

Appellant alleged that the employing establishment unfairly demoted her after she returned to work following back surgery.¹ It ignored her medical restrictions and refused to transfer her to a facility closer to her home. The employing establishment discriminated against appellant in assigning work. Her supervisors were mentally and physically abusive. Appellant submitted a copy of an EEO document indicating that her complaint against the employing establishment had been accepted for investigation. An email message from the administrative law judge assigned to the EEO case indicated that a settlement conference was pending. By letter dated December 1, 2004, Denise Mercherson, Esq., appellant's attorney, informed her that the employing establishment had offered \$25,000.00 to settle her EEO case.

In reports dated August 6, 2004 to September 22, 2005, Mary Ellen Moore, Ph.D., a clinical psychologist, indicated that she was counseling appellant for depression and anxiety. The condition was due to job stress from appellant's relationships with her supervisors and coworkers. Ms. Moore diagnosed an acute stress disorder. In reports dated September 8, 2005 and March 9, 2006, Dr. Harshad M. Mehta, an attending Board-certified psychiatrist, stated that he had treated appellant since March 24, 2005 for major depression. Dr. Mehta indicated that the condition was caused by harassment and discrimination at work.

By decision dated December 2, 2005, the Office denied appellant's emotional condition claim.

Appellant requested an oral hearing. A telephonic hearing was scheduled for March 20, 2006. She missed the scheduled telephonic conference and subsequently requested that the conference be rescheduled. On March 22, 2006 the hearing representative informed appellant that the hearing could not be rescheduled. The hearing representative subsequently performed a review of the written record.

In a March 22, 2006 letter to the hearing representative, appellant reiterated her allegations against the employing establishment. She asserted that the medical evidence and her EEO case established her claim for a work-related emotional condition.

By decision dated May 4, 2006, an Office hearing representative affirmed the December 2, 2005 decision denying appellant's emotional condition claim, but modified to reflect that no compensable work factors had been established.²

LEGAL PRECEDENT

To establish a claim that she sustained 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

¹ Appellant was assigned to a part-time flexible position.

² The December 2, 2005 decision denied appellant's emotional condition claim on the grounds that the evidence did not establish fact of injury.

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.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 an illness has some connection with 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 employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act.⁴ On the other hand, the disability is not covered where it results from such factors as an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.⁵

Administrative and personnel matters, although generally related to the employees' employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.⁶ However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment, in what would otherwise be an administrative matter, coverage will be afforded.⁷ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁸

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 work 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 compensable factors of employment and may not be considered.⁹ If a claimant does implicate a factor of employment, the Office should then consider whether the evidence of record substantiates that factor. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim; the claim must be supported by probative

³ *Pamela D. Casey*, 57 ECAB ____ (Docket No. 05-1768, issued December 13, 2005); *George C. Clark*, 56 ECAB ____ (Docket No. 04-1573, issued November 30, 2004).

⁴ 5 U.S.C. §§ 8101-8193; see *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁶ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁷ See *William H. Fortner*, 49 ECAB 324 (1998).

⁸ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁹ *Dennis J. Balogh*, 52 ECAB 232 (2001).

evidence.¹⁰ Where 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.¹¹

ANALYSIS

Appellant alleged that her supervisors did not honor her medical restrictions. The Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if such activity is substantiated by the record.¹² However, there is insufficient evidence to establish that the employing establishment required appellant to perform work that exceeded her medical restrictions. She did not specify the work restrictions that were not accommodated or demonstrate that the work assignments from her supervisors were inconsistent with her restrictions. Therefore, this allegation is not found to be a compensable employment factor.

Appellant alleged that the employing establishment discriminated against her in making work assignments and in denying her request for a transfer to a facility closer to her home. She alleged that the employing establishment unfairly demoted her to a part-time flexible position after she returned to work following back surgery. Appellant did not provide details regarding these allegations such as dates, individuals involved or what specific acts occurred. These allegations involve administrative matters which generally do not fall within coverage of the Act.¹³ An administrative or personnel matter will be considered to be an employment factor only where the evidence discloses error or abuse on the part of the employing establishment.¹⁴ The assignment of work by a supervisor, the granting or denial of a request for a transfer and the assignment to a different position are administrative functions that are not compensable absent error or abuse. Appellant has provided insufficient evidence that the employing establishment erred or acted abusively in handling these administrative matters. Therefore, these allegations are not established as compensable employment factors.

Appellant alleged generally that her supervisors were mentally and physically abusive. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute a compensable employment factor.¹⁵ However, for harassment and 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.¹⁶ The Board has

¹⁰ See *Charles E. McAndrews*, 55 ECAB 711 (2004).

¹¹ *Jeral R. Gray*, 57 ECAB ____ (Docket No. 05-1851, issued June 8, 2006).

¹² *Diane C. Bernard*, 45 ECAB 223 (1993).

¹³ *Michael L. Malone*, 46 ECAB 957 (1995).

¹⁴ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁵ *Michael A. Salvato*, 53 ECAB 666 (2002).

¹⁶ *Donna J. DiBernardo*, 47 ECAB 700 (1996).

held that mere disagreement or dislike of a supervisory or management action will not be compensable without a showing, through supporting evidence, that the incidents or actions complained of were unreasonable.¹⁷ Appellant provided no details regarding her allegations of mental and physical abuse by her supervisors such as dates, individuals involved and what occurred. Therefore, these allegations are not established as factual. The Board finds insufficient evidence of harassment or discrimination by the employing establishment. Consequently, no compensable employment factor has been established.

Appellant stated that an EEO complaint against the employing establishment had been resolved in her favor and established that her emotional condition was causally related to her federal employment. She submitted a copy of an EEO document indicating that her complaint against the employing establishment had been accepted for investigation. An email message from an administrative law judge indicated that a settlement conference was pending. Appellant's attorney informed her that the employing establishment had offered \$25,000.00 to settle her EEO case. The Board has held that grievances and EEO complaints, by themselves, do not establish wrongdoing by an employing establishment.¹⁸ There is no EEO decision or settlement agreement of record containing findings of error or abuse by employing establishment personnel. Consequently, appellant's EEO materials are not sufficient to establish a compensable factor of her employment.

CONCLUSION

The Board finds that appellant failed to establish that her emotional condition was causally related to a compensable factor of employment.¹⁹

¹⁷ *Janice I. Moore*, 53 ECAB 777 (2002).

¹⁸ *Charles D. Edwards*, *supra* note 14; *Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁹ Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence. *See Barbara J. Latham*, 53 ECAB 316 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 4, 2006 and December 2, 2005 are affirmed.

Issued: December 12, 2006
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board