

order, these incidents included: (1) sometime prior to March 2002 appellant noticed him “making a face” at her as she passed by; (2) while in travel status in March 2002, Mr. Graves told appellant he wanted to get together and he showed up at her hotel room; (3) In November 2002 at a meeting in Phoenix he said they should get a drink together; (4) in April 2003, Mr. Graves was verbally abusive; (5) on April 21, 2004 he “began to make sexual comments again like how beautiful I looked, good enough to eat” and stood close to her until she told Mr. Graves to get away and leave her alone. Appellant noted that she had filed an Equal Employment Opportunity (EEO) complaint against Mr. Graves for sexual harassment. She alleged that in reprisal she was placed on administrative leave without explanation on June 25, 2004.

With respect to administrative leave, the postmaster indicated in an October 8, 2004 letter, that an investigation into allegations of inappropriate conduct had been concluded and no disciplinary action against appellant would be taken. Appellant was advised to report to work. In a November 1, 2004 letter to her, the postmaster stated that on June 25, 2004 appellant received a letter from the Tucson plant manager advising that she was put on administrative leave because of an investigation into allegations of inappropriate conduct involving appellant and others. In a December 1, 2004 statement, appellant’s supervisor, Jack Neuman, stated that, in February 2002, appellant mentioned that Mr. Graves made comments on her looks and asked her to go out for drinks a few times and she spoke with Mr. Graves about leaving her alone. Mr. Neuman also indicated that he talked to Mr. Graves after an incident while in travel status where Mr. Graves asked appellant to go for a drink after dinner and knocked on her room door. According to Mr. Neuman, appellant and a coworker were placed on administrative leave to investigate an allegation by Mr. Graves that appellant was having a sexual relationship with a supervisor.

The medical evidence submitted included a report dated September 7, 2004 from Dr. Howard Toff, a psychiatrist, who noted in his history that appellant had been put on administrative leave after allegations that she was having an affair with a supervisor and she filed a sexual harassment complaint. He diagnosed anxiety disorder. In a report dated October 26, 2004, Dr. Craig Everett, a psychologist, diagnosed post-traumatic stress disorder. He stated that the condition appeared to be “both triggered and aggravated by specific stressors and actions taken by individuals in patient’s employment setting....” In a November 30, 2004 report, Dr. Toff stated that stress induced by sexual harassment, the subsequent claim process and forced administrative leave had affected appellant mentally and physically.

In a statement dated December 8, 2004, a coworker, Mr. Anderson, indicated that on April 21, 2004 he saw Mr. Graves at appellant’s cubicle and heard her say “Stop, leave me alone.” Another coworker reported, in a December 2, 2004 statement, that in April 2003 Mr. Graves shouted at appellant for approximately 15 minutes. The witness also stated that, in 2003 she observed appellant attempting to pull away from Mr. Graves and “in particular he would make comments like “you’re so pretty I could eat you.”

In a letter dated January 31, 2005, the employing establishment indicated that Mr. Graves denied the specific allegations made by appellant. According to the employing establishment, there was an extensive EEO investigation into the allegations of sexual harassment and the

“outcome of the investigation was inconclusive for any sexual harassment claims” involving appellant and Mr. Graves.

By decision dated March 14, 2005, the Office denied appellant’s claim for compensation. The Office found that she had not established any compensable work factors.

Appellant requested a hearing, which was held on November 17, 2005. She submitted portions of deposition testimony that were taken as part of the EEO complaint. There is no decision in the record with respect to a claim for sexual harassment. In a report dated September 7, 2005, Dr. Barry Morenz provided a history and results on examination. He stated that appellant’s perceptions of sexual harassment and retaliation caused her a great deal of stress and to the extent that her perceptions were historically accurate, it was reasonable to conclude that they were substantial contributing causes to her major depression and panic disorder.

By decision dated January 20, 2006, the hearing representative modified the March 14, 2005 decision to reflect that appellant had established a compensable factor in April 2003 when she was subject to verbal abuse by Mr. Graves. He found that no other compensable factors were substantiated and found that the medical evidence was not sufficient to establish an injury causally related to the compensable work factor.

LEGAL PRECEDENT

To establish a claim that she sustained an emotional condition in the performance of duty, appellant 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

The Board has held that 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 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. The same result is reached when the emotional disability resulted from the employee’s emotional reaction to the nature of her work or her fear and anxiety regarding her ability to carry out her work duties.³

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

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

³ *Ronald J. Jablanski*, 56 ECAB ____ (Docket No. 05-482, issued July 13, 2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

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 hold a particular position.⁴

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.⁵ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.⁶

ANALYSIS

The primary allegation made by appellant regarding the source of emotional stress at work is a claim she was sexually harassed by a coworker. In May 2004, appellant filed a claim of sexual harassment with the EEO Commission. There is, however, no decision with respect to that claim in the record. For appellant to establish harassment, there must be probative evidence that is sufficient to establish a compensable work factor with respect to the actions of the coworker. The evidence of record in this case is not sufficient to establish a compensable work factor with regard to the claim of harassment.

Appellant alleged in her initial statement that the coworker made sporadic innuendos and comments in 2002, without providing additional detail. She alleged that the coworker made a face at her in 2002 and asked her out for a drink while in travel status but these incidents do not describe actions sufficient to constitute a compensable work factor. A witness, F. Franklin, reported that the coworker made comments in 2003 like, "you're so pretty I could eat you" but no other details were provided and appellant did not describe such comments except for an April 21, 2004 incident. With respect to this incident, Mr. Anderson reported that he heard her tell the coworker to leave her alone. He did not discuss any comments made by the coworker. The Board notes that the coworker denied making the alleged comments.

The employing establishment reported that an investigation was inconclusive and, as noted above, there are no findings of harassment by the EEO or other agency. The witness statements do not provide sufficient detail regarding the allegations. The deposition testimony of record provides only a portion of the testimony offered and does not establish a compensable work factor. Based on the evidence of record, the Board finds that appellant did not establish a compensable work factor regarding her claim of harassment.

Appellant also alleged that she was subject to retaliation after she filed an EEO complaint. Specifically, she indicated that in June 2004 she was placed on administrative leave without justification or explanation. The employing establishment, however, indicated that

⁴ *Id.*

⁵ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁶ *Helen P. Allen*, 47 ECAB 141 (1995).

appellant was advised of an investigation of possible inappropriate conduct that involved her. The investigation did not reveal any inappropriate behavior by appellant and she returned to work. There is no probative and reliable evidence that being placed in an administrative leave status was retaliatory or was erroneous.⁷ In the absence of such evidence, appellant has not established a compensable work factor regarding the allegation of retaliation.

The hearing representative found that a compensable work factor occurred in April 2003 when the coworker verbally abused appellant by yelling for an extended period. This allegation was supported by witnesses and represents a compensable work factor. The medical evidence is, therefore, reviewed to determine if causal relationship is established between a diagnosed condition and the work factor. In this case none of the physicians of record identified the compensable work factor and provide a reasoned opinion on causal relationship. Dr. Toff and Dr. Morenz refer to sexual harassment and retaliation which have not been established as compensable factors. Dr. Everett notes general stress at work, without providing additional detail. Appellant did not submit probative medical evidence with a complete factual and medical background and a reasoned opinion on causal relationship between a diagnosed condition and the accepted work factor. The Board accordingly finds that she did not meet her burden of proof in this case.

CONCLUSION

Appellant did not meet her burden of proof to establish an emotional condition causally related to a compensable work factor.

⁷ An administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment. See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 20, 2006 is affirmed.

Issued: October 3, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board