

result of her federal employment. Appellant claimed that she was “constantly being approached” about her job performance by a coworker, who criticized her work and “ma[de] it look as though she [was] not working.” Appellant stated that “it just [had] become so frustrating to come in and even be [at work] it feels better to be away (even in my mind).”

In support of her claim, appellant submitted a memorandum dated April 4, 2005 to James Scott in which she stated: “Let us get something straight right now, YOU ARE NOT MY SUPERVISOR. Whatever personal problems you have, I will no longer allow you to take it out on me.” Appellant instructed Mr. Scott to concentrate on himself and leave her alone and informed him that she no longer cared why he felt that she did not “do her job.”

Appellant submitted a report dated April 6, 2005 from Dr. Kevin Flood, a Board-certified psychiatrist, who treated her at the employing establishment’s mental health clinic. Dr. Flood indicated that appellant had been diagnosed with post-traumatic stress disorder and depression resulting from trauma sustained during military service and was currently experiencing a worsening of her condition secondary to work stress.

Appellant submitted several memorandums to her supervisor, Frank Cruz. In a February 9, 2005 memorandum, appellant asked for clarification of her work assignments. In a memorandum dated February 11, 2003, entitled “Work Performance and Verbal Lies,” she indicated that Mr. Scott was spreading rumors that she was not doing her job. She alleged that Mr. Scott had told her “every single day since she [had] been on 5E” that someone had complained about her work performance and that his statements were untrue. She also stated that Mr. Scott had many problems with his coworkers, all of whom were African-American. In a February 1, 2005 memorandum entitled “Work Load in 5E”, appellant related that she was responsible for “A [l]ot” of work, including 15 discharges, beds, floors, bedrooms, three terminal discharges and two trash runs, the eye clinic and patient waiting area.

In an April 11, 2005 report, Linda Maggio, Ph.D., a sexual trauma counselor, noted that she met with appellant bi-weekly. She stated that “coping with coworkers and workplace stress [had] been an ongoing topic in [appellant’s] ongoing counseling sessions.” Dr. Maggio further indicated that appellant was “sensitive to these issues as her post-traumatic stress disorder is related to military sexual trauma, which occurred in the workplace.”

Appellant submitted illegible progress notes dated November 8, 2005, reflecting appellant’s allegation that her supervisor had taken no action regarding her reports of mistreatment by a coworker.

In a supplemental statement to Form CA-2 dated April 8, 2005, appellant indicated that she was a veteran and had filed a claim for a service-related disability. She further indicated that the nature of the work-related injury was “stress, emotional/traumatic.”

In an April 26, 2005 report, Dr. Flood stated that appellant experienced a worsening of post-traumatic stress disorder and depression secondary to ongoing work stress. He had seen documentation of the work stress and agreed that the situation was untenable. Dr. Flood recommended that appellant be excused from her regular work duties for three days or until her

supervisor could respond to her desire for a reassignment to a different part of the hospital or to a different work shift.

By letter dated September 7, 2005, the Office advised appellant that the information submitted was insufficient to establish her claim and requested details regarding incidents, disputes, practices and confrontations she believed contributed to her condition. The Office also requested a comprehensive medical report describing symptoms, diagnosis, treatment, test results and a reasoned medical opinion explaining how her diagnosed condition was causally related to her employment. By letter dated September 7, 2005, the Office asked the employing establishment for a response to appellant's allegations.

In a letter dated September 19, 2005, appellant alleged that she had been harassed in her work facility "for some time." She experienced no pressure from her job and that her claim "had nothing to do with the actual work," but rather had to do with the environment and the conditions in which she had to do her duties. She indicated that her post-traumatic stress disorder had no effect on her job performance and that she requested leave due to the fact that coworkers harassed her. Appellant reported an incident of sexual harassment by a fellow employee, but did not know the outcome of her claim. She related that, beginning in January 2005, another coworker began harassing her. Appellant stated that "it was more like sabotage," noting that items were routinely missing from her housekeeping closet and that, on one occasion, her housekeeping closet was completely destroyed. The unnamed coworker made derogatory comments about her job performance and created a hostile work environment. She complained that, after returning from sick leave following the destruction of her locker, she was required to work with the coworker before the employing establishment placed her in a different area.

