

as a result of her federal employment. Appellant indicated that on August 1, 2002 she had been given a notice of unacceptable performance that contained untrue statements.

In a statement dated December 26, 2002, appellant alleged that coworkers were told they could not submit statements supporting her claim. She told her supervisor, Joseph R. DelVecchio, that she was taking a number of medications and the employing establishment did not offer any accommodations or assistance. Appellant stated that she “had to adjust to six changes of leadership, each individual wanting to change everything the last one did, including how the office operated.” According to appellant, there were three physical moves of her work area, which was not done to other employees and she was given leftover equipment. Appellant also alleged that other employees were allowed to take extended lunches, but she frequently could get not relief for lunch and had to take a portable telephone to the bathroom.

The employing establishment supervisor, Mr. DelVecchio, responded in a January 6, 2003 statement that appellant had not informed him that she was taking medications. He stated that the August 1, 2002 notice did not contain untrue statements, nor were employees told not to make statements regarding appellant. The supervisor stated that numerous employees had their work areas moved due to installation of modular furniture. With respect to lunch relief, Mr. DelVecchio stated that appellant failed to communicate her lunch schedule so that telephone coverage could be provided.

By decision dated March 28, 2003, the Office denied the claim for compensation on the grounds that appellant had not established a compensable work factor.

Appellant requested an oral hearing, which was held on November 19, 2003. She alleged that she was snubbed by coworkers, spoken to in a nasty tone and criticized for the size of the bags she carried and for wearing sandals after a toe injury. Appellant submitted evidence regarding an Equal Employment Opportunity (EEO) complaint of discrimination based on gender, age and disability. A report of investigation from the employing establishment indicated that the complaint was based on a requirement to adjust her working hours commencing July 11, 2002 from 7:00 a.m. to 3:30 p.m., to 7:30 a.m. to 4:00 p.m. Additional grounds were as follows: appellant was not offered an opportunity to park in the garage after a July 5, 2002 toe injury; she was not trained on expectations for completion of tasks; appellant was given the August 1, 2002 notice; she was denied an annual performance evaluation; was required always to be at her desk to answer the telephone; criticized by coworkers and given the “cold shoulder”; assigned work inappropriate for her grade level and an annual leave request was denied.

In addition to the report of investigation, the record contains witness affidavits submitted pursuant to the EEO complaint, including those from supervisors Mr. DelVecchio, Melvin Womack and Alfredo Perez and coworkers Tyrone Goddard and Laureen Eipp. Mr. Goddard stated that he believed appellant came into a hostile work environment in that people were not very friendly. Ms. Eipp stated that the office environment was friendly, but appellant often did not acknowledge other people’s greetings and coworkers were put off by her personality.

By report dated November 25, 2003, Dr. Anil Verma, a psychiatrist, diagnosed major depression and post-traumatic stress disorder. She stated that appellant’s work involved

coordination of policies and procedures that required her to move at a fast pace and also “appears to have been hostile and discriminatory on both a peer and supervisor level.” Dr. Verma indicated that appellant was shunned by coworkers and this was further complicated by a series of changes in supervisors. She further stated that appellant “has experienced change of desk positions four times, often for no reason; unfair changes of hours; unreasonable and unfulfilled demands for work; lack of guidance with citations for poor performance, etc.” Dr. Verma concluded that job stress, unreasonable demands and constant harassment led to her diagnosed conditions.

In a report dated December 3, 2003, Dr. Paul Fiacco, a family practitioner, stated that appellant had been struggling with anxiety and depression. He stated that appellant’s employment had caused long-term stress and he recommended that appellant be off work until her symptoms were controlled.

By decision dated February 19, 2004, the Office hearing representative affirmed the March 28, 2003 decision. The hearing representative found that the record did not substantiate any compensable work factors.

By letter dated May 5, 2005, appellant requested reconsideration and submitted additional evidence. In a decision dated February 25, 2005, an administrative judge determined that the employing establishment had failed to make reasonable accommodations for her disability. The administrative judge found that appellant had a condition that impaired her ability to concentrate and interact with others, that the employing establishment was aware of her disability and failed to accommodate her need for a work schedule that began early. With respect to her other allegations of discrimination, the administrative judge indicated that appellant withdrew these allegations on July 26, 2004.

