

In a statement dated October 15, 2002, appellant alleged that she was subject to harassment and discrimination by Supervisor James Scott. Appellant discussed her claims before the Office and asserted that Supervisor Scott had held up and did not properly process her compensation claim forms, denied leave and created an unsafe and hostile work environment. Appellant also discussed Accident Review Board hearings in April 2002¹ and alleged that she was not properly notified of the hearings. She submitted an amendment to an Equal Employment Opportunity (EEO) complaint filed on April 20, 2002. The amendment alleged that appellant was subject to unspecified harassment from Supervisor Cora Limon on July 22, 2002. In an October 11, 2002 letter, appellant indicated that on July 8, 2002 her car was scratched at work and she felt Supervisor Limon had scratched the car. Appellant also stated that on July 9, 2002 she filed a grievance regarding a letter of warning she received.

Supervisor Scott responded, in a statement received on December 16, 2002, that he did not hold up claim forms, lose paperwork or otherwise delay appellant's compensation claims. He stated that appellant claimed an unsafe condition existed anytime she was given instructions or assignment she did not like. Supervisor Scott indicated that appellant was issued a letter of warning because of her refusal to cooperate with an accident repeaters program.

Appellant submitted statements from several coworkers, who generally discussed difficulties with Supervisor Scott but did not address specific incidents involving appellant. She submitted a statement dated February 8, 2003, alleging that on January 12, 2003 her chair at work was missing and the lock and chain had been cut. According to appellant, she had not received a response to her request for a chair and this was retaliation.

By letter dated April 4, 2003, appellant reported that on February 17, 2003 Supervisor Scott had a stroke and beginning the next day coworkers had teased and accused her of killing Supervisor Scott. She alleged, for example, that on February 18, 2003 two female employees stated that "I killed SDO [Supervisor Distribution Operations] [Supervisor] Scott" and one male coworker stated that "I did n[o]t have to worry about my friend any more." In an April 23, 2003 statement, appellant indicated that she had notified Supervisor Russ Nekomoto of the slander and harassment from coworkers. Appellant submitted a settlement agreement indicating that Supervisor Nekomoto would seek a reassignment for appellant.

By decision dated August 20, 2003, the Office denied appellant's claim for compensation. The Office enumerated appellant's allegations in detail and found that she had not established a compensable work factor.

Appellant requested a review of the written record by an Office hearing representative. She submitted evidence with respect to EEO complaints and grievances filed, including: an April 4, 2002 Step 2 decision denying a grievance regarding an alleged failure to accommodate appellant with a special chair; a June 9, 2003 Step 2 decision denying a grievance with regard to in-section bidding; a July 3, 2003 Step 2 grievance decision denying a grievance work outside appellant's medical restrictions; a July 9, 2003 settlement of a grievance that appellant was

¹ The record contains a memorandum dated April 30, 2002, which recommended that management make efforts to obtain more equipment and not overload equipment.

required to sit in the front row of the Mailing Primary while Asian employees were allowed to sit anywhere; and a July 31, 2003 denial of a grievance concerning a bid assignment.

By decision dated March 19, 2004, an Office hearing representative affirmed the August 20, 2003 Office decision. The hearing representative found that appellant had not established a compensable work factor.

Appellant requested reconsideration and submitted a June 16, 2004 report from Dr. Julie Goalwin, a psychologist. By decision dated September 15, 2004, the Office denied the request for reconsideration and determined that the evidence was insufficient to warrant merit review of the claim.

LEGAL PRECEDENT -- ISSUE 1

To establish a 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.²

The Board has held that 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 employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that 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. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of her work or her fear and anxiety regarding appellant's ability to carry out her work duties.³

By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.⁴

The Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors, which may be considered by a physician when providing an opinion on causal relationship and which are not deemed factors of

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

³ *Ronald J. Jablanski*, 56 ECAB ____ (Docket No. 05-482, issued July 13, 2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁴ *Id.*

employment and may not be considered.⁵ 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 evidence.⁶

ANALYSIS -- ISSUE 1

Appellant has raised a number of allegations with respect to her claim, including a general allegation of harassment and retaliation, as well as specific claims of error regarding actions of her supervisors. She has alleged that there were errors by her supervisors regarding her workers' compensation claim, disciplinary actions and leave matters, a violation of her light-duty medical restrictions, denial of appropriate equipment such as a special chair and errors with respect to Accident Review Board hearings. The Board notes that none of these allegations relate to regular or specially assigned employment duties. The allegations relate to administrative actions of the employing establishment. It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.⁷ The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.⁸ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁹

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 a number of 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 Step 2 denials and settlement agreements that do not provide any admission or evidence of error. It appears that appellant filed EEO complaints but there are no decisions of record or probative evidence establishing harassment, discrimination or retaliation. 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 alleged that she was subject to remarks accusing her of killing Supervisor Scott. 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.¹⁰ Appellant did not submit evidence establishing comments from

⁵ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁶ *See Charles E. McAndrews*, 55 ECAB ____ (Docket No. 04-1257, issued September 10, 2004).

⁷ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

⁸ *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁹ *Anna C. Leanza*, 48 ECAB 115 (1996).

¹⁰ *Denise Y. McCollum*, 53 ECAB 647 (2002).

coworkers that rose to the level of verbal abuse. The Board finds that the evidence is not sufficient to establish a compensable work factor in this regard.

The record also contains reference to an allegation that a supervisor deliberately scratched appellant's car. Appellant did not provide further detail of the alleged incident or any evidence supporting her allegation. The Board finds that appellant has not established a compensable factor with respect to the alleged action by Supervisor Limon.

The Board accordingly finds that the evidence of record does not substantiate a compensable work factor with respect to her claim. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.¹¹

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may--

(1) end, decrease, or increase the compensation awarded; or

(2) award compensation previously refused or discontinued.”

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹²

ANAYSIS -- ISSUE 2

As noted, appellant did not establish a compensable work factor with respect to her claim for compensation. Until a compensation work factor is established, the medical evidence is not relevant since the medical issue is whether a diagnosed condition is causally related to a compensable work factor.¹³ The report from Dr. Goalwin is not new and relevant evidence in the absence of evidence establishing a compensable work factor. Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal

¹¹ See *Margaret S. Krzycki*, *supra* note 5.

¹² *Eugene F. Butler*, 36 ECAB 393 (1984).

¹³ See *James W. Scott*, 55 ECAB ___ (Docket No. 04-498, issued July 6, 2004).

argument not previously considered or submit new and relevant evidence. The Board finds that appellant did not meet any of the requirements of section 10.606(b)(2) and therefore the Office properly refused to reopen the case for merit review.

CONCLUSION

Appellant did not establish an emotional condition causally related to compensable work factors. The Board further finds that the Office properly refused to reopen the case for review of the merits of the claim.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 15 and March 19, 2004 are affirmed.

Issued: February 21, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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