



alleged that she was not given enough time to complete her work assignments, including typing, to accommodate her carpal tunnel syndrome. On June 14, 2004 she received a “successful” performance rating but Vicki Johnson, her team leader and supervisor, included false negative comments. She complained and the rating was later changed to “highly successful.” Appellant alleged that in August 2004, when she was at home due to illness, Ms. Johnson asked a coworker to telephone and ask for appellant’s computer password so that Ms. Johnson could access some information. She refused because she had been instructed not to reveal her password. Appellant alleged that between September 2003 and August 2004, Ms. Johnson intentionally excluded her from meetings pertaining to her cases, which hindered her ability to do her job and that other employees were not excluded from such meetings. On one occasion, Ms. Johnson left in the middle of a meeting because she disagreed with the viewpoint of appellant and an attorney. Appellant alleged that she was excluded by Ms. Johnson from a team trip to another state. She alleged that Ms. Johnson chastised her for failing to follow an instruction<sup>2</sup> and their discussion was heard on the speakerphone by other employees. When appellant returned to the office from a trip in September 2004, she saw Ms. Johnson rummaging through her work area and leaving it in a disorganized state.

Appellant alleged that Ms. Johnson harassed and discriminated against her and belittled employees at meetings. She gave instructions, later changed her mind and lied about giving the original instructions. Appellant indicated that the harassment began in September 2003, in retaliation against her, after the regional Director of the Office of Civil Rights asked appellant to provide information regarding Ms. Johnson’s behavior as a team leader. Appellant reported that Ms. Johnson was unprofessional, manipulative and verbally abusive. Ms. Johnson harassed appellant by repeatedly asking her to bring water from a “water club” cooler but she refused because Ms. Johnson had not paid to join the water club. Ms. Johnson chastised appellant in front of other employees when she did not bring the water. In October 2003, Ms. Johnson told her that a case assigned to her was overdue but it had been sitting on Ms. Johnson’s desk for a year and such incidents were designed to upset appellant. In January or February 2004, Ms. Johnson told appellant that her hairdresser had lupus but did not take any medication, implying that appellant was lying about having to take medication.

Ms. Johnson responded to appellant’s claim. She stated that appellant’s workload of cases had decreased between May 2003 and September 2004. When the workload began to rise to a normal level, appellant became frustrated and anxious and her absences from work increased. Ms. Johnson denied stating that appellant lied about her lupus. Her purpose in telling appellant about the hairdresser who was not on medication for her lupus was to give appellant inspiration that her own condition might improve. Regarding the performance evaluation, Ms. Johnson stated that appellant’s overall rating of “successful” was changed to “highly successful.” However, the “successful” ratings assigned to individual rating elements were not changed. Ms. Johnson stated that appellant was given additional time to complete her assignments due to her carpal tunnel syndrome but she did not avail herself of the offer of assistance with her typing tasks. Ms. Johnson’s usual practice was to avoid contacting employees on leave but appellant was contacted at home on one occasion in August 2004, because a time-sensitive matter was involved. Regarding the allegation of rummaging through

---

<sup>2</sup> Appellant stated that Ms. Johnson had given no such instruction.

appellant's desk, Ms. Johnson stated that she needed certain documents for a meeting, reviewed documents at appellant's desk and left the desk arranged as she had found it. She indicated that appellant may have been excluded from some meetings because it was unnecessary for employees to attend all meetings involving assigned cases, particularly if action on another case was more pressing. Ms. Johnson denied that she ever left a meeting because she disagreed with the views of participants. She sometimes left meetings to attend to other matters and employees knew to continue without her or adjourn and reschedule the meeting. Ms. Johnson denied that she ever changed instructions and later lied about it. She explained that she sometimes asked appellant to provide additional information in a work product or modify analyses or conclusions to improve the quality but appellant misperceived this as "changing her mind" or lying about the instructions.

In a report dated November 10, 2004, Dr. G. Andres Quiceno, an attending rheumatologist, stated that appellant had systemic lupus erythematosus (lupus) which was aggravated by her work stress. In reports dated November 2 and December 8, 2004, Dr. Jacqueline C. Hubbard, an attending Board-certified internist, stated that appellant had multiple medical problems, including lupus, which had been aggravated during the past year by job stress.

