

Appellant stated that she filed charges with the Equal Employment Opportunity (EEO) Commission against the employing establishment for discrimination and that she tried to deal with the stress by pursuing an acceptable settlement agreement.

In an undated narrative statement, appellant alleged that in May 2001 she bid on an automation flat sorter machine (FSM) job because she developed bursitis in her right shoulder and believed that her condition would improve in this job. She hoped to only work the position like the previous person who worked in the position. Appellant contended that, on the day she got the job, her supervisor yelled at her for bidding for it and immediately took her to the automation part of the job and told her that she was going to work there. Her supervisor also told her that she was not going to work the FSM. Appellant described her automation work duties and stated that her shoulder became painful which required medical attention. When she returned from a medical appointment with a note for desk work, her supervisor allegedly told her that her shoulders were not going to get any better and that she was no spring chicken so she may have to take an early retirement. After filing a claim for her shoulder injury which was denied, she was unable to afford medical treatment and returned to work. Appellant was allowed to work the sorter machine on the day shift, but when the position was "excessed" she was moved to the night shift while a younger and stronger male was allowed to remain on the day shift. On June 7, 2001 she filed a claim for bursitis in her right shoulder which was accepted by the Office in April 2002. On February 7 and 28, 2003 appellant filed claims for pain in her shoulder and arm conditions. She was denied a bid for a job in April 2002 for which she filed an EEO claim. Appellant related that, Dr. Gray K. Arthur, a Board-certified psychiatrist, opined that her emotional condition arose out of her prior work injuries. She indicated that since March 2003, she had been reassigned to a revenue protection clerk position and worked the evening shift. Appellant submitted employment records regarding jobs awarded to employees and employees who received notice that their bid job was abolished.

In letters dated April 15 and 23, 2003, the employing establishment controverted appellant's claim on the grounds that she knowingly placed herself in each of her job assignments and was well aware of the duties required. The employing establishment stated that it was unaware that a supervisor yelled at appellant and that a Mr. Stevens may have been given first preference for a job over her because of his seniority. The employing establishment noted that her automation bid was contractually abolished according to a collective bargaining unit agreement and that she was not the only employee affected by this change. Each affected clerk was given a list of jobs to bid on and appellant chose job assignments on her own authority. The employing establishment stated that she was not reassigned to a revenue protection clerk position, rather she chose this position and submitted a statement from her attending physician who stated that she was able to perform the duties of the position. It related that appellant was late in submitting this medical documentation, yet she was allowed to fill the job which was an example of how management worked to fulfill her needs. Appellant knew about her restrictions and was informed not only by her immediate supervisor, but also by her manager, to stay within them. The employing establishment stated that she was never forced to perform work outside her light-duty requirements.

The employing establishment submitted correspondence which advised appellant to submit medical documentation establishing that she could perform the duties of jobs she bid on.

Medical evidence was received regarding her ability to perform the duties of the revenue protection position, her emotional condition and disability for work.

By letter dated May 28, 2003, the Office advised appellant that the evidence of record did not establish that she sustained an injury caused by her employment. The Office further advised her about the factual and medical evidence she needed to submit to establish her claim.

The Office received a May 13, 2003 disability slip which indicated that appellant could return to work on May 19, 2003 and that she was not a danger to herself or others.

On June 10, 2003 and in an undated narrative statement, appellant identified Grace Finn as the supervisor who yelled at her when she successfully bid on the automation position. She alleged that Ms. Finn instructed her to work the automation part of the job and made the derogatory comment about her shoulder condition and need to retire. Appellant was assigned to work at night while a Mr. Stevens remained on the day shift. She noted her physical conditions included a ruptured appendix that required surgery, a left shoulder condition due to overuse and her job stress.

An undated statement, Ms. Finn explained why appellant was moved to automation. She stated that anytime clerks were moved it was done by seniority. Ms. Finn noted that, prior to appellant's bid on an FSM position, she related experiencing shoulder pain when she lifted a letter to an upper case. She asked appellant if she wanted to see a physician and appellant responded no. Ms. Finn was concerned about appellant's health because the FSM position required heavier lifting. She denied yelling at appellant and stated that she was only concerned about the bid appellant made. Ms. Finn denied discriminating against appellant in the reassignment to the automation unit. She noted that the other employees who were not reassigned had more seniority than appellant and that junior people were moved first. Ms. Finn further noted that, while one of these employees submitted medical documentation in support of her request for light-duty work, appellant never requested such work.

By decision dated September 23, 2003, the Office found that appellant failed to submit sufficient evidence establishing that her emotional condition arose from a compensable factor of her employment. She disagreed with the Office's decision and requested an oral hearing before an Office hearing representative by letter dated October 20, 2003.

Appellant submitted medical records indicating that she was totally disabled for work due to work-related stress and which addressed her right and left shoulder conditions. She also submitted her EEO claim for discrimination and harassment based on retaliation by Ms. Finn. On October 15, 2003 Ms. Finn told her that she could not be placed on leave-without-pay status for October 18 and 25, 2003.

Appellant submitted her application for disability retirement which was approved on April 6, 2004. She alleged that she had to retire early on disability due to harassment by Ms. Finn. Appellant reiterated her prior allegations of harassment and retaliation. She contended that she was subjected to an investigative interview after she made a request to go to the hospital when she sustained a left shoulder injury at work. Appellant also contended that she was being retaliated against because she filed EEO claims.

