United States Department of Labor
Employees' Compensation Appeals Board

C.S., Appellant	)	
and	)	**Docket No. 06-1583**
	)	**Issued: November 6, 2006**
DEPARTMENT OF THE AIR FORCE, MILITARY AIRLIFT COMMAND, SCOTT AIR FORCE BASE, IL, Employer	)	

Appearances:
Raymond K. Schultz, for the appellant
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 June 26, 2006 appellant, through her representative, filed a timely appeal from a merit decision of a hearing representative of the Office of Workers' Compensation Programs dated March 21, 2006 affirming the denial of her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On November 6, 2002 appellant, then a 51-year-old international clearance specialist, filed an occupational disease claim alleging that she sustained heart ischemia due to an

altercation with her supervisor on October 30, 2002.[1] She attributed her heart ischemia and subsequent panic attacks to her supervisor's "vile attitude, derogatory [remarks] and threats" after she returned to the office from conducting union business. Appellant stopped work on October 30, 2002. Her supervisor, Mark T. Bobzien, noted on the claim form that "the accusation did not occur as stated."

In an electronic message dated November 6, 2002, Rachael E. Whitlow, a coworker, related that on October 30, 2002 appellant called Captain Brian Nola and informed him that she might be slightly late for work due to a meeting with a union representative. When she arrived late, Mr. Bobzien asked to speak with her in his cubicle. Ms. Whitlow related that she heard appellant start to cry but witnessed no raised voices or hitting. After the meeting, appellant requested her heart medicine. She refused assistance to a hospital and drove herself to the emergency room.[2]

Lieutenant Colonel (Lt. Col.) Michael Sirosis, a coworker, overheard part of the conversation between appellant and Mr. Bobzien on October 30, 2002. In a November 7, 2006 statement, he related that Mr. Bobzien told appellant to be at work on time. She responded that she often stayed after her shift and he told her to document her overtime so she could be paid for it. Lt. Col. Sirosis did not hear the rest of the conversation but witnessed appellant crying later. He stated:

> "Neither party was loud or obnoxious as far as I could tell. The conversation seemed to be very low key, which is why at first I did [not] realize there was a conversation going on at all. I did not hear any vile or rude comments, again referring to the 'quiet' nature of the discussion. The few comments I mentioned above that I did overhear did not appear to be of a rude or confrontational nature. There was no shouting during the discussion…."

In a statement dated November 10, 2002, received by the Office on January 6, 2003, appellant noted that she informed Captain Nola that she might be late arriving for work because she had a union appointment. When she entered her office, Mr. Bobzein threw the Collective Bargaining Agreement (CBA) at her and told her that she would not be paid for the 19 minutes she spent conducting union business. The CBA did not hit her. Mr. Bobzein, speaking through clenched teeth, told her that she could adhere to the union agreement and not make personal telephone calls, take her breaks alone, eat at her desk and have no personal communication with coworkers. He also indicated that he would "search for anything he could use to displace" her

[1] An occupational disease is defined as "a condition produced by the work environment over a period longer than a single workday or shift." 20 C.F.R. § 10.5(q). Appellant, in a statement dated November 10, 2002, attributed her emotional condition to harassment and leave issues which occurred over more than a single workday and thus she properly filed an occupational disease claim.

[2] Appellant submitted a copy of the emergency room report dated October 30, 2002.

and told her that the shift leaders were there to "babysit" her. Mr. Bobzien believed that appellant had a problem with the shift leaders because they lacked her experience. She related:

> "I was feeling very anxious and threatened as he had been speaking through clenched teeth this entire time. His words seemed to spew at me like vile. In an attempt to end this altercation, I finally asked him, 'Do you have a problem with my work?' I asked this question because I know my work is good and that was not the real issue at hand. I felt his anger was coming from my meeting with the union. His reply was 'Your work is adequate. But, I find you repulsive and hateful.' I was shocked beyond belief and started crying."

Appellant noted that she needed her heart medicine because she could not breathe. She declined the help of her coworkers and drove to the emergency room. Appellant maintained that she experienced no problems at work until Lt. Col. Donald L. Huguley, Jr. became director and began harassing her.

Appellant submitted a performance appraisal dated October 29, 2001 which indicated that she needed little or no improvement and a performance appraisal dated May 26, 2002 which indicated that she needed a bit of improvement in some areas. She also submitted an electronic mail message in which she was asked to provide medical documentation in connection with her request for advanced sick leave.

In a December 16, 2002 response to the Office's request for additional information, appellant related that she had adequate equipment for her duties but there was not a lot of office space as they were in a temporary setting. After September 11, 2001, appellant's office workload doubled. She now had to get "last minute changes for missions involving several different countries" and that "[t]rying to accomplish this is very stressful." Appellant related that, when Lt. Col. Huguley arrived, she experienced harassment and discrimination. She met with him four times to try to reconcile differences but he denied having problems with her. Since being off work, her superiors requested medical documentation and denied her request for advanced sick leave for knee surgery, even though an employee with much less seniority received advanced sick leave. Coworkers with less experience were promoted over her because of discrimination by Lt. Col. Huguley. Appellant believed that Lt. Col. Huguley was attempting to fire her and noted that she had received a reduced rating on her most recent performance appraisal.