By decision dated May 11, 2005, the Office denied appellant's claim on the grounds that the evidence did not establish that her emotional condition was causally related to a compensable factor of employment.

Appellant requested a review of the written record by the Office's Branch of Hearings and Review and submitted additional evidence consisting of witness statements.

In a May 23, 2005 statement, Rita Sandoval stated that working under Ms. Johnson was stressful and she left to work for another agency. She alleged that Ms. Johnson verbally abused employees at meetings and on voice mail messages and email. Ms. Johnson had berated Ms. Sandoval on one occasion in front of appellant. On another occasion she called Ms. Sandoval a liar for failing to notify her of a schedule change but later apologized for being wrong.

In statements dated May 31 and September 15, 2005, Lisa Wentt stated that Ms. Johnson created a hostile and abusive work environment. She was verbally abused by Ms. Johnson and suspended after she spoke back one day. Ms. Wentt stated that Ms. Johnson stopped scheduling meetings that included appellant and walked past her work area without talking to her after appellant was asked by the director to comment on Ms. Johnson's treatment of employees. She indicated that Ms. Johnson told another employee not to prepare travel documents for appellant involving a team trip but appellant was allowed to go after she protested. Ms. Wentt alleged that Ms. Johnson asked employees to bring her water from the water club cooler even though she had not paid to join the club. Ms. Wentt alleged that employees transferred, quit or retired because of harassment from Ms. Johnson.

In statements dated May 26 and September 15, 2005, Melissa Malonson stated that Ms. Johnson was an unprofessional and abusive supervisor. She stated that, after appellant spoke to the regional director, Ms. Johnson began excluding her from meetings and walking past

her work area without speaking to her. Ms. Malonson alleged that Ms. Johnson badgered appellant on one occasion when she did not bring her water from the water club cooler. She stated that Ms. Johnson was responsible for the stress and aggravation of appellant's lupus.

In statements dated June 1 and September 15, 2005, Ted Crim alleged that Ms. Johnson harassed employees. He discussed his own problems with Ms. Johnson but did not describe any specific situations involving appellant and Ms. Johnson.

In an August 29, 2005 memorandum, Ms. Johnson denied the allegations in the witness statements. She denied that she ever called anyone, including Ms. Sandoval, a liar or intentionally caused employees stress. Ms. Johnson denied that she retaliated against appellant for speaking to the regional director by excluding her from meetings or team trips or not talking to her when walking past her work area. Ms. Johnson stated that her comments about the water club were a "joke" and she stopped when she realized her comments were taken seriously.

By decision dated October 31, 2005, an Office hearing representative affirmed the May 11, 2005 decision.

### **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 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.<sup>3</sup>

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 an 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 her ability to carry out her work duties.<sup>4</sup>

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 the employment, such as when disability results from an employee's fear of

---

<sup>3</sup> *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).

<sup>4</sup> *Id.*; see also *Lillian Cutler*, 28 ECAB 125 (1976).

reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>5</sup>

The Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors of employment, which may be considered by a physician when providing an opinion on causal relationship and which are not deemed compensable factors of employment and may not be considered.<sup>6</sup> 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.<sup>7</sup>

