

In a statement dated April 28, 2005, appellant alleged that on April 22, 2005 her supervisor, Janet Seegers, yelled at her in front of coworkers about her evaluation. Louisa Basile, another supervisor, raised her voice to appellant on the telephone and insisted that she give the telephone to a coworker. Appellant sought medical treatment at an emergency room on April 22, 2005 for high blood pressure, anxiety and a panic attack. Ms. Basile was not concerned when she told her that she had a headache and high blood pressure.¹

In a statement to Ms. Basile dated April 22, 2005, Ms. Seegers indicated that she called appellant into her office on April 22, 2005 to sign the employee section of her performance standards. She related:

“[Appellant] signed it and then asked me for a copy, which I provided to her. When I gave her the copy she accused me of tampering with the form and stated that Ms. Basile’s comments had not been on the form previously. She also said she would not have signed the form if the training recommendations had been there as she has had this training before. I indicated to [her] that I believed the form had not been changed since she and I had signed it on Monday. I indicated that possibly Ms. Basile had written a comment on the form after she and I signed it on Monday, but we would have to check with Ms. Basile. During this entire conversation, [appellant] was extremely argumentative, rude and her demeanor was bordering on insubordination.”

In a statement dated June 8, 2005, appellant related that she was hospitalized on April 22, 2005 for an anxiety attack. She attributed her anxiety attack to her supervisors refusing to let her have water at her desk even though she had a urinary tract infection. Additionally, Physician Assistant Bing told appellant to be careful because her supervisors were attempting to fire her.² Ms. Seegers yelled at her about her evaluation in front of a coworker. Ms. Basile attributed appellant’s back condition to her thinness and implied that she did not really have a back injury. She also denied appellant’s request for a change in work shift to accommodate physicians’ appointments.”³

Ms. Basile submitted a statement dated June 9, 2005. She related that appellant “was allowed to drink and take breaks as she needed for her medical condition.” Ms. Basile denied that anyone mocked appellant’s accent or spoke to her sarcastically. She noted that appellant verbally requested a shift change without a lunch break. Ms. Basile told her to put her request

¹ Appellant also described additional employment factors that occurred at work over a period of time. A traumatic injury is defined as a “condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift.” 20 C.F.R. § 10.5(ee). 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, through her representative, specified at the hearing that her claim concerned only the events that occurred on April 22, 2005. She has another occupational disease claim before the Office.

² Appellant received an April 26, 2005 proposed removal from the employing establishment due to physical and mental inability to perform the duties of her position.

³ Ms. Basile also addressed alleged employment factors which did not occur on April 22, 2005.

for a shift change in writing and informed her that a lunch break was necessary due to the hectic work environment. She denied that staff or management yelled or argued with appellant.

By decision dated July 6, 2005, the Office denied appellant's emotional condition claim on the grounds that she failed to establish any compensable employment factors.

On July 13, 2005 appellant, through her representative, requested an oral hearing.⁴ At the hearing, held on December 21, 2005, her representative clarified that the current claim concerned only incidents occurring on April 22, 2005.⁵ Appellant related that on April 22, 2005 she was unable to hear Ms. Basile's work assignments on the telephone because of the noise level in the office. Ms. Basile raised her voice to appellant and told her to give the telephone to someone who could understand her.⁶ In the break room, Ms. Basile told appellant that she could not take coffee back to her desk even though she knew that appellant was on antibiotics for kidney problems; however, Ms. Basile also took both food and drink to her office. Ms. Seegers mocked her southern accent by saying that she did not "know how you did it down South, little darling." Ms. Seegers checked boxes indicating unsatisfactory performance on her standards. She informed appellant in a sarcastic tone that she needed to attend training classes. Appellant replied that she had already taken the training classes. Ms. Seegers put her hands up and sarcastically said that she was proud of her. A coworker warned her to be careful because management was trying to get rid of her. Appellant experienced difficulty breathing and felt dizzy. She went to the hospital and received treatment.

By decision dated March 2, 2006, the Office hearing representative affirmed the July 6, 2005 decision.

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 her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁷ 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.⁸

⁴ In a statement dated July 24, 2005, appellant described in detail her employment duties but did not raise any allegations relevant to the events occurring on April 22, 2005.

⁵ Appellant also noted that she had a prior accepted emotional condition claim.

⁶ Appellant indicated that she filed an Equal Employment Opportunity (EEO) complaint against Ms. Basile for discrimination.

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

⁸ *Gregorio E. Conde*, 52 ECAB 410 (2001).

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.⁹ 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.¹⁰ 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.¹¹

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.¹² A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.¹³ 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.¹⁴ 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.¹⁵

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 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.¹⁶ 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

⁹ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹⁰ See *William H. Fortner*, 49 ECAB 324 (1998).

