



that her stress returned after learning she lost the job she held following a settlement agreement for her original injury. The Office adjudicated the claim as a new injury as appellant implicated new factors of employment.<sup>2</sup>

Appellant submitted factual and medical evidence. In an August 11, 2005 attending physician's report (Form CA-20), Dr. Brian Andrews, a treating Board-certified internist, diagnosed job-related severe anxiety. Appellant included statements by her supervisor, Linda Iuliano, Information Systems Coordinator, and coworkers, Cecilia Chavez, M. Shuster, Dale L. Robinson, Jr. Progress notes from James Dykstra, a licensed clinical social worker, diagnosed work-related anxiety and stress. In reports dated June 7 to September 1, 2005, Dr. Robert B. Ogesen, a treating Board-certified psychiatrist, diagnosed anxiety.

Appellant noted that she became very upset at the meeting held on June 2, 2005 with Pedro Simpson, a manager. The meeting concerned the termination of the positions of four rehabilitation employees due to budget constraints. Mr. Simpson requested that appellant remain after the meeting when he told her that her Equal Employment Opportunity (EEO) settlement would not be honored. Appellant contended that this was a breach of the settlement. She alleged that she was treated differently than the three other rehabilitation employees as they were able to keep their hours. Appellant received a new assignment at Indian School station working from 1:00 a.m. to 7:30 p.m. and she contended that the work hours were discriminatory and retaliatory. She also alleged that Phil Fenno, a supervisor, did nothing to stop a hostile work environment.

On June 7, 2005 Dr. Ogesen diagnosed anxiety which he attributed "to work situations that occurred last week" and events occurring in 2003. He also diagnosed adjustment disorder due to work stress. Dr. Ogesen reported that appellant "claims her employer is violating an EEO Commission settlement from last year." He stated that appellant was totally disabled beginning August 9, 2005 and estimated a return to work on September 12, 2005.

In letters dated September 28 and November 1, 2005, the employing establishment denied appellant's allegations of harassment, discrimination and retaliation. It advised that the position appellant was offered was within her restrictions. The employing establishment referenced a July 20, 2005 letter from the Office informing appellant that the July 13, 2005 job offer was within her physical restrictions.

By decision dated December 22, 2005, the Office denied appellant's claim for an employment-related emotional condition.

Appellant requested an oral hearing on January 5, 2006. A telephonic hearing was held on May 3, 2006. Appellant contended that the reassignment to the Indian School station would expose her to seeing someone who had stalked her in the vicinity.

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<sup>2</sup> This was assigned file number 13-2134650.

The Office received additional factual and medical evidence including a July 13, 2005 duty status report<sup>3</sup> and a copy of a July 13, 2005 modified mail processing clerk position.<sup>4</sup> In a May 23, 2006 EEO Commission decision, it found no breach of the settlement agreement.

Appellant contended that the first position to which she was assigned at the Indian School station on August 8, 2005 required her to work outside her restrictions. She contended that the tubs were over her weight restriction and she was required to bend and squat “an incredible amount of times.”

In an undated statement, Mr. Fenó stated that, if appellant “worked outside her restrictions, it was he[r] decision to do so.” He related that appellant was told not to work outside her restrictions. Appellant was working in the unendorsed bulk business mail section and was told she could pick up one piece of mail at a time from the tubs if needed. In a December 28, 2005 statement on appellant’s disability application, Mr. Fenó noted that appellant started the modified position on August 8, 2005. He related that appellant was unable to complete the majority of the required duties essential to the position due to the repetitive nature of the job. Mr. Fenó noted the lack of duties at the station for a mail processing clerk with appellant’s restrictions. In answers to a Social Security Administration questionnaire, he stated that appellant was only able to complete approximately 25 percent of the duties required. Mr. Fenó also stated that appellant could not perform the duties of the modified position in a timely manner, efficiently or without assistance.

In a January 6, 2006 report, Mr. Dykstra diagnosed panic disorder and adjustment disorder with depressive mood and mixed anxiety. He opined that appellant’s “current work environment is not conducive to complete resolution of her symptoms.”

Appellant alleged that the modified position at the Indian School station required her to work outside her physical restrictions as it required an incredible amount of repetitious bending and twisting. She estimated that a full hamper of mail weighed 300 pounds and that she had a 10-pound limit on the use of her right arm. Appellant alleged that she injured her left shoulder and arm after working four hours in the unendorsed bulk business mail section. She noted that she picked up small amounts of mail which she transferred to the hampers.

