



inappropriately rubbed her back.<sup>1</sup> Appellant alleged that, when she filed a complaint, Mr. Adams retaliated against her by giving her a letter of warning on February 10, 2004,<sup>2</sup> telling her on February 12, 2004 that she would not get paid and sending her home on February 22, 2004.<sup>3</sup> She alleged that she was not paid for holidays and drop days.<sup>4</sup> Appellant alleged that she was charged with being AWOL by Mr. Adams on November 16, 2003 although her leave had been approved by another supervisor.<sup>5</sup> She alleged harassment and discrimination by Al Gervin, manager. Appellant alleged that she was granted eight hours of sick leave for July 13, 2004 and called Mr. Gervin the following day to request approval of additional leave but he refused to talk to her or grant the leave. She went to see Mr. Gervin in person but he would not see her. A clerk advised her of Mr. Gervin's message that she could not fill out a leave slip and she was not supposed to be at work. Appellant alleged that Mr. Gervin unfairly changed her work hours on August 10, 2004. She generally alleged that she was treated improperly by Joseph Leonti, plant manager.

Appellant submitted medical evidence in support of her claim. In an August 12, 2004 disability certificate, Dr. Raymond L. Coleman, an attending internist, stated that appellant had vertigo and a stress condition. In an August 20, 2004 report, Cecil Harris, DO, an attending psychiatrist, diagnosed a major depressive disorder and indicated that appellant had been depressed on and off since December 31, 2003 when the alleged sexual harassment occurred. Appellant submitted a July 27, 2005 report from a psychologist with a diagnosis of major depression and post-traumatic stress disorder due to inappropriate touching and verbal harassment by another employee.

By decision dated September 13, 2004, the Office denied appellant's claim for an emotional condition on the grounds that the evidence did not establish that her emotional condition was causally related to a compensable work factor and the medical evidence did not support her claim.

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<sup>1</sup> On March 15, 2004 appellant filed a grievance against Mr. Adams alleging a pattern of harassment and discrimination. In a March 8, 2005 presettlement agreement, the parties agreed that all employees would be treated with dignity and respect and no employee would be subjected to vulgarity. The parties agreed that the settlement was nonprecedent setting and would not be cited in any subsequent grievance or arbitration hearing. There was no finding of wrongdoing.

<sup>2</sup> The record reflects that the February 10, 2004 letter of warning and a seven-day suspension on December 22, 2004, for several unscheduled absences beginning November 16, 2003, were rescinded and expunged by settlement agreements between the parties. The settlement agreements indicated that the parties would not cite the agreements as precedent in any future grievance or arbitration case and there was no finding of wrongdoing by Mr. Adams.

<sup>3</sup> Appellant alleged that on February 22, 2004 Mr. Adams unfairly took her off the clock and charged her with being absent without leave (AWOL). She indicated that the AWOL status was later removed and she was paid for that day.

<sup>4</sup> Appellant did not specify the dates involved.

<sup>5</sup> Appellant submitted the first page of a May 20, 2004 dismissal of an Equal Employment Opportunity complaint regarding the November 16 and December 31, 2003 incidents. As only the first page of the dismissal is of record, the basis for the dismissal cannot be determined. There is a leave slip of record indicating that appellant's request for leave on November 16, 2003 was approved by a supervisor whose name is illegible. Appellant noted in her statements that she was working a different tour on November 16, 2003, not Mr. Adams' tour.

Appellant requested an oral hearing that was held on July 25, 2005.

By decision dated November 3, 2005, the Office affirmed the September 13, 2004 decision but modified it to reflect that the claim was denied because no compensable employment factor had been established and therefore evaluation of the medical evidence was not necessary.<sup>6</sup>

### **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>7</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>8</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 reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>9</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

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<sup>6</sup> Appellant submitted additional evidence subsequent to the Office decision of November 3, 2005. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

<sup>7</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>8</sup> *Id.*; *see also Lillian Cutler*, 28 ECAB 125 (1976).

