



On August 7, 2002 appellant, then a 54-year-old medical clerk, filed an occupational disease claim alleging that she sustained post-traumatic stress disorder due to factors of her employment.<sup>2</sup> She alleged that, on an unspecified date, a patient from the geriatric ward came to her desk in the reception area of the building and asked about a smell in the air. Appellant advised that some painting was being performed and, responding to a question as to her position, indicated that she was a medical clerk. The patient told her that he did not believe that she was a medical clerk that she should be placed in a back room with a bag over her head. He sat on her desk and insisted that appellant tell him the “truth.” Appellant told the patient that she would call security and the patient said in a loud voice, “call them.” She left the area after calling security.

Appellant alleged that her work area was unsafe because it was “right out in the open” and there were few people in the area except for patients. She stated that she was “the first target that anyone would see” when entering the building. Appellant indicated that her work area was poorly lit and the position of her desk would cause her to become “trapped” behind it. She informed Supervisors Bonnie Pierce and Marlene Brewster and a union official about her safety concerns. Appellant alleged that the patient who told her to place a bag over her head followed her on several occasions and asked coworkers about her whereabouts. She advised Ms. Pierce and Ms. Brewster about this patient and about another patient who had molested a coworker.<sup>3</sup> They did not address her concerns about the patients or her other safety concerns. Appellant alleged that Ms. Brewster told her that there was no other workplace to send her and the union representative told her that she should not complain “as long as nothing happened to her.” She alleged that management took no action regarding her safety concerns.

Appellant submitted medical evidence in support of her claim.<sup>4</sup> In notes dated October 18, 2002, a physician indicated that an elderly patient had recently made threatening comments to appellant as she sat at her desk. The incident frightened her because she had been physically attacked by a patient in 1997 and had reason to be fearful of patients because they were “unpredictable.” The physician diagnosed an adjustment disorder with anxious mood caused by her employment. He prescribed medication.

By decision dated February 27, 2003, the Office denied appellant’s emotional condition claim.

In a statement dated February 28, 2003, Ms. Pierce noted that appellant had informed her of the patient who made the “bag over her head” comment and other rude statements. After the patient filed a complaint against appellant, management moved him to a different facility in order to avoid a confrontation. Ms. Pierce stated that appellant was stationed at the reception

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<sup>2</sup> The Office previously accepted appellant’s claim for an emotional condition in 1997 when a patient in a wheelchair grabbed her arm while she was walking to the restroom.

<sup>3</sup> Appellant indicated that the patient who molested a coworker was not transferred to another work area until at least one month after the incident. The coworker advised appellant that it was not safe for a female to work alone in that area.

<sup>4</sup> Appellant also submitted reports and notes from a licensed clinical social worker.

desk across from the elevators in the building and the reception area was purposely designed so that the receptionist was the first person visitors would see upon entering the building. The area was safe and she indicated that it was not isolated as there were several offices near the reception area. Appellant did not advise Ms. Pierce that she felt the reception area was unsafe or of any other safety concerns, apart from the incident with the elderly patient. Ms. Pierce was not aware of any attack on another employee and had never been informed of any patient molesting a staff member.

By decision dated February 23, 2006, the Office denied appellant's emotional condition claim, finding that her condition was not caused by any compensable factors of employment.

### **LEGAL PRECEDENT**

To establish a 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.<sup>5</sup>

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 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 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.<sup>6</sup> On the other hand, the disability is not covered where it results from such factors as an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>7</sup>

Administrative and personnel matters, although generally related to the employees' 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.<sup>8</sup> 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.<sup>9</sup> In determining whether the employing establishment has erred or acted abusively, the Board will

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<sup>5</sup> *Pamela D. Casey*, 57 ECAB \_\_\_\_ (Docket No. 05-1768, issued December 13, 2005); *George C. Clark*, 56 ECAB \_\_\_\_ (Docket No. 04-1573, issued November 30, 2004).