¹¹ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹² See *Michael Ewanichak*, 48 ECAB 364 (1997).

¹³ See *Charles D. Edwards*, 55 ECAB 258 (2004); *Parley A. Clement*, 48 ECAB 302 (1997).

¹⁴ See *James E. Norris*, 52 ECAB 93 (2000).

¹⁵ *Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁶ *Dennis J. Balogh*, 52 ECAB 232 (2001).

record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.¹⁷

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of employment incidents which occurred on April 22, 2005. The Board must initially review whether these incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant attributed her anxiety and panic attack, in part, to verbal abuse by her supervisor on April 22, 2005. She alleged that Ms. Basile spoke to her in a raised voice on the telephone while giving her a work assignment on April 22, 2005. Appellant could not hear Ms. Basile on the telephone due to noise from the office. Ms. Basile ordered appellant to put a coworker who could understand her on the telephone. She also told appellant that she was “too skinny” and that was why she had a back condition. Ms. Seegers yelled at her in front of coworkers and spoke to her sarcastically about her performance standards and need for additional training. She also mocked appellant’s southern accent by saying that she did not “know how you did it down South, little darling.” The Board has held that, while verbal abuse may constitute a compensable factor of employment, not every statement uttered in the workplace will be covered under the Act.¹⁸ A raised voice in the course of a conversation does not, in and of itself, warrant a finding of verbal abuse.¹⁹ While appellant alleged that her supervisors yelled at her, spoke to her sarcastically and mocked her accent, she did not submit sufficient evidence corroborating her allegations of verbal abuse. A claimant must establish a factual basis for her allegations with probative and reliable evidence.²⁰ Ms. Basile denied that either staff or management yelled at appellant or mocked her accent. Appellant, consequently, has not established verbal abuse by Ms. Basile or Ms. Seegers on April 22, 2005.

Regarding appellant’s allegations of harassment and discrimination by her supervisors, the Board has held that to the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from the employee’s performance of her regular duties, these could constitute employment factors.²¹ The evidence, however, must establish that the incidents of harassment or discrimination occurred as alleged to give rise to a compensable disability under the Act.²² Appellant maintained that Ms. Basile harassed and discriminated against her by refusing to allow her to eat or drink at her desk even though she needed to drink due to a medical condition. She also alleged that a coworker informed her that management was attempting to fire her.

¹⁷ *Id.*

¹⁸ *See Judy L. Kahn*, 53 ECAB 321 (2002).

¹⁹ *Karen K. Levene*, 54 ECAB 671 (2003).

²⁰ *Andrew J. Sheppard*, 53 ECAB 170 (2001).

²¹ *Janice I. Moore*, 53 ECAB 777 (2002).

²² *Id.*

Ms. Basile, in a statement dated June 9, 2005, related that appellant was allowed to eat and drink as needed for her medical condition. Appellant did not submitted any evidence substantiating her allegation that Ms. Basile did not allow her to eat or drink at her desk or that her supervisors were trying to discharge her. As she has not established a factual basis for her allegation of harassment and discrimination with reliable and probative evidence, she has not established a compensable employment factor.²³

Appellant also contended that Ms. Seegers indicated that she had unsatisfactory areas of performance on her standards. Ms. Seegers further told her that she needed to attend training classes even though appellant had already taken the classes and was competent in the training areas. The Board has characterized criticisms of performance, supervisory discussions of job performance, matters involving training and reprimands as administrative or personnel matters of the employing establishment, which are covered only when erroneous or abusive.²⁴ Appellant has not submitted any evidence showing that Ms. Seegers erred in instructing her to take training classes or in criticizing her job performance and thus has not established a compensable employment factor.

Appellant further alleged that Ms. Basile denied her request for a shift change. Ms. Basile noted that appellant verbally requested a shift change and permission to work through her lunch break. She told appellant to put her request in writing and informed her that a lunch break was deemed necessary for all employees. The Board has held that an employee's frustration over not being permitted to work a particular shift or to hold a particular position is not covered under the Act.²⁵

As appellant failed to establish any compensable factors of employment occurring on April 22, 2005, the Office properly denied her claim.²⁶

CONCLUSION

The Board finds that appellant has not established that she sustained an emotional condition on April 22, 2005 in the performance of duty.

²³ *Lori A. Facey*, 55 ECAB 217 (2004).

²⁴ *Roger W. Robinson*, 54 ECAB 846 (2003); *James E. Norris*, *supra* note14.

²⁵ *Katherine A. Berg*, 54 ECAB 262 (2002).

²⁶ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Hasty P. Foreman*, 54 ECAB 427 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 2, 2006 and July 6, 2005 are affirmed.

Issued: January 4, 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