By decision dated August 4, 2005, the Office acknowledged that the request for reconsideration was untimely, but based on the evidence submitted the case was reopened for merit review. The Office found that a compensable work factor had been established with respect to the failure to accommodate the requested work hours. The claim, however, was denied on the grounds that the medical evidence did not establish an emotional condition causally related to the compensable factor. The Office found that Dr. Verma’s report included “a litany of the employee’s complaints” and did not explain how an emotional condition resulted from the accepted work factor.

LEGAL PRECEDENT

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.¹

¹ *Leslie C. Moore*, 52 ECAB 132 (2000).

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 appellant's work or her fear and anxiety regarding her ability to carry out her work duties.²

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.³

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 employment and may not be considered.⁴ 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.⁵

ANALYSIS

Appellant has raised a number of allegations with respect to her claim. Several of the allegations related to administrative or personnel matters, such as the August 1, 2002 notice of unacceptable performance and opportunity to improve, attempts to keep coworkers from providing statements, denials of leave or an allegation of insufficient training or guidance. Appellant did not submit probative evidence or error or abuse in these matters. There is no indication that any administrative action was erroneous; the employing establishment denied any attempt to keep coworkers from providing statements and no probative evidence was provided with respect to lack of training.

In addition, appellant reported that there were frequent changes of leadership and that her work area was often moved. These allegations do not relate to appellant's job duties. She indicated that each individual wanted to change what had previously been done, but appellant did not specifically indicate how her job duties changed or explain how the performance of specific

² *Ronald J. Jablanski*, 56 ECAB ____ (Docket No. 05-482, issued July 13, 2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

³ *Id.*

⁴ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁵ *See Charles E. McAndrews*, 55 ECAB ____ (Docket No. 04-1257, issued September 10, 2004).

assigned duties caused stress. To the extent that she is alleging overwork, she did not provide probative supporting evidence. With respect to moving her work site, this appears part of the general allegation that she was treated differently than other employees, such as with the allegation that she received left over equipment. Appellant did not submit probative evidence establishing harassment or disparate treatment in this regard.

The Board notes that appellant alleged that she experienced stress from her coworkers, who criticized her and were not friendly. Accepting the allegations as factual, appellant did not establish a compensable work factor. Not every statement uttered in the workplace will give rise to coverage.⁶ The Board also notes that the administrative judge indicated that appellant's condition and medication interfered with her ability to interact with coworkers and a coworker indicated that at times appellant had difficulty interacting with coworkers. None of the allegations of actions by coworkers were unreasonable or abusive and they do not establish a compensable work factor.

Appellant did establish a compensable work factor, however, with respect to the change in her work hours. The administrative judge found that the employing establishment failed to reasonably accommodate her request to keep her work schedule hours.⁷ Since appellant has established a compensable work factor the medical evidence is examined to determine if causal relationship is established. The Office found that Dr. Verma's November 25, 2003 report was not rationalized because other noncompensable work factors were discussed and no opinion was offered as to the specific compensable factor. However, when a compensable work factor is established and the opinion on causal relationship includes the work factor as well as noncompensable factors, it is important for the Office to prepare a proper statement of accepted facts and develop the medical evidence.⁸ Dr. Verma did discuss the change of work hours and discrimination, in addition to factors not established as compensable. The case will be remanded to the Office to prepare a proper statement of accepted facts that distinguishes between compensable and noncompensable work factors and to secure a reasoned medical opinion on the issue of causal relationship between a diagnosed condition and a compensable work factor. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that the record is sufficient to require further development of the medical evidence on the issue of causal relationship.

⁶ See *Cyndia R. Harrill*, 55 ECAB ____ (Docket No. 04-399, issued May 7, 2004); *Alton White*, 42 ECAB 666, 669-70 (1991).

⁷ While not dispositive of appellant's claim under the Act, the findings of other administrative agencies are instructive and may be given weight on review by the Board. See *Michael A. Deas*, 53 ECAB 208 (2001).

⁸ See, e.g., *Jamel A. White*, 54 ECAB ____ (Docket No. 02-1559, issued October 10, 2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 4, 2005 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: January 9, 2006
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