

United States Department of Labor  
Employees' Compensation Appeals Board

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SARAH J. STOCKTON, Appellant )  
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and )  
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DEPARTMENT OF THE AIR FORCE, 38<sup>th</sup> )  
LOGISTICS SQUADRON, TINKER AIR )  
FORCE BASE, OK, Employer )  
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Docket No. 05-1400  
Issued: July 6, 2006

*Appearances:*  
Sarah J. Stockton, pro se  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On June 17, 2005 appellant filed a timely appeal from a March 29, 2005 decision of a hearing representative of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this case.

**ISSUE**

The issue is whether the Office met its burden of proof to rescind acceptance of appellant's claim that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

**FACTUAL HISTORY**

On March 18, 2003 appellant, then a 44-year-old former supply technician, filed a Form CA-2, occupational disease claim, alleging that factors of her federal employment caused an adjustment disorder, major depression, dysthymia and somatic delusion disorder and agoraphobia. She first became aware of the condition on June 14, 2000 and its relationship to her employment on July 6, 2002. Appellant stopped work in August 2001 and was removed

from employment at the employing establishment effective December 16, 2002, due to unauthorized absences.

In support of her claim, appellant submitted materials, including personal statements dated June 6 and 27, 1997 and July 10, 1998, apparently prepared for grievances or an Equal Employment Opportunity (EEO) Commission claim regarding events that took place at the employing establishment in 1997. She contended that she was harassed by her supervisor, Frank Diehm, who had downgraded her performance appraisal, improperly put her on administrative leave and cancelled her security clearance. Appellant alleged that after her transfer in July 1997 she continued to have problems regarding her security clearance and with payroll.

Appellant submitted a number of statements from coworkers and friends regarding her character and describing the events of June 1997. In statements dated June 5 and 19, 1997, Senior Airman Matthew J. Burns, a coworker, stated that Mr. Diehm was out to get appellant because she stood up to him. He did not believe that appellant deserved this treatment and repeated conversations in which appellant was upset with Mr. Diehm and stated that if she had an axe she would chop him in little pieces. Mr. Burns stated that he just thought appellant was being dramatic and did not mean this as a threat.<sup>1</sup> In a statement dated June 18, 1997, Esther T. Ramos, a coworker, stated that Mr. Diehm treated appellant differently than other workers and that appellant became very frustrated, venting her anger to Mr. Diehm in June 1997, by stating that she was going to tell personnel she wished he were dead so she would be transferred. Ms. Ramos stated that she did not believe this to be a true threat and that appellant was not a danger to herself or others. Larry McCloud, a coworker, provided a June 16, 1997 statement, in which he reported that Mr. Diehm treated appellant differently. He noted that she requested a transfer and did not believe that any statements she made should be considered a true threat.

In a June 6, 1997 statement, appellant stated that when Mr. Diehm lowered her performance appraisal, she went to his supervisor, James Wood, for help and that after that Mr. Diehm began treating her differently. She contended that Mr. Diehm had a vendetta against her and she repeatedly emailed Mr. Woods that he was demented and dangerous. Appellant stated that the "last straw" was when Mr. Diehm said she could not earn compensatory time without supervision. She acknowledged making threats but stated that she was just blowing off steam. Appellant alleged that Mr. Diehm hated her because she was so verbal. She submitted medical evidence from Dr. Donald B. Chesler, a Board-certified psychiatrist, who first saw appellant on July 31, 1997 and diagnosed depression with agoraphobic tendencies. Appellant submitted reports from Drs. Donald R. Chadwell, a Board-certified psychiatrist, and William McAfee, Board-certified in family medicine, who diagnosed chronic migraines, neck and back pain and severe stress and anxiety caused by a conflict with her supervisor at work. Treatment notes from Jeanie M. Davis, a licensed social worker, were also submitted.

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<sup>1</sup> The record also contains statements with redacted signatures that indicate that appellant made several threats toward Mr. Diehm, including that he wished she were dead and that if she were not transferred, she would blow people away.

In an undated statement, appellant's representative noted her multiple psychiatric diagnoses and alleged that her termination was due to a mental disability caused by employment. He alleged that appellant's problems began in February 1997 when Mr. Diehm became her supervisor and alleged that Mr. Diehm methodically intimidated, harassed and undermined appellant. He improperly lowered her performance appraisal, questioned her timesheets and leave requests and denied her requests for compensatory time such that she requested intervention from Mr. Woods and created friction with coworkers. He stated that appellant's marriage dissolved because of stress at work and that she was improperly placed on enforced leave in June 1997. The charges were dropped and in July 1997 appellant transferred but Mr. Diehm continued to gossip about appellant, including to her new supervisor, which caused the beginning of her isolation. He further noted that in July 1997 appellant filed an EEO claim and came under the care of Dr. Chesler. In 2001, she was again transferred, where she had to work with others, noting that she felt that they had heard rumors about her, which added to her feelings of anxiety, panic attacks and depression, causing her to stop work in August 2001. He stated that she was incapable of providing medical evidence to support her continued absences from work because her emotional condition prevented her from leaving home.