Appellant submitted an electronic mail message from Lt. Col. Huguley to Major Vernon Lucas dated June 6, 2002. Lt. Col. Huguley informed Major Lucas of the need to document any "discipline and behavior aberrations" by appellant and another coworker and noted that she and the coworker "continue to demonstrate resistance to change."

In a statement received January 7, 2003, Mr. Bobzien related that appellant was 30 minutes late on October 30, 2002. He stated:

> "I informed [her] at that time that I intended to charge her leave without pay unless she desired to submit an annual leave form. [Appellant] immediately became agitated and told me she expected to be paid because she had to seek

union representation in an undisclosed matter. I explained to [her] that she should have reported to work at her scheduled time and requested to go to visit with her union representatives."

Appellant told him that he was discriminating against her and that she was leaving. Mr. Bobzien replied that "she was not in a position to tell [him] what she was going to do" and went to check her workload to see if he could approve annual leave. Appellant left the area and requested her angina inhaler from a coworker. She was "red faced and crying uncontrollably." Appellant refused emergency assistance or a ride to the hospital "claiming that no one cared if she died." Mr. Bobzien and a coworker helped her to her car. On the way to the car, she needed to use her inhaler. Mr. Bobzien noted that the workload in the office had "increased dramatically" due to the world situation and that the "workload demands do become stressful, but, sufficient periods of rest are assured to all employees." He also noted that appellant believed that she was more qualified than the shift leaders.

By decision dated February 7, 2003, the Office denied appellant's claim on the grounds that the evidence did not establish that she sustained an emotional condition in the performance of duty. The Office determined that she had not established any compensable employment factors.

Appellant, through her representative, requested an oral hearing. By decision dated January 5, 2004, the Office found that appellant had abandoned her hearing request. She appealed to the Board, arguing that neither she nor her representative had received notice of the scheduled hearing. In a decision dated June 13, 2005, the Board set aside the January 5, 2004 decision and remanded the case for the Office to schedule a hearing after providing proper notice to all parties.[3]

At the hearing, held on February 8, 2006, appellant, through her representative, attributed her stress-related condition to verbal abuse by her supervisor rather than job dissatisfaction, work assignments or administrative actions. She described the events of October 30, 2002 and noted that she had gone to the union office because she was called as a witness rather than for her own purposes. Appellant filed a grievance as a result of the events on October 30, 2002 but it was unresolved.

In a decision dated March 21, 2006, the hearing representative affirmed the February 7, 2003 decision as modified to show findings made on additional work factors. The hearing representative determined that appellant had not established any compensable work factors.

LEGAL PRECEDENT

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 the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed

[3] *Connie L. Sauerwein*, Docket No. 04-1227 (issued June 13, 2005).

by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[4] 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 his or her frustration from not being permitted to work in a particular environment or to hold a particular position.[5]

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.[6] However, the Board has held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.[7] In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.[8]

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.[9] A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and Equal Employment Opportunity complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.[10] The issue is whether the claimant has submitted sufficient evidence under the Act to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[11] The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.[12]

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

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[4] 5 U.S.C. § 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

[5] *Gregorio E. Conde*, 52 ECAB 410 (2001).

[6] *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

[7] *See William H. Fortner*, 49 ECAB 324 (1998).

[8] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[9] *See Michael Ewanichak*, 48 ECAB 364 (1997).

[10] *See Charles D. Edwards*, 55 ECAB ___ (Docket No. 02-1956, issued January 15, 2004); *Parley A. Clement*, 48 ECAB 302 (1997).

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

[12] *Beverly R. Jones*, 55 ECAB ___ (Docket No. 03-1210, issued March 26, 2004).

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.[13] 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.[14]

ANALYSIS

Appellant has not alleged that she developed an emotional condition due to the performance of her regular or specially assigned duties or out of a specific requirement imposed by her employment. She noted that her workload doubled after September 11, 2001 and that it was stressful accomplishing some of her required duties. Mr. Bobzien confirmed that her work duties had increased due to the world situation but noted that employees had "sufficient periods of rest." The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable.[15] At the hearing, however, appellant specified that she attributed her emotional condition to verbal abuse by Mr. Bobzien rather than her work assignments.

