United States Department of Labor
Employees' Compensation Appeals Board

LOUISE S. SMITH, Appellant	)	
and	)	**Docket No. 06-728**
	)	**Issued: July 5, 2006**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Lexington, KY, Employer	)	

Appearances:
Louise S. Smith, 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 February 6, 2006 appellant filed a timely appeal from Office of Workers' Compensation Programs' decisions dated June 22 and November 21, 2005, denying her claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant's claimed emotional condition was causally related to a compensable factor of her federal employment.

FACTUAL HISTORY

On February 15, 2005 appellant, then an 80-year-old personnel management specialist, filed an occupational disease claim alleging that she developed an acute anxiety reaction and stress condition, beginning in May 1999, due to harassment and discrimination at work. She alleged that management attempted to remove her from her position during the four-year period preceding her retirement. Appellant alleged that Jacqueline Kuchyak, Acting Director, was

heard by attendees at a meeting saying that she wanted Don Schmonsky, Chief of the Human Resources Management Service (HRMS) and appellant's secondary supervisor, to "fire" or "get rid of" her by October 1, 2001, whatever it took, because she wanted appellant out of the job. Appellant heard rumors that Ms. Kuchyak wished to place an affirmative action minority employee in her position to score "points" with a superior. Appellant indicated that her job duties were given to another employee and she had no duties to perform and did not receive a job description or performance evaluation after September 12, 2001, although she continued to perform her former duties through September 5, 2004. She became embarrassed because several employees knew of her "displacement." Appellant was not selected for the new position, contending that she was more qualified and advised that she might be asked to train the person selected for the position. She was moved to another office and assigned a new supervisor.

Appellant expressed her dissatisfaction with the manner in which managers, including Director Helen Cornish and Team Leader David Hull performed their jobs. She felt embarrassed at a meeting when Ms. Cornish advised a large group of employees that operating costs were too high and changes would be made in appellant's program for which she had been responsible for 26 years. Ms. Cornish and Mr. Hull made changes in the workers' compensation program of which appellant disapproved. Appellant alleged that Mr. Hull harassed employees by accusing them of mishandling cases, removing employees from their positions and attempting to revise the billing system. She alleged that he took improper actions such as declaring that a large number of workers' compensation claims at the employing establishment were fraudulent. Mr. Hull criticized her job performance, hoping that she would make mistakes justifying her removal from the employing establishment. He falsely accused her of refusing to assist the new employee who took over the compensation program duties. Appellant noted that Mr. Hull was removed from his job for improper copying of restricted records.

In reports dated August 27, 2002 and July 2, 2004, Dr. Natalia A. Shrestha, an attending internist, stated that she had treated appellant since December 2001 for stress, primarily due to problems at work. Appellant's stress caused hypertension and a subsequent transient ischemic episode (TIA) or "mini-stroke." A report from Leonard Lipton, Ph.D., a licensed clinical psychologist, diagnosed a post-traumatic stress disorder caused by feelings of detachment from coworkers.

In an April 6, 2005 letter, James Blust, appellant's supervisor, stated that, from approximately 1980 to December 2001, she was assigned responsibility for the workers' compensation program at the employing establishment and had performed her duties in an exemplary manner. This job assignment was given to another employee who had no background in workers' compensation but was targeted for a higher grade and was provided clerical assistance. Mr. Blust indicated that, after December 2001, appellant performed clerical duties and was eventually assigned to a position involving security clerical work. Appellant worked in this position until her retirement. He noted that appellant filed an Equal Employment Opportunity (EEO) complaint regarding the reassignment of her duties to another employee. The complaint was settled with a retroactive promotion but she was not reassigned her former duties.

In a May 2, 2005 letter, Mr. Schmonsky stated that appellant performed as a workers' compensation specialist for 20 years at the employing establishment. The position was

subsequently announced and filled at a higher grade level with the added benefit of an assistant. Appellant applied for the position but was not selected. He stated that management never told her that she would be fired. Appellant was assigned to a position established for her which involved employee background checks and security functions. She performed her duties in an outstanding manner until her extended sick leave and subsequent retirement. There was an initial attempt to have her train the new specialist but it was decided that training would be provided elsewhere. Appellant continued to receive calls and visitors from employees and officials after she was "displaced" and not performing any compensation duties.

By letter dated May 16, 2005, the Office asked appellant to provide additional evidence, including a detailed description of incidents or conditions that contributed to her emotional condition, with specific information such as relevant dates, locations, employees involved and what occurred.

Appellant submitted a copy of a June 28, 2004 settlement agreement that followed the filing of a civil suit in federal court.[1] The agreement provided that appellant would receive a retroactive promotion, back pay and additional damages in return for her resignation from employment. The settlement agreement contained a clause indicating that the agreement was not an admission of wrongdoing by the employing establishment.

By decision dated June 22, 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 Branch of Hearings and Review. She stated that her stress was due to working three years in a position with no described duties and no performance ratings, not just to having her duties reassigned to another employee.