An incident report dated June 5, 1997, stated that appellant communicated a threat. Mr. Diehm, chief, material management, provided a notice of proposed enforced leave dated June 6, 1997 on the grounds that on June 4 and 5, 1997 appellant made several threats to coworkers concerning him, which were considered a serious threat to the safety of appellant and others. She was immediately placed in a nonduty pay status. Mr. Diehm also provided a statement on July 21, 1997, in which he contended that he had not discriminated against appellant. In a July 18, 1997 statement, Daryl Maness, appellant's new supervisor, reported a telephone conversation in which Mr. Diehm stated that he thought appellant had a substance abuse problem, reported late and took unscheduled leave excessively.

The employing establishment controverted the claim, stating that there were no reports that Mr. Diehm or Mr. Woods had ever harassed appellant. The employing establishment contended that any claim for events that occurred in 1997 was untimely as appellant had been transferred and that the other allegations were administrative in nature. By letters dated April 25, 2003, the Office informed appellant of the evidence needed to support her claim and requested that the employing establishment respond to her allegations. In a response dated May 20, 2003, the employing establishment reiterated that it was controverting the claim and noted that since appellant's transfer in July 1997, she had not provided any notice of illness. The employing establishment submitted appellant's job description and emails from her regarding a possible return to work. These included appellant's request that she return to a different job because her regular job was dull and tedious. In a statement dated November 19, 2002, her then supervisor, Jimmy Snyder, reported that appellant had done her job well.

On May 23, 2003 appellant reiterated that her problems began in 1997 when Mr. Diehm became her supervisor, that he treated her differently and that she went to everyone for help including the union and upper management. She indicated that she was improperly suspended in June 1997 after she made the verbal threat. Appellant stated that after her transfer, she felt isolated and missed her old friends. She had injuries from a 1992 motor vehicle accident, including migraines, for which she took medication. Appellant also submitted treatment notes from Dr. Chesler dating from July 31, 1997 to February 19, 2003 and from Ms. Davis.

By decision dated August 19, 2003, the Merit Systems Protection Board (MSPB) reached agreement between appellant and the employing establishment regarding her termination. The decision noted that it did not constitute an admission of guilt by either party. Appellant agreed to withdraw her MSPB and EEO claims and the employing establishment agreed to pay her attorney's fees of \$15,000.00 and a payment of \$26,250.00. The December 2002 decision to remove was cancelled and appellant was allowed to retire on disability.

A statement of accepted facts dated October 28, 2003, accepted that appellant's security clearance was taken away and she was not allowed access to facility grounds as a compensable factor of employment. The Office accepted that appellant sustained an employment-related general anxiety disorder and phobia and requested that she submit a Form CA-7 claim for compensation. On November 14, 2003 she claimed compensation beginning August 27, 2001. She also submitted reports from Dr. Chesler dated November 22, 2000, July 6 and December 31, 2002 and December 17, 2003.

By decision dated March 2, 2004, the Office determined that appellant was not entitled to disability compensation beginning August 27, 2001, on the grounds that the medical evidence was insufficient to support total disability. Appellant was paid for 80 hours of wage-loss compensation. On March 22, 2004 appellant requested a hearing and submitted additional medical evidence.

At the hearing, held on November 22, 2004, appellant testified that she began having problems with Mr. Diehm shortly after his arrival as her supervisor. She questioned his authority and this culminated in June 1997, when he charged her with a threat, which caused enforced leave and her transfer in July 1997. Appellant admitted that she used bad judgment in her comments regarding Mr. Diehm, but had considered his comments threatening. She described her health, noting that she did not leave home. Appellant was reassigned in March 2001, following a reduction-in-force and that while she worked alone from July 1997 to March 2001, the new position was with many people and that she could not cope with this and stopped work in August 2001. She stated that she never felt the same after she was traumatized in 1997 and testified that a no fault settlement agreement had been reached with the MSPB regarding her termination. Appellant submitted reports from Dr. Chesler dated March 20, May 20 and June 9, 2004.

Subsequent to the hearing, appellant submitted evidence including statements regarding her character copies of emails and duplicates of evidence previously of record. She submitted a statement dated January 23, 1998, prepared for her EEO claim addressing her 1997 performance appraisal and the denial of compensatory time without supervision. Appellant acknowledged that she stated that she was going to chop him into little pieces but that she was just blowing off steam. After an investigation, she was allowed to return to work in a different location but that Mr. Diehm continued to spread rumors.

