

**United States Department of Labor
Employees' Compensation Appeals Board**

DOLORES M. CHARLES, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Atlanta, GA, Employer**

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**Docket No. 05-1556
Issued: March 2, 2006**

Appearances:
Dolores M. Charles, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 20, 2005 appellant filed a timely appeal from the July 7, 2005 merit decision of the Office of Workers' Compensation Programs which denied her claim on the grounds that she failed to establish that she sustained an emotional condition in the performance of duty on April 28, 2005. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant has established an emotional condition in the performance of duty on April 28, 2005.

FACTUAL HISTORY

On May 16, 2005 appellant, a 35-year-old computerized mark-up clerk, filed an occupational disease claim alleging that on April 28, 2005 she realized her stress and anxiety were due to harassment when the employing establishment instructed appellant "to attend a meeting regarding 'transitioning back to work.'" She alleged that "[t]he meeting required me to

go against my doctor's recommendations and restriction." Appellant also stated: "[N]o one in the meeting was authorized to make a decision." The employing establishment controverted her claim.

In a May 24, 2005 statement by Amelia J. Washington, manager customers service, stated that a meeting was held with appellant and her union representative on April 28, 2005 to discuss her return to work.

In a May 24, 2005 statement, Natalie Frazier, Labor Relations Specialist, noted that a meeting was held on April 28, 2005 to discuss appellant's transitioning back into the work environment after an extended absence from work. She noted that the meeting was not held at appellant's workplace and a union representative was permitted. Ms. Frazier indicated that the meeting was scheduled following a fitness-for-duty examination, which stated that appellant was capable of returning to full-duty work with no restrictions.

By letter dated May 31, 2005, the Office requested additional factual and medical evidence in support of appellant's claim and allowed her 30 days to submit this evidence. She submitted a statement; a June 21, 2005 verification of treatment by Lydea Alexander, a psychologist; a February 25, 2005 fitness-for-duty directive; an April 25, 2005 letter from Ms. Frazier regarding the April 28, 2005 meeting; a May 5, 2005 return-to-duty directive; and directives for an investigative interview dated June 2 and 15, 2005. Appellant noted that she was currently under medical care for work-related stress since May 2004." She noted that she had been subjected to ongoing harassment by management and she was afraid of her supervisor.

By decision dated July 7, 2005, the Office denied appellant's claim on the grounds that she failed to establish that she sustained an injury as defined under the Federal Employees' Compensation Act. The Office accepted that the event occurred as alleged, but found that there was no medical evidence which diagnosed a condition due to the accepted incident.

LEGAL PRECEDENT

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his 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 Act.³ There are situations where an injury or

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

² 28 ECAB 125 (1976).

³ 5 U.S.C. §§ 8101-8193.

illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁴ When an employee experiences emotional stress in carrying out 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. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. Rather, the issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting her allegations with probative and reliable evidence.⁸

ANALYSIS

In the instant case, the Board finds that the Office properly developed this claim as a traumatic injury rather than an occupational disease claim, as the April 28, 2005 incident

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)

occurred during one workday or work shift.⁹ Appellant alleged that she sustained an emotional condition as a result of the April 28, 2005 meeting pertaining to her transition back to work. The Office denied her claim on the grounds that she did not sustain an injury as defined under the Act. The Board must, therefore, initially review whether this alleged incident is a covered employment factor.

The record supports that appellant, her union representative and Ms. Washington had a discussion concerning her return to work. Appellant alleged that “[t]he meeting required me to go against my doctor’s recommendations and restriction” and “no one in the meeting was authorized to make a decision.” She alleged that being required to attend this meeting was harassment. Appellant also alleged that she was subjected to ongoing harassment and was afraid of her supervisor. The Board has held that to the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from the employee’s performance of her regular duties, these could constitute employment factors.¹⁰ The evidence, however, must establish that the incidents of harassment or discrimination occurred as alleged to give rise to a compensable disability under the Act.¹¹ Mere perceptions of harassment or discrimination are not compensable under the Act.¹² In the present case, appellant has not submitted any evidence to establish that she was harassed or discriminated against by her supervisor.¹³ She provided no corroborating evidence, such as witness statements, to support her claim nor has she explained how the April 28, 2005 meeting regarding her return to work constituted harassment. Thus, appellant has not established a compensable employment factor under the Act with respect to her allegations of harassment and discrimination.

The record reflects the purpose of the meeting on April 28, 2005 between Ms. Washington, appellant and her union representative was based on a fitness-for-duty examination, finding that she could return to work. The Board finds that this relates to an administrative or personnel matter, unrelated to the employee’s regular or specially assigned work duties and does not fall within the coverage of the Act.¹⁴ The Board has found that an administrative or personnel matter will be considered to be an employment factor where the

⁹ A traumatic injury means a condition caused by an incident or incidents occurring within a single workday or work shift; occupational disease or illness is a condition produced by the work environment over a period longer than a single workday. *See* 20 C.F.R. § 10.5(q) and (ee), respectively.

¹⁰ *David Cuellar*, 56 ECAB ____ (Docket No. 05-429, issued July 18, 2005); *Janice I. Moore*, 53 ECAB 777 (2002).

¹¹ *Donna M. Schmiedeknecht*, 56 ECAB ____ (Docket No. 05-494, issued September 2, 2005).

¹² *Joe M. Hagewood*, 56 ECAB ____ (Docket No. 04-1290, issued April 26, 2005); *Mary J. Summers*, 55 ECAB ____ (Docket No. 04-704, issued September 29, 2004).

¹³ *See Ronald K. Jablanski*, 56 ECAB ____ (Docket No. 05-482, issued July 13, 2005). (A claimant’s allegation that she was harassed or discriminated against is not determinative of whether or not such incidents occurred); *see also Joel Parker, Sr.*, 43 ECAB 220 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁴ *See Donney T. Drennon-Gala*, 56 ECAB ____ (Docket No. 04-2190, issued April 26, 2005); *Dennis J. Balogh*, *supra* note 7.

evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁵ There is no evidence that the employing establishment erred or was abusive in scheduling the April 28, 2005 meeting. Thus, appellant has not established a compensable employment factor under the Act with respect to this administrative matter.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹⁶

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she developed an emotional condition due to the April 28, 2005 incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 7, 2005 is affirmed.

Issued: March 2, 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

¹⁵ *Reco Roncaglione*, 52 ECAB 454 (2001).

¹⁶ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. See *Lori A. Facey*, 55 ECAB ____ (Docket No. 03-2015, issued January 6, 2004); *Margaret S. Krzycki*, 43 ECAB 496 (1992).