*, 53 ECAB 777 (2002).

¹⁵ *See Martha L. Cook*, 47 ECAB 226 (1995).

¹⁶ *Marlon Vera*, 54 ECAB 834 (2003).

¹⁷ *Kim Nguyen*, *supra* note 7.

¹⁸ *Beverly A. Spencer*, 55 ECAB ____ (Docket No. 03-2033, issued May 3, 2004).

appraisal does not establish any administrative error or abuse, particularly due to appellant's absence during 10 months of the performance year, the letters of counseling she received and the investigative report which found no evidence to support appellant's belief that she was entitled to a higher rating for the 2003 performance appraisal.

Appellant alleged that her sick leave request for four hours on October 25, 2002 was denied by Ms. Laube. The handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹⁹ In this case, the Board finds that the employing establishment acted reasonably in this administrative matter.

Appellant also alleged that she was subjected to threatening remarks made by Mr. Torres. There are no witness statements or other evidence providing detail of the alleged comments. It is well established that not every statement uttered in the workplace will give rise to coverage.²⁰ Appellant did not submit evidence establishing Mr. Torres made the alleged threatening remarks to her or the contents thereof. The Board finds that the evidence is not sufficient to establish a compensable work factor in this regard.

The Board finds that appellant has failed to establish a compensable factor of employment with regard to these allegations and consequently has not met her burden of proof in establishing his claim for an emotional condition.²¹

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish her emotional condition claim.

¹⁹ See *Judy L. Kahn*, 53 ECAB 321 (2002).

²⁰ *Denise Y. McCollum*, 53 ECAB 647 (2002).

²¹ Where a claimant has not established any compensable employment factors, it is not necessary to consider the medical evidence of record. *Peter D. Butt, Jr.*, 56 ECAB ____ (Docket No. 04-1255, issued October 13, 2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 30, 2006 is affirmed.

Issued: August 4, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board