In an undated "Report of Contact" (automated VA Form 119), appellant complained that Jim Scott attempted to give her orders and failed to do the work he was assigned. She alleged that, when she returned from leave, she discovered that her housekeeping closet had been destroyed and that all of her supplies were missing. She claimed that Mr. Scott was responsible for removing items from and trashing her locker. Mr. Scott made her very uncomfortable and that "his actions speak louder than his words."

By decision dated October 4, 2005, the Office denied appellant's claim, finding that she had failed to establish a compensable employment factor.

In a letter dated November 2, 2005, appellant stated that she was "requesting a review." She stated that her anger and stress was caused by someone trying to control her and that she had filed sexual harassment charges against the coworker. Appellant reiterated that she experienced no pressure from the job itself but was unable to work because she was crying and remembering how she was treated years before by controlling men.

In an informational letter dated November 14, 2005, the Office advised appellant to clarify in writing the type of review she was requesting in her November 2, 2005 letter. The Office informed appellant that no further action would be taken on her request at that time.

On December 5, 2005 appellant requested reconsideration.

By decision dated December 13, 2005, the Office denied appellant's request for reconsideration, finding that the evidence submitted was insufficient to warrant merit review. The Office stated that appellant submitted no evidence to support that the alleged incidents actually occurred.¹

LEGAL PRECEDENT -- ISSUE 1

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.²

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 illness has some connection with the 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.³ The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of appellant's work or her fear and anxiety regarding her ability to carry out her duties.⁴ 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 employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.⁵ Moreover, although administrative and personnel matters are generally related to employment, they are functions of the employer and not duties of the employee. Thus, the Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.⁶

¹ The Board notes that the record on appeal contains additional evidence which was not before the Office at the time it issued its October 4, 2005 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; see 20 C.F.R. § 501.2(c). *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

² *Leslie C. Moore*, 52 ECAB 132 (2000).

³ 5 U.S.C. §§ 8101-8193.

⁴ *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁵ *Id.* See also *Peter D. Butt, Jr.*, 56 ECAB ____ (Docket No. 04-1255, issued October 13, 2004).

⁶ See *Charles D. Edwards*, 55 ECAB ____ (Docket No. 02-1956, issued January 15, 2004); see also *Ernest J. Malagrida*, 51 ECAB 287, 288 (2000).

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment, which may be considered by a physician when providing an opinion on causal relationship and which are not deemed factors of employment and may not be considered. When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.⁷ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.⁸ As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.⁹

Generally, an employee's emotional reaction to administrative or personnel actions taken by the employing establishment is not covered because such matters pertain to procedures and requirements of the employer and are not directly related to the work required of the employee.¹⁰ An administrative or personnel matter will be considered to be an employment factor, however, where the evidence discloses error or abuse on the part of the employing establishment.¹¹ An employee's frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable.¹² Likewise, an employee's dissatisfaction with perceived poor management is not compensable under the Act.¹³

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 (EEO) 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 coemployees or workers. Mere perceptions and feelings of harassment will not support an award of compensation.¹⁴

⁷ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁸ See *Charles D. Edwards*, *supra* note 6.

⁹ *Charles E. McAndrews*, 55 ECAB ____ (Docket No. 04-1257, issued September 10, 2004); see also *Arthur F. Hougens*, 42 ECAB 455 (1991); and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence established such allegations).

¹⁰ *Felix Flecha*, 52 ECAB 268 (2001).

¹¹ *James E. Norris*, 52 ECAB 93 (2000).

¹² *Barbara J. Latham*, 53 ECAB 316 (2002).

¹³ *Id.*

¹⁴ *Beverly R. Jones*, 55 ECAB ____ (Docket No. 03-1210, issued March 26, 2004).

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. Rather, 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.¹⁵

An employee has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition was caused or adversely affected by her employment.¹⁶ 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 a causal relationship.¹⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of employment.¹⁸ Appellant has not attributed her emotional condition to the performance of her regular duties or to any special work requirement arising from her employment duties under *Cutler*; nor has she implicated her workload as having caused or contributed to her emotional condition. She specifically stated that she experienced no pressure from the job itself.