By decision dated March 29, 2005, an Office hearing representative affirmed the March 2, 2004 decision as modified. The hearing representative found that the fact that appellant's security clearance was withdrawn such that she could not enter the employing establishment was erroneously accepted as a compensable factor of employment. While this occurred, it was an administrative function of the employing establishment and the record did not

establish error or abuse on its part. The hearing representative further noted that, while the medical evidence was insufficient to support disability, the claim was denied on the grounds that appellant failed to establish a compensable factor of employment.

### **LEGAL PRECEDENT**

The Board has upheld the Office's authority to reopen a claim at any time on its own motion under 5 U.S.C. § 8128 and, where supported by the evidence, set aside or modify a prior decision and issue a new decision.<sup>2</sup> The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be set aside in the manner provided by the compensation statute.<sup>3</sup> It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. This holds true where the Office later decides that it has erroneously accepted a claim for compensation.<sup>4</sup> To support rescission of acceptance of a claim, the Office must show that it based its decision on new evidence, legal argument and/or rationale.<sup>5</sup> The Office may rescind a claim if it determines that an accepted injury did not occur in the performance of duty.<sup>6</sup>

### **ANALYSIS**

In this case, the Office initially accepted that appellant sustained an employment-related general anxiety disorder and phobia. It accepted that her security clearance was taken away such that she was not allowed access to facility grounds. The Office paid wage-loss compensation for 80 hours. By decision dated March 29, 2005, an Office hearing representative modified the March 2, 2004 decision, finding that the noted factor had been erroneously accepted as it was clearly administrative functions of the employing establishment and the record did not establish error or abuse. The hearing representative denied the claim on the grounds that appellant did not establish a compensable factor of employment. The hearing representative thus rescinded acceptance of appellant's claim.

The Board finds that the Office properly rescinded acceptance of appellant's claim for general anxiety disorder and phobia as the evidence of record at the time of the Office's rescission did not establish that appellant's condition arose from compensable factors of employment.<sup>7</sup> In rescinding acceptance of the claim, the Office provided reasons for the rescission and properly explained that no compensable employment factors were factually established.<sup>8</sup>

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<sup>2</sup> *Eli Jacobs*, 32 ECAB 1147 (1981).

<sup>3</sup> *Doris J. Wright*, 49 ECAB 230 (1997); *Shelby J. Rycroft*, 44 ECAB 795 (1993).

<sup>4</sup> *See* 20 C.F.R. § 10.610.

<sup>5</sup> *Stephen N. Elliot*, 53 ECAB 659 (2002); *Roberto Rodriguez*, 50 ECAB 124 (1998).

<sup>6</sup> *Belinda R. Darville*, 54 ECAB 656 (2003).

<sup>7</sup> *See Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>8</sup> *See Andrew Wolfgang-Masters*, 56 ECAB \_\_\_\_ (Docket No. 05-1, issued March 22, 2005).

Regarding the factor initially accepted by the Office as compensable, the evidence of record supports that appellant made threatening statements regarding Mr. Diehm in June 1997. She acknowledged making the threats in her statements and at the hearing. The employing establishment placed her on administrative leave and removed her security clearance, which denied her access to the employing establishment. 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.<sup>9</sup> An administrative or personnel matter will be considered to be an employment factor, however, where the evidence discloses error or abuse on the part of the employing establishment.<sup>10</sup> The Board finds that based on appellant's threats regarding Mr. Diehm, as a reasonable exercise of its administrative function, the employing establishment placed appellant in a nonpay status. It withdrew her security clearance and she was denied access to the employing establishment. The record does not establish error or abuse on the part of the employing establishment in these matters. The fact that appellant's security clearance was withdrawn and she was subsequently denied access is not established as a compensable factor of employment.<sup>11</sup> The hearing representative properly rescinded acceptance of the claim.

Appellant described a number of additional employment conditions, which she believed caused her emotional condition. She contended that in 1997 she was harassed by Mr. Diehm. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.<sup>12</sup> The Board, however, finds that appellant has failed to establish her allegations. Her contentions that in 1997, Mr. Diehm improperly downgraded her performance appraisal, required supervision for compensatory time and had payroll problems fall into the category of administrative or personnel actions. Absent a showing of error or abuse, these matters generally fall outside the scope of coverage under the Federal Employees' Compensation Act.<sup>13</sup> In this case, there is insufficient evidence to establish that the employing establishment erred in these matters. The mere fact that personnel actions are later modified or rescinded does not, in and of itself, establish error or abuse on the part of the employing establishment.<sup>14</sup> The assignment of work is an administrative function and the manner in which a supervisor exercises his or her discretion falls outside the ambit of the Act.<sup>15</sup>

Appellant disagreed with certain actions and decisions made by Mr. Diehm. There is no evidence of record, however, to indicate that any actions taken by him were unreasonable. An employee's complaints concerning the manner in which a supervisor performs his or her duties

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<sup>9</sup> *Felix Flecha*, 52 ECAB 268 (2001).