By decision dated November 21, 2005, an Office hearing representative affirmed the June 22, 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.[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

[1] The civil suit arose from her original EEO complaint against the employing establishment.

[2] *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).

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 an employee'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 the 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 to 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 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.[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

Appellant's allegations primarily concern administrative or personnel matters. 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.[7] 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.[8]

Appellant alleged that management improperly removed her from her position. She alleged that Ms. Kuchyak was heard to say that she wanted Mr. Schmonsky to "fire" or "get rid of" her, whatever it took because she wanted appellant out of the job. Appellant heard rumors that Ms. Kuchyak wished to place another person in the position to score "points" with a superior. She stated that her job duties were given to another employee and she had no duties to perform and did not receive a job description or performance evaluation after September 12,

[3] *Id; see also Lillian Cutler,* 28 ECAB 125 (1976).

[4] *Id*.

[5] *Dennis J. Balogh*, 52 ECAB 232 (2001).

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

[7] *Charles D. Edward*, 55 ECAB ___ (Docket No. 02-1956, issued January 15, 2004).

[8] *Janice I. Moore*, 53 ECAB 777 (2002).

2001, but continued to perform her former duties through September 5, 2004. Appellant was embarrassed because she was not selected for the position, felt more qualified for the position and that she might be asked to train the person selected for the position. She was moved to another office and assigned a new supervisor and other employees knew of her "displacement."

Appellant submitted a copy of a June 28, 2004 settlement agreement that followed the filing of a civil suit in federal court. The agreement provided that appellant would receive a retroactive promotion, back pay and additional damages in return for her resignation. The settlement agreement contained a clause indicating that it was not an admission of wrongdoing or liability by the employing establishment. Because this agreement does not find that the employing establishment erred or acted abusively in not promoting appellant to another position, it does not establish a compensable factor of employment.

Mr. Blust indicated that appellant's assignment and responsibilities were given to another employee who had no background in workers' compensation but was targeted for a higher grade and was provided with clerical assistance. However, the fact that another employee was assigned to handle the compensation function, even though this employee did not have appellant's experience, does not establish that management erred or acted abusively in selecting another employee for the position. Appellant's desire to get the promotion or hold a particular position is not compensable.

Mr. Schmonsky stated that the position was filled at a higher grade level with the added benefit of an assistant. Appellant applied for the position but was not selected. He stated that management never told her that she would be fired and she was reassigned to a position which involved employee background checks and security functions. Mr. Schmonsky indicated that appellant continued to receive calls and visitors from employees and officials after she was "displaced" and not performing compensation duties. His statement does not establish that management erred or acted abusively in selecting an employee other than appellant for the compensation position or in reassigning appellant to a different position or in the fact that individuals contacted her regarding compensation questions after she ceased performing her compensation functions.

The Board finds that the evidence does not establish that the employing establishment erred or acted abusively in its handling of appellant's reassignment.

Appellant expressed her dissatisfaction with the manner in which managers, including Ms. Cornish and Mr. Hull, performed their jobs. These managers made changes in the workers' compensation program of which appellant disapproved. However, as noted, 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. Appellant has provided insufficient evidence that management acted unreasonably in handling these administrative matters. Therefore, these allegations are not deemed compensable employment factors.

Appellant alleged that management harassed and discriminated against her. 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.[9] 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.[10]

Appellant alleged that Ms. Cornish embarrassed her at a meeting when she advised a group of employees that operating costs were too high and changes would be made in appellant's program. However, there is insufficient evidence that Ms. Cornish's actions at the meeting were abusive or constituted harassment of appellant. Appellant alleged that Mr. Hull harassed employees by accusing them of mishandling cases, removing employees from their position, attempting to revise the billing system and that he took improper actions such as declaring that a large number of workers' compensation claims at the employing establishment were fraudulent. These general allegations of how Mr. Hull treated employees do not bear on appellant's claim as they are not specific to Mr. Hull's treatment of her. She alleged that Mr. Hull criticized her job performance, hoped that she would make mistakes to justify her removal from the employing establishment and falsely accused her of refusing to assist the new employee. There is insufficient evidence that Mr. Hull was abusive or harassed appellant in his review of her job performance or that he hoped she would make mistakes leading to dismissal from her job or that he falsely accused her of refusing to train the new employee. Appellant noted that Mr. Hull was removed from his job for improper copying of restricted records. However, the fact that he was removed from his job for actions unrelated to his relationship with appellant does not establish a compensable employment factor in her claim. The Board finds that there is insufficient evidence to establish harassment or discrimination by management in its treatment of appellant. Therefore, appellant has failed to establish a compensable employment factor in this regard.

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.[11]

[9] *See Charles D. Edwards*, *supra* note 7.

[10] *Donna J. DiBernardo*, 47 ECAB 700 (1996).

[11] 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).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 21 and June 22, 2005 are affirmed.

Issued: July 5, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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