In a May 23, 2006 response to the transcript, the employing establishment again controverted appellant’s claim and denied her allegations.

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<sup>3</sup> The duty status report contained a diagnosis of epicondylitis. Restrictions for this condition included lifting up to 10 pounds, continuous sitting of two to three hours per day, intermittent sitting of three to six hours per day, standing, twisting, reaching above the shoulder, driving a vehicle and walking up to two hours continuously, no climbing, one hour of continuous kneeling and less than one hour continuously of pushing/pulling, simple grasping and fine manipulation.

<sup>4</sup> The physical restrictions of the position included intermittent lifting of up to 10 pounds for eight hours, no repetitive activities and setting her own pace of work. The duties of the position included two to four hours of checking in accountable mail/carriers, one hour of close out assistance, intermittent “sort bypass distribution -- nonrepetitive placing of mail bundles in carrier hold outs,” and two to three hours of clerical assistance.

By decision dated July 18, 2006, the Office hearing representative affirmed the denial of her claim.<sup>5</sup>

### **LEGAL PRECEDENT**

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.<sup>6</sup>

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*,<sup>7</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.<sup>8</sup> There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.<sup>9</sup> When an employee experiences emotional stress in carrying out her employment duties, and the medical evidence establishes that the disability resulted from an 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 an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.<sup>10</sup> 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.<sup>11</sup>

In emotional condition claims, 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 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. If a

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<sup>5</sup> The hearing representative references appellant's File No. 13-915980 for an elbow injury. He states "[t]hat claim also includes a statement dated March 29, 2006 from [a]cting [s]tating [m]anager, [Mr.] Feno" regarding appellant's work duties. The hearing representative appears to be referencing evidence which is contained in appellant's other claim and not in the instant claim.

<sup>6</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>7</sup> 28 ECAB 125 (1976).

<sup>8</sup> 5 U.S.C. §§ 8101-8193.

<sup>9</sup> See *Robert W. Johns*, 51 ECAB 137 (1999).

<sup>10</sup> *Lillian Cutler*, *supra* note 7.

<sup>11</sup> *Kim Nguyen*, 53 ECAB 127 (2001).

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.<sup>12</sup>

As a general rule, 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.<sup>13</sup> 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.<sup>14</sup> An employee's frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable.<sup>15</sup> Similarly, an employee's dissatisfaction with perceived poor management is not compensable under the Act.<sup>16</sup>

### ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of her reassignment from a position in the IT office. She contended this position was a result of a settlement agreement for her harassment claim and that her reassignment violated the agreement. Appellant also alleged that the new position was not within her physical restrictions. She contended she was subjected to retaliation, harassment and discrimination as a result of the reassignment and the position at the Indian School station. The Office denied her claim on the grounds that she had not established any compensable factors of employment. The Board, must, therefore initially review whether these alleged incidents and conditions are covered employment factors under the terms of the Act.

Appellant alleged generally that Mr. Feno, a supervisor, "did nothing to stop the hostile work environment." She also alleged that her newly assigned work hours of 11:00 a.m. to 7:30 p.m. were discriminatory and retaliatory. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are factually established as occurring, these could constitute a compensable employment factor.<sup>17</sup> However, for harassment and discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.<sup>18</sup> Appellant provided no details regarding her allegations of a hostile work environment. She did not specify any actions

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<sup>12</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>13</sup> *Felix Flecha*, 52 ECAB 268 (2001).

<sup>14</sup> *Kim Nguyen*, *supra* note 11.

<sup>15</sup> *Barbara J. Latham*, 53 ECAB 316 (2002).

<sup>16</sup> *Id.*

<sup>17</sup> *Charles D. Edward*, 55 ECAB 258 (2004).

<sup>18</sup> *Janice I. Moore*, 53 ECAB 777 (2002).

by her supervisor or provide information concerning dates, individuals involved and what occurred. Therefore, her allegation of a hostile work environment is not established as factual. There is insufficient evidence to support harassment, retaliation or discrimination as alleged. Consequently, no compensable employment factor has been established.