<sup>10</sup> *James E. Norris*, 52 ECAB 93 (2000).

<sup>11</sup> *Id.*

<sup>12</sup> *Katherine A. Berg*, 54 ECAB 262 (2002).

<sup>13</sup> 5 U.S.C. §§ 8101-8193; *id.*

<sup>14</sup> *Mary L. Brooks*, 46 ECAB 266 (1994).

<sup>15</sup> *Barbara J. Latham*, 53 ECAB 316 (2002).

as a supervisor or the manner in which a supervisor exercises his or her supervisory discretion fall, as a rule, outside the scope of coverage of the Act. This principle recognizes that a supervisor or manager, in general, must be allowed to perform their duties, that employees will at times dislike the actions taken.<sup>16</sup> Furthermore, 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.<sup>17</sup> The fact that appellant was transferred from Mr. Diehm's supervision in 1997 does not, in and of itself, establish error or abuse by management in its administrative duties.<sup>18</sup> The record indicates that this was done to accommodate appellant and there was no evidence of wrongdoing on the part of the employing establishment. There is no evidence that the employing establishment committed error or abuse in this regard.<sup>19</sup> Appellant's transfer in 2001 was done in response to down-sizing and other employing establishment actions. The Board finds that the fact that appellant stopped work in August 2001 was merely her frustration and dislike for that particular position and not a compensable factor of employment.<sup>20</sup>

Appellant also contended that she was harassed by Mr. Diehm. With regard to emotional claims arising under the Act, the term "harassment" as applied by the Board is not the equivalent of "harassment" as defined or implemented by other agencies, such as the EEO claim, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers' compensation under the Act, the term "harassment" is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by coemployees or workers. Mere perceptions of harassment or discrimination are not compensable under the Act<sup>21</sup> and unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.<sup>22</sup> Although appellant submitted statements describing Mr. Diehm's treatment of her and his supervision in 1997, the Board finds that this evidence does not demonstrate that he acted unreasonably, abusively or in fact harassed appellant.<sup>23</sup> The Board finds that her allegations do not rise to a level to establish harassment, rather they constitute her perception and as she did not establish as factual a basis for her perceptions of discrimination or harassment by the employing establishment, she did not establish that harassment and/or discrimination occurred.<sup>24</sup> The evidence instead suggests that the employee's feelings were self-generated and thus not

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<sup>16</sup> *Judy L. Kahn*, 53 ECAB 321 (2002).

<sup>17</sup> *Id.*

<sup>18</sup> *See e.g. Peter D. Butt*, 56 ECAB \_\_\_\_ (Docket No. 04-1255, issued October 13, 2004).

<sup>19</sup> *See Felix Flecha*, *supra* note 9.

<sup>20</sup> *Kim Nguyen*, 53 ECAB 127 (2001).

<sup>21</sup> *Beverly R. Jones*, 55 ECAB \_\_\_\_ (Docket No. 03-1210, issued March 26, 2004).

<sup>22</sup> *James E. Norris*, *supra* note 10.

<sup>23</sup> *See Ernest J. Malagrida*, 51 ECAB 287 (2000).

<sup>24</sup> *James E. Norris*, *supra* note 10.

compensable under the Act.<sup>25</sup> Appellant also submitted an EEO claim materials and a final MSPB decision. In assessing the evidence, the Board has held that grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.<sup>26</sup> The findings of other administrative agencies have no bearing on proceedings under the Act, which is administered by the Office and the Board.<sup>27</sup> The MSPB found no evidence of wrongdoing on the part of the employing establishment. This would, thus, not establish a compensable employment factor.

The Board therefore finds that, as the evidence of record does not establish a compensable work factor, the Office properly rescinded acceptance of her claim.<sup>28</sup>

### **CONCLUSION**

The Board finds that the Office properly rescinded acceptance of appellant's claim.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 29, 2005 be affirmed.

Issued: July 6, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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<sup>25</sup> See *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>26</sup> *Michael L. Deas*, 53 ECAB 208 (2001).

<sup>27</sup> *James E. Norris*, *supra* note 10.

<sup>28</sup> *Andrew Wolfgang-Masters*, *supra* note 8.