Appellant primarily attributed her emotional condition to verbal abuse by Mr. Bobzien, her supervisor, on October 30, 2002. Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the evidence of record, may constitute factors of employment.[16] In this case, however, the evidence does not establish verbal abuse by Mr. Bobzien. Appellant maintained that on October 30, 2002 she telephoned Captain Nola and informed him that she might be late because she had to meet with a union representative. When she arrived at the office, Mr. Bobzien allegedly threw the CBA at her and told her that she would not be paid for the 19 minutes she spent doing union business unless she took annual leave. Speaking through clenched teeth, he told her that she could not make personal telephone calls or have personal communications with coworkers, and had to take breaks alone and eat at her desk. Mr. Bobzien informed her that her work was adequate but that he found her "repulsive and hateful." Appellant began crying and experienced difficulty breathing. She left work and was admitted to the hospital. In an undated statement, Mr. Bobzien related that on October 30, 2002 he told appellant that he would place her on unpaid leave unless she submitted a request for annual leave. She related that she expected to be paid because it was union business. Appellant accused him of discriminating against her and told him that she was leaving work. Mr. Bobzien told her that she could not tell him what she was going to do and went to check her workload to see if he could approve leave. When he returned she was crying

[13] *Dennis J. Balogh*, 52 ECAB 232 (2001).

[14] *Id.*

[15] *Trudy A. Scott*, 52 ECAB 309 (2001).

[16] *Marguerite Toland*, 52 ECAB 294 (2001).

and requested her inhaler. Ms. Whitlow, a coworker, heard appellant start to cry during the course of her conversation with Mr. Bobzien but did not hear any raised voices. In a statement dated November 7, 2002, Lt. Col. Sirosis heard Mr. Bobzien tell appellant that she should come to work on time and to document any overtime. He indicated that neither party was loud and he heard no "vile or rude comments" or shouting. Appellant has submitted no evidence corroborating her claim that Mr. Bobzien threw the CBA at her, told her that she was "repulsive and hateful" or spoke through clenched teeth. She has not established a factual basis for her allegation of verbal abuse by Mr. Bobzien.

It appears that the October 30, 2002 conversation between appellant and Mr. Bobzien occurred when he spoke with her about her late arrival for work and told her that she needed to take annual leave to cover her absence. An employee's complaints concerning the manner in which a supervisor performs his duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act.[17] This principle recognizes that a supervisor or manager in general must be allowed to perform their duties, that employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.[18] In giving instructions to appellant regarding her arrival time and the need to use leave, Mr. Bobzien was performing an administrative function which, absent evidence of error or abuse, is not compensable.[19] She has not submitted any evidence that her supervisor acted unreasonably in this case and thus has not established a compensable employment factor.

Appellant also alleged that she experienced harassment and discrimination from Lt. Col. Huguley. For harassment or discrimination to give rise to a compensable disability, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable.[20] In support of her allegation, appellant submitted an electronic mail message from Lt. Col. Huguley dated June 6, 2002. In the message, Lt. Col. Huguley informed Major Lucas of the need to document any of appellant's discipline or behavior problems and noted that she was resisting change. As discussed above, however, the manner in which a supervisor performs his duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act.[21] Appellant has not established that Lt. Col. Huguley's instructions to document any of her behavioral problems constituted harassment; instead, it is within his discretion as a supervisor. Additionally, she has not submitted any evidence, such as witness statements, to corroborate that Lt. Col. Huguley was trying to fire her. Consequently, she has not

[17] *Judy L. Kahn*, 53 ECAB 321 (2002).

[18] *Id*.

[19] *See Paul L. Stewart*, 54 ECAB 824 (2003).

[20] *Jamal A. White*, 54 ECAB 224 (2002).

[21] *See Judy L. Kahn*, *supra* note 17.

established a compensable employment factor with respect to the claimed harassment and discrimination.[22]

Regarding her contention that less qualified coworkers received promotions, the Board has held that failure to be promoted is not compensable because the lack of a promotion does not involve the employee's ability to perform his or her regular or specially assigned duties but rather constitutes the employee's desire to work in a different position.[23]

Appellant further alleged that the employing establishment erred in requiring medical documentation for her absence and denying her request for advanced sick leave. She also expressed dissatisfaction with her current performance appraisal. Although the handling of evaluations and leave requests are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[24] As discussed, 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.[25] Appellant has not established any evidence that the employing establishment committed error or abuse in her performance appraisal or matters involving leave requests and thus has not established a compensable employment factor.

As appellant failed to establish any compensable factors of employment, the Office properly denied her claim.[26]

CONCLUSION

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

[22] *Id*.

[23] *Andrew J. Sheppard*, 53 ECAB 170 (2001).

[24] *Lori A. Facey*, 55 ECAB ___ (Docket No. 03-2015, issued January 6, 2004); *Paul L. Stewart*, 54 ECAB 824 (2003).

[25] *Id*.

[26] As appellant did not establish a compensable employment factor, the Board need not address the medical evidence of record; *see Kathleen A. Donati*, 54 ECAB 759 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 21, 2006 is affirmed.

Issued: November 6, 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