### ANALYSIS

The Board finds that the evidence of record does not establish that certain allegations by appellant are factual. Appellant alleged that she was not given enough time to complete her typing assignments as an accommodation for her carpal tunnel syndrome. However, Ms. Johnson stated that appellant was given additional time to complete her assignments due to her carpal tunnel syndrome. Appellant alleged that on one occasion Ms. Johnson left in the middle of a meeting because she apparently disagreed with the viewpoint of appellant and an attorney. Ms. Johnson denied that she ever left a meeting because she disagreed with the views of participants. Ms. Johnson stated that she sometimes left meetings to attend to other matters and employees knew to continue without her or adjourn and reschedule the meeting. Appellant alleged that between September 2003 and August 2004, Ms. Johnson intentionally excluded her from meetings in retaliation for speaking to the director. She also alleged that she was excluded by Ms. Johnson from a team trip. In response, Ms. Johnson stated that appellant may have been excluded from some meetings because it was unnecessary for employees to attend all meetings, particularly if action on another case was more pressing. Ms. Johnson denied that she retaliated against appellant for speaking to the regional director by excluding her from team trips. Appellant alleged that Ms. Johnson gave instructions, later changed her mind and lied about giving the original instructions. However, appellant did not provide any specific details or evidence. Ms. Johnson denied that she ever changed instructions and later lied about it. She explained that she sometimes asked appellant to provide additional information in a work product or modify analyses or conclusions to improve the quality but appellant misperceived this as “changing her mind” or lying about the instructions. Appellant alleged that Ms. Johnson chastised her on one occasion for failing to follow an instruction and their discussion was heard on the speakerphone by other employees. This allegation is not supported by corroborating evidence such as witness statements. As there is insufficient evidence to establish these allegations as factual, they are not established as compensable employment factors.

Appellant made certain allegations that concern administrative or personnel matters. An administrative or personnel matter will be considered to be an employment factor only where the

---

<sup>5</sup> *Id.*

<sup>6</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>7</sup> *See Charles E. McAndrews*, 55 ECAB \_\_\_\_ (Docket No. 04-1257, issued September 10, 2004).

evidence discloses error or abuse on the part of the employing establishment.<sup>8</sup> The Board has 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.<sup>9</sup>

Appellant alleged that she received a “successful” performance rating but Ms. Johnson included false negative comments. She appealed the performance rating and it was later changed to “highly successful.” The mere fact that personnel actions were later modified or rescinded does not, in and of itself, establish error or abuse.<sup>10</sup> Ms. Johnson stated that appellant’s overall rating of “successful” was changed to “highly successful” but the “successful” ratings assigned to individual rating elements were not changed. There is insufficient evidence of error or abuse in connection with appellant’s performance rating. Appellant alleged that in August 2004, when she was at home due to illness, Ms. Johnson asked a coworker to telephone and ask for appellant’s computer password so that Ms. Johnson could access some information. Ms. Johnson stated that it was her usual practice to avoid contacting employees on leave but appellant was contacted at home on one occasion in August 2004, because a time-sensitive matter was involved. There is insufficient evidence that Ms. Johnson erred or acted abusively when, during appellant’s absence from work, she sought to obtain appellant’s computer password in order to access work-related information. Appellant alleged that, when she returned to the office from a trip in September 2004, she saw Ms. Johnson rummaging through her work area and leaving her work in a disorganized state. Ms. Johnson explained that she needed certain information for a meeting and reviewed some documents on appellant’s desk for that purpose but left the desk as she had found it. There is insufficient evidence of error or abuse regarding this allegation. These actions involving a performance rating and a supervisor’s actions to obtain work-related information are administrative matters, which generally do not fall within coverage of the Act.<sup>11</sup> Appellant has provided insufficient evidence that Ms. Johnson erred or acted abusively in handling these administrative matters. Therefore, these allegations are not deemed compensable employment factors.

Appellant alleged that Ms. Johnson harassed and discriminated against her and other employees. 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.<sup>12</sup> 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.<sup>13</sup>

---

<sup>8</sup> *Charles D. Edward*, 55 ECAB \_\_\_\_ (Docket No. 02-1956, issued January 15, 2004).

<sup>9</sup> *Janice I. Moore*, 53 ECAB 777 (2002).

<sup>10</sup> *Michael Thomas Plante*, 44 ECAB 510 (1993).

<sup>11</sup> *Michael L. Malone*, 46 ECAB 957 (1995).

<sup>12</sup> *See Charles D. Edwards*, *supra* note 8.

<sup>13</sup> *Donna J. DiBernardo*, 47 ECAB 700 (1996).