Appellant alleged that she experienced stress as a result of her reassignment from a position in the IT office at the General Mail Facility (GMF) in Phoenix, Arizona to the Indian School station, a position she contended violated her medical restrictions. The Board notes that an assignment of work including transfer is an administrative function of a supervisor.<sup>19</sup> An employee's dissatisfaction with being transferred constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is generally not compensable.<sup>20</sup> Although these types of matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>21</sup> Workers' compensation law does not cover an emotional reaction to an administrative or personnel action unless the evidence establishes error or abuse on the part of the employing establishment.<sup>22</sup> In support of her claim, appellant submitted medical and factual information. However, none of this evidence establishes error or abuse on the part of the employing establishment in transferring her from her modified position in the IT center. The statement by Ms. Iuliano, information systems coordinator, and coworkers, Cecilia Chavez, M. Shuster, and Dale L. Robinson, Jr., her supervisor, show she was unhappy about the transfer. They do not establish error or abuse by the employing establishment. The employing establishment noted that appellant's position with the technology section had been abolished due to budget constraints. The record contains no evidence that appellant was reassigned for a reason other than budgetary reasons. The Board finds that appellant submitted no evidence establishing error by management. She has not established a compensable factor of employment with respect to her transfer.

Appellant also alleged that the reassignment to Indian School stations was a breach of her EEO settlement agreement. The record contains an EEO claim she filed regarding the alleged breach of the settlement agreement and a decision by the EEO Commission. The Board has held that grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.<sup>23</sup> The EEO Commission issued a decision denying her claim that the employment breached the prior settlement agreement by transferring her to the Indian School station from her current position in the IT office at the GMF. This evidence is a substantial finding that the employing establishment did not breach any duty under the settlement agreement. The Board finds that appellant failed to establish a compensable factor of employment in this regard.

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<sup>19</sup> *Jeral R. Gray*, 57 ECAB \_\_\_\_ (Docket No. 05-1851, issued June 8, 2006).

<sup>20</sup> *Robert Breeden*, 57 ECAB \_\_\_\_ (Docket No. 06-734, issued June 16, 2006).

<sup>21</sup> See *Lori A. Facey*, 55 ECAB 217 (2004); *Janet I. Jones*, 47 ECAB 345 (1996); *Jimmy Gilbreath*, 44 ECAB 555 (1993).

<sup>22</sup> See *Tina D. Francis*, 56 ECAB \_\_\_\_ (Docket No. 04-965, issued December 16, 2004); *Charles D. Edwards*, *supra* note 17.

<sup>23</sup> *Michael L. Deas*, 53 ECAB 208 (2001).

Appellant also alleged that she was required to work outside her medical restrictions in the Indian School station position. The Board has held that being made to work beyond one's physical limitations or prescribed restrictions may be a compensable factor of employment.<sup>24</sup> The evidence with respect to her medical restrictions include a July 20, 2005 letter from the Office, a July 13, 2005 modified job offer and July 13, 2005 duty status report. The modified clerk position limited appellant to intermittent lifting of 10 pounds, no repetitive work and the ability to work at her own pace. Mr. Fenno, appellant's supervisor, provided statements made in support of appellant's application for disability retirement under social security.<sup>25</sup> Mr. Fenno denied requiring appellant to work outside her restrictions. Appellant was advised to work within her restrictions and to work at her own pace. In support of appellant's disability application, Mr. Fenno stated that she was unable to perform her modified job duties. He did not acknowledge that she was required to work outside her restrictions. There is insufficient evidence of record to establish appellant's contention that she was required to work outside her physical restrictions. The Board finds that appellant has failed to establish a compensable employment factor. The Office properly found that appellant did not sustain an emotional condition in the performance of duty.

For the foregoing reasons, the Board finds that appellant has not established any compensable employment factors.<sup>26</sup>

### CONCLUSION

The Board finds that appellant failed to establish that she sustained an emotional condition in the performance of duty.

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<sup>24</sup> *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>25</sup> The Board notes that the standards of other agencies regarding disability are not binding on the Office simply because the standards for establishing work-related disability under the Act, which governs the Office and the Board, are not the same as the standards set for disability retirement or social security benefits. See *Raj B. Thackurdeen*, 54 ECAB 396 (2003).

<sup>26</sup> Until a claimant establishes a compensable employment factor, it is premature to consider whether medical evidence establishes that a compensable employment factor caused an injury. See *David Cuellar*, 56 ECAB \_\_\_\_ (Docket No. 05-429, issued July 18, 2005); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 18, 2006 is affirmed.

Issued: February 22, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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