<sup>6</sup> 5 U.S.C. §§ 8101-8193; see *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>7</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>8</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>9</sup> See *William H. Fortner*, 49 ECAB 324 (1998).

examine the factual evidence of record to determine whether the employing establishment acted reasonably.<sup>10</sup>

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 deemed compensable work 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 compensable factors of employment and may not be considered.<sup>11</sup> If a claimant does implicate a factor of employment, the Office should then consider whether the evidence of record substantiates that factor. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim; the claim must be supported by probative evidence.<sup>12</sup> Where the matter asserted is a compensable factor of employment and the evidence of record established the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>13</sup>

### ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of several employment incidents, including when a patient told her she should have a bag placed over her head, being followed by this patient, her concerns about the safety of her work area, a coworker indicating that she had been molested by a patient and that management did not adequately respond to her various safety concerns.

Appellant alleged that management assigned her to an unsafe workplace. She alleged that her work area was unsafe because it was “right out in the open” and there were few people in the area except for the patients. Appellant contended that she was “the first target that anyone would see” when entering the building. She indicated that her work area was poorly lit and the position of her desk would cause her to be “trapped” behind her desk. Appellant alleged that she informed Ms. Pierce, Ms. Brewster and a union official about her safety concerns but no action was taken. She alleged that Ms. Brewster told her that there was no other workplace to send her and the union representative told her that she should not complain. The Board has found that unsafe conditions in the workplace may constitute a compensable employment factor if established by the factual evidence.<sup>14</sup> In this case, there is insufficient evidence to establish appellant’s allegation that management assigned her to an unsafe work area and did not respond adequately to her safety concerns. Ms. Pierce stated that appellant had never voiced any concern about the safety of her work area. She explained that appellant was stationed at the reception desk across from the elevators and the reception area was purposely designed so that the

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<sup>10</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>11</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>12</sup> *See Charles E. McAndrews*, 55 ECAB \_\_\_\_ (Docket No. 04-1257, issued September 10, 2004).

<sup>13</sup> *Jeral R. Gray*, 57 ECAB \_\_\_\_ (Docket No. 05-1851, issued June 8, 2006).

<sup>14</sup> *See Peggy Ann Lightfoot*, 48 ECAB 490 (1997).

receptionist was the first person building visitors would see. Ms. Pierce indicated that the reception area was safe and that the location was not isolated as there were several offices located near the reception area. The Board finds that appellant has provided insufficient evidence that the employing establishment erred or acted abusively in handling these administrative matters, the assignment of her work area or addressing her safety concerns. Therefore, these allegations are not deemed compensable employment factors.

Appellant alleged that a coworker told her that she had been molested by a patient and that it was not safe for a female to work alone. However, she provided insufficient evidence to establish this incident as factual, such as a statement from the coworker involved. Ms. Pierce stated that she was not aware of any attack on another employee and had never been informed of any patient molesting a staff member. The Board finds that appellant has not established this incident as factual. It is not deemed a compensable employment factor.

Appellant alleged that a patient from the geriatric ward came to her desk in the reception area of the building and inquired about a smell. During their conversation, he allegedly stated that she should be placed in a back room with a bag over her head. After he sat on her desk, she contacted security and left the area. Ms. Pierce confirmed in her statements that appellant had informed her of this incident and that the patient was moved to a different facility the next day to avoid another confrontation with appellant. The Board finds that the evidence establishes this incident as factual. It occurred in the performance of appellant's job duties while working in the reception area, a place she was expected to be. Therefore, this incident is deemed a compensable factor of employment under *Cutler*. Because the Office did not accept any compensable factors, the case will be remanded for appropriate development of the medical evidence.

### **CONCLUSION**

The Board finds that this case is not in posture for decision. Appellant has established a compensable factor requiring further development of the claim.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 23, 2006 is affirmed, in part, and set aside and the case remanded for further action consistent with this decision.

Issued: September 19, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board