Appellant alleged that the harassment from Ms. Johnson began in September 2003, in retaliation, after the regional director asked appellant to provide information regarding Ms. Johnson's behavior as a team leader and she reported that Ms. Johnson was unprofessional and abusive. Ms. Johnson denied that she retaliated against appellant for speaking to the regional director. Appellant alleged that Ms. Johnson harassed her by repeatedly asking her to bring water from a "water club" cooler. Ms. Johnson explained that her comments about the water club were a "joke" and she stopped when she realized they were taken seriously. Appellant alleged that in January or February 2004, Ms. Johnson told her that her hairdresser did not take medication for her lupus, implying that appellant was lying about needing medication. Ms. Johnson denied that she had ever implied that appellant had lied about her lupus. She explained that her purpose in telling appellant about the hairdresser was to give her inspiration that her own lupus condition might improve. Appellant alleged that in October 2003, Ms. Johnson told her that a case assigned to her was overdue but it had been sitting on Ms. Johnson's desk for a year and such incidents were designed to upset her. There is insufficient evidence to establish that Ms. Johnson intended to harass appellant in this matter. The Board finds that there is insufficient evidence to establish harassment or discrimination by Ms. Johnson in her treatment of appellant. Therefore, appellant has failed to establish a compensable employment factor in this regard.

Appellant provided witness statements in support of her claim. Ms. Sandoval stated that working under Ms. Johnson was stressful and caused her to take a job with another agency. She alleged that Ms. Johnson verbally abused employees and had called Ms. Sandoval a liar for failing to notify her of a change in a scheduled activity but later apologized for being wrong. However, these allegations of abuse involve Ms. Johnson's treatment of Ms. Sandoval and employees in general. Because Ms. Sandoval's statement does not address specific incidents between Ms. Johnson and appellant, it is not relevant to this claim and does not establish a compensable factor in appellant's emotional condition claim.

Ms. Wentt stated that Ms. Johnson created a hostile and abusive work environment. She alleged that she was verbally abused by Ms. Johnson and suspended after she spoke back one day. Ms. Wentt alleged that Ms. Johnson stopped scheduling meetings that included appellant and passed by her work area without talking to her. She indicated that Ms. Johnson told another employee not to prepare travel documents for appellant involving a team trip but appellant was allowed to go after she protested. Ms. Wentt alleged that Ms. Johnson improperly asked employees to get water for her from the employee water club cooler. She alleged that employees transferred, quit or retired because of harassment from Ms. Johnson. However, Ms. Johnson denied Ms. Wentt's allegation that she retaliated against appellant for speaking to the regional director by excluding her from meetings or team trips or not talking to her when walking past her work area. As noted, Ms. Johnson stated that her comments about the water club were a "joke." Ms. Wentt's statement is insufficient to establish a compensable factor of employment in appellant's claim because her statement either addresses Ms. Johnson's interaction with employees other than appellant or is insufficient to establish error or abuse in Ms. Johnson's supervisory relationship with appellant.

Ms. Malonson stated that Ms. Johnson was an unprofessional and abusive supervisor. She stated that after appellant spoke to the regional director Ms. Johnson began excluding her from meetings and walking past her work area without speaking to her. Ms. Malonson alleged

that Ms. Johnson badgered appellant on one occasion appellant when she did not get Ms. Johnson water from the water club cooler. However, as noted, Ms. Johnson denied that she retaliated against appellant for speaking to the regional director and explained that her water cooler comments were meant as a joke. Ms. Malonson's statement is not sufficient to establish the existence of a compensable employment factor in Ms. Johnson's supervision of appellant.

Mr. Crim alleged that Ms. Johnson harassed employees and he discussed his own problems with Ms. Johnson. However, he did not describe any specific situations involving appellant and Ms. Johnson. Therefore, his statement is not relevant to appellant's claim and does not establish a compensable employment factor.

Appellant failed to establish that her emotional condition was causally related to a compensable factor of employment. Therefore, the Office properly denied her claim.

### **CONCLUSION**

The Board finds that appellant failed to establish that her emotional condition was causally related to a compensable factor of employment.<sup>14</sup>

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated October 31 and May 11, 2005 are affirmed.

Issued: July 10, 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

---

<sup>14</sup> 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); *Garry M. Carlo*, 47 ECAB 299 (1996).