<sup>9</sup> *Id.*

deemed compensable factors of employment and may not be considered.<sup>10</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>11</sup>

### ANALYSIS

Appellant alleged harassment and discrimination by Mr. Adams. 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> Appellant alleged that Mr. Adams harassed her on February 12, 2004 by telling her that she would not get paid and that she was not paid for some holidays and drop days. However, there is no corroborating evidence to establish these allegations as factual. There is no documentation or other evidence to establish that appellant was told on February 12, 2004 that she would not be paid or that there were any days for which she did not receive pay to which she was entitled. Lacking an adequate factual foundation, these allegations cannot be considered as compensable employment factors. Appellant alleged that when she filed a complaint against Mr. Adams, he retaliated against her by giving her a letter of warning on February 10, 2004 and sending her home on February 22, 2004, charging her with being in AWOL status. She alleged that Mr. Adams charged her with being AWOL on November 16, 2003 although her leave had been approved by another supervisor. These actions involving discipline, scheduling and leave status are administrative matters which generally do not fall within coverage of the Act.<sup>14</sup> 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.<sup>15</sup> Regarding the February 22, 2004 incident when appellant was charged with being AWOL, she indicated that the AWOL status was later removed and she was paid for that day. However, the fact that her leave status was later changed is insufficient, by itself, to establish that Mr. Adams erred or acted abusively in this matter. Regarding the November 16, 2003 incident, there is a leave slip of record approved by a supervisor for the tour to which appellant was assigned at that time. However, there is insufficient evidence that Mr. Adams erred or acted abusively regarding the November 16, 2003 leave request. There could be another explanation for Mr. Adams' action, including the possibility that he was not aware of appellant's change of tour. The record contains copies of settlement agreements regarding appellant's allegations of harassment and discrimination by Mr. Adams. In these

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<sup>10</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>11</sup> *See Charles E. McAndrews*, 55 ECAB \_\_\_\_ (Docket No. 04-1257, issued September 10, 2004).

<sup>12</sup> *See Charles D. Edwards*, 55 ECAB \_\_\_\_ (Docket No. 02-1956, issued January 15, 2004).

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

<sup>14</sup> *Michael L. Malone*, 46 ECAB 957 (1995).

<sup>15</sup> *Charles D. Edwards*, *supra* note 12.

agreements there is no finding of wrongdoing by Mr. Adams. Therefore, the settlement agreements do not establish a compensable factor of employment. Appellant has provided insufficient evidence that Mr. Adams erred or acted abusively in handling these administrative matters. Therefore, these allegations are not deemed compensable employment factors.

Appellant alleged that on December 31, 2003 Mr. Adams said, “God damn, can’t you do anything.” The Board has held that, while verbal abuse may constitute a compensable factor of employment, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.<sup>16</sup> There is no corroborating evidence, such as statements from witnesses, to establish this allegation as factual. Therefore, a determination cannot be made as to whether the alleged verbal abuse constitutes a compensable factor of employment. Appellant also alleged that on December 31, 2003 Mr. Adams inappropriately rubbed her back. Physical contact arising in the course of employment, if substantiated by the evidence of record, may support an award for compensation if the medical evidence establishes that the condition was thereby caused or aggravated.<sup>17</sup> There is insufficient evidence to establish this allegation as factual. For example, there is no corroborating evidence such as statements from witnesses. Due to these deficiencies, appellant has not established a compensable employment factor in connection with the alleged incidents on December 31, 2003.

Appellant alleged harassment and discrimination by Mr. Gervin. She alleged that she was granted eight hours of sick leave for July 13, 2004 but he unfairly refused to grant her additional leave for the following day. Appellant also alleged that Mr. Gervin unfairly changed her work hours on August 10, 2004. There is insufficient detail or corroborating evidence regarding these allegations, which involve administrative matters, the granting of leave and the scheduling of work hours, for a determination to be made as to whether they are factual. Therefore, these allegations involving administrative matters cannot be deemed compensable factors of employment.

Appellant also alleged that she was generally treated improperly by Mr. Leonti. However, she provided no details of specific incidents involving Mr. Leonti. Therefore, there is no factual background provided for this allegation and it cannot be deemed a compensable factor of employment.

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

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

<sup>17</sup> *Alton L. White*, 42 ECAB 666 (1991); *Helen Casillas*, 46 ECAB 1044 (1995).

**CONCLUSION**

The Board finds that appellant failed to establish that her emotional condition was causally related to a compensable factor of employment.<sup>18</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 3, 2005 is affirmed.

Issued: June 14, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

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

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<sup>18</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).