

appellant could not work from July 9 to 30, 2005. In a July 30, 2005 report, Dr. Hua advised that she experienced severe depression and needed rest at home for one month. In an August 5, 2005 report, Dr. Jianping Chen, Board-certified in psychiatry, diagnosed major depression and advised that appellant could not work.

In a letter dated September 9, 2005, the employing establishment noted that on June 15, 2005 appellant filed a written complaint that a coworker was harassing her. On June 16, 2005 the plant manager spoke with appellant and advised her to contact the police. An investigation was conducted, after which the coworker was given a notice of removal, based on violation of the employing establishment's zero tolerance policy. The employing establishment noted that, as all the incidents occurred off premises and were the result of a personal relationship between the parties, the injury did not arise in the performance of duty. An employing establishment investigation dated June 18, 2005 found that the implicated coworker, Eun Kim, acknowledged that he went to appellant's apartment when drunk, that he cut her off while driving on the Northern State Parkway, and that he commented to a coworker, Freddie Ho, that he would kill appellant if he found out she had a boyfriend. Mr. Kim noted that he had been interviewed by the Nassau County Police and was advised to stay away from appellant. He was given a notice of removal dated July 15, 2005 for his unacceptable behavior toward appellant.

By letter dated September 12, 2005, the Office advised appellant of the type of evidence needed to support her claim. This was to include a comprehensive medical report which described her symptoms, treatment, diagnosis and the physician's opinion with medical reasons on the cause of her condition. In a decision dated January 13, 2006, the Office denied the claim. The Office found that appellant established that she was harassed by Mr. Kim but that she failed to submit sufficient medical evidence to meet her burden of proof.

LEGAL PRECEDENT

To establish her 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.¹

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,² the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.³ There are situations where an injury or illness has some connection with the employment but

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

² 28 ECAB 125 (1976).

³ 5 U.S.C. §§ 8101-8193.

nevertheless does not come within coverage under the Act.⁴ When an employee experiences emotional stress in carrying out his or her employment duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁵ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁶

In emotional condition claims, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁷

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. The issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁸ 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 Equal Employment Opportunity Commission, 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 co-employees or workers. Mere perceptions and feelings of harassment will not support an award of compensation.⁹

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹⁰ Rationalized medical evidence is medical

⁴ See *Robert W. Johns*, 51 ECAB 137 (1999).

⁵ *Lillian Cutler*, *supra* note 2.

⁶ *Kim Nguyen*, 53 ECAB 127 (2001).

⁷ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁸ *James E. Norris*, 52 ECAB 93 (2000).

⁹ *Beverly R. Jones*, 55 ECAB ____ (Docket No. 03-1210, issued March 26, 2004).

¹⁰ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹²

ANALYSIS

In the present case, appellant has not attributed her emotional condition to the performance of her regular assigned duties as a mail processor or to any special work requirement arising from her employment duties under the *Cutler* standard. Rather, appellant's claim pertains to allegations of harassment and abuse by Mr. Kim, a coworker. The Office accepted that based on the employing establishment's investigation, Mr. Kim's threats at the workplace constituted harassment, towards appellant. The Board finds, however, that appellant has not submitted sufficient medical evidence to establish her claim.

The medical evidence submitted by appellant consists of disability slips in which Dr. Ding provided diagnoses of stress and hypertension and advised that she could not work. Dr. Chen diagnosed major depression and advised that appellant could not work. None of these reports contained an opinion regarding the cause of appellant's condition. Neither Dr. Ding nor Dr. Chen addressed the issue of causal relationship or specifically identified the harassment accepted as a factor in this case.

In assessing medical evidence, the number of physicians supporting one position or another is not controlling. The weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹³ The opinion of a physician must be of reasonable medical certainty and must be supported by medical rationale explaining causal relationship.¹⁴ Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁵ In this case, appellant submitted insufficient medical evidence explaining that her diagnosed condition was caused by the accepted harassment at work.

¹¹ *Leslie C. Moore, supra note 1; Gary L. Fowler, 45 ECAB 365 (1994).*

¹² *Dennis M. Mascarenas, 49 ECAB 215 (1997).*

¹³ *Anna M. Delaney, 53 ECAB 384 (2002).*

¹⁴ *Lois E. Culver (Clair L. Culver), 53 ECAB 412 (2002).*

¹⁵ *Willie M. Miller, 53 ECAB 697 (2002).*

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an employment-related emotional condition causally related to the accepted harassment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 13, 2006 be affirmed.

Issued: June 14, 2006
Washington, D.C.

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

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