In a September 20, 2005 decision, an Office hearing representative found that appellant failed to establish that she sustained an emotional condition caused by factors of her employment. The hearing representative determined that her allegation regarding her bid on an automation position and subsequent abolishment of this position involved administrative matters and there was no evidence establishing error or abuse in these matters. The hearing representative further determined that appellant was not discriminated against by the employing establishment because she had not established the derogatory statements attributed to Ms. Finn.

LEGAL PRECEDENT

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.¹ To establish her claim that she sustained an emotional condition in the performance of duty, the employee must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.²

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*,³ the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁴ There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage under the Act.⁵ When an employee experiences emotional stress in carrying out her employment duties and the medical evidence establishes that the disability resulted from her 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 her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of her work.⁶ There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage under the Act.

In cases involving emotional conditions, the Board has held that, 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

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ 28 ECAB 125 (1976).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *See Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

⁶ *Lillian Cutler*, *supra* note 3.

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.⁷ 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.⁸

Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. 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.⁹ Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially-assigned work duties, do not fall within coverage of the Act.¹⁰ However, an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.¹¹

ANALYSIS

Appellant attributed her emotional condition to harassment and discrimination on the part of Ms. Finn, her supervisor, who allegedly yelled at her for successfully bidding on a job and made derogatory comments about her shoulder condition and the need to retire. She alleged that Ms. Finn did not allow her to work on an FSM and instead instructed her to perform automation duties which caused her right shoulder condition to worsen. Appellant contended that Ms. Finn moved her to the night shift while allowing a Mr. Stevens to remain on the day shift. She further contended that in March 2003 she was reassigned to a revenue protection clerk position. In addition, she contended that she was subjected to an investigative interview regarding her request to seek medical treatment for a left shoulder injury sustained at work. Harassment and verbal abuse when shown to have occurred is considered a compensable factor of employment. However, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.¹²

⁷ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁸ *Id.*

⁹ *Lillian Cutler*, *supra* note 3.

¹⁰ *Michael L. Malone*, 46 ECAB 957 (1995).

¹¹ *Charles D. Edwards*, 55 ECAB ____ (Docket No. 02-1956, issued January 15, 2004).

¹² *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

Appellant did not submit any evidence establishing that Ms. Finn yelled at her or made the alleged derogatory statements. Ms. Finn denied yelling at appellant and had only expressed her concern about appellant's shoulder condition and whether appellant would be able to perform the physical requirements of the automation position. There were no statements submitted for any witness to the alleged comments.

Appellant did not submit any evidence to establish her allegation that Ms. Finn discriminated against her by moving her to an automation job that was subsequently abolished and not allowing her to continue working during the day. The employing establishment stated that her automation position was contractually abolished based on the collective bargaining agreement and that she was not the only affected employee. Ms. Finn explained that the reassignment of employees involved junior people being moved first, noting that the employees who were not reassigned to the night shift had more seniority than appellant. Ms. Finn noted that appellant did not submit any medical evidence in support of her request for light-duty work.

Appellant has the burden of establishing a factual basis for her allegations; she has not met her burden of proof as her allegations are not supported by specific, reliable, probative and substantial evidence. Accordingly, the Board finds that she has not established any compensable factors of employment.

Appellant's allegations regarding reassignment to a different work shift,¹³ the investigation into her request for leave,¹⁴ and the denial of leave¹⁵ involve administrative actions of the employer. They are not related to day-to-day duties or specially assigned duties or to a requirement of her employment. Such administrative actions do not constitute compensable factors of employment unless there is affirmative evidence that the employer erred or acted abusively in the administration of the matter. The employing establishment stated that appellant was not reassigned. Rather, all employees affected by the abolishment of jobs including appellant were given a list of jobs to bid on and she selected this position. She submitted medical documentation from her attending physician who found that she could perform the duties of the selected position. The employing establishment stated that it did not require her to work outside her physical limitations and instructed her to work within the restrictions. Appellant has not submitted sufficient evidence to establish her allegations of error or abuse in these matters. Therefore, the Board finds that she has failed to establish a compensable factor of employment.

Appellant contended that the employing establishment investigated her request for medical treatment following an injury sustained at work and denied her request for leave without pay. She has not submitted any evidence establishing that the employing establishment committed error or abuse in investigating her request or denying her leave request. The Board finds that appellant has failed to establish a compensable factor of employment under the Act.

¹³ See *Charles J. Jenkins*, 40 ECAB 362, 367 (1990).

¹⁴ *Ernest St. Pierre*, 51 ECAB 623 (2000).

¹⁵ *John Polito*, 50 ECAB 347, 348 (1999).

Appellant filed an EEO claim for discrimination. The Board has held that grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.¹⁶ In this case, the complaint was denied and the record does not contain a final EEO decision, otherwise establishing her allegations. The Board finds that appellant failed to establish a compensable factor of employment in this regard.

CONCLUSION

Appellant has not established any compensable factors of her employment. The Board finds that she has failed to establish that she sustained an emotional condition while in the performance of duty.¹⁷

ORDER

IT IS HEREBY ORDERED THAT the September 20, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 3, 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

¹⁶ *Michael L. Deas*, 53 ECAB 208 (2001).

¹⁷ As appellant has not submitted the necessary evidence to substantiate a compensable factor of employment as the cause of her emotional condition, the medical evidence relating appellant's emotional condition need not be addressed. *Karen K. Levene*, 54 ECAB 671 (2003).