Appellant alleged that her preexisting post-traumatic stress disorder was aggravated by harassment by coworkers. She claimed that she had been sexually harassed by an unidentified individual. She also claimed that Mr. Scott had harassed her and created a hostile work environment by criticizing her work, attempting to give her orders, spreading false rumors and vandalizing her locker. With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.¹⁹ An employee's allegation that she was harassed or discriminated against is not determinative of whether or not such incidents occurred.²⁰ The record contains no decision from the EEO Commission or other court decision supporting appellant's allegations of discrimination. Moreover, appellant has submitted no

¹⁵ *James E. Norris*, *supra* note 11.

¹⁶ *See Charles D. Edwards*, *supra* note 6.

¹⁷ *Ronald K. Jablanski*, 56 ECAB ____ (Docket No. 05-482, issued July 13, 2005). *See also Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

¹⁸ As appellant has not established a compensable factor of employment, it is unnecessary to review the medical evidence of record. *See Margaret S. Krzycki*, *supra* note 7.

¹⁹ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

²⁰ *Helen P. Allen*, 47 ECAB 141 (1995).

evidence, in the form of witness statements or otherwise, to corroborate her allegations. The Board finds insufficient evidence to support appellant's allegation of harassment, as factually established.

Appellant alleged that her supervisor improperly refused to transfer her to a different work environment and that she was very uncomfortable working with Mr. Scott. The assignment of work duties is an administrative function of the employer and not a duty of the employee.²¹ Therefore, it is only considered compensable if the employing establishment acts unreasonably or abusively.²² The Board finds that appellant has submitted insufficient evidence to establish that the employing establishment erred or acted abusively in this administrative function. As stated previously, appellant provided no corroboration for any of her allegations. The Board notes that appellant's memorandums to her supervisor and to her coworker do not establish her claim. Rather, they merely provide evidence that appellant perceived that she was being harassed. Mere perceptions of harassment or discrimination are not compensable under the Act.²³ Moreover, appellant's self-generated frustration from not being permitted to work in a particular environment is not compensable.²⁴

Under the circumstances of this case, the Board finds that appellant has failed to establish that her supervisor's refusal to transfer her was abusive or in error.

LEGAL PRECEDENT -- ISSUE 2

The Act²⁵ provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee may obtain this relief through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."²⁶

The application for reconsideration must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.²⁷

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of these standards. If

²¹ See *Cyndia R. Harrill*, 55 ECAB ____ (Docket No. 04-399, issued May 7, 2004).

²² See *Dennis J. Balogh*, 52 ECAB 232 (2001).

²³ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

²⁴ *Barbara J. Latham*, *supra* note 12. See also *Michael Thomas Plante*, 44 ECAB 510, 516-17 (1993).

²⁵ 5 U.S.C. § 8101 *et seq.*

²⁶ 20 C.F.R. § 10.605.

²⁷ 20 C.F.R. § 10.606.

reconsideration is granted, the case is reopened and the case is reviewed on its merits.²⁸ Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.²⁹

ANALYSIS -- ISSUE 2

In her request for reconsideration, appellant did not make any argument that the Office erroneously applied or interpreted a specific point of law or advance a legal argument not previously considered by the Office. Nor did she submit any relevant and pertinent new evidence not previously reviewed by the Office. Rather, she merely restated her belief that her coworker's actions exacerbated the symptoms of her post-traumatic stress disorder. Appellant's belief that her condition was caused, precipitated or aggravated by her employment is insufficient to establish causal relationship.³⁰ The Board finds that appellant did not show that the Office erroneously applied or interpreted a specific point of law, did not raise any substantive legal questions and failed to submit any relevant and pertinent new evidence not previously reviewed by the Office.

Accordingly, the Board finds that the Office properly refused to reopen appellant's claim for review on the merits.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of employment.³¹ The Board further finds that the Office properly denied her request for merit review under 5 U.S.C. § 8128(a).

²⁸ *Donna L. Shahin*, 55 ECAB ____ (Docket No. 02-1597, issued December 23, 2003).

²⁹ 20 C.F.R. § 10.608.

³⁰ *Id.*

³¹ As appellant has not established a compensable factor of employment, it is unnecessary to review the medical evidence of record. See *Margaret S. Krzycki*, *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the December 13 and October 4, 2005 decisions of the Office of Workers' Compensation are affirmed.

Issued: May 12, 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