

**United States Department of Labor  
Employees' Compensation Appeals Board**

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C.V., Appellant )

and )

**DEPARTMENT OF AGRICULTURE, RURAL )  
DEVELOPMENT, Morena Valley, CA, Employer )**

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**Docket No. 06-1518  
Issued: January 12, 2007**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 20, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' March 16, 2006 merit decision denying her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

**FACTUAL HISTORY**

On March 1, 2005 appellant, then a 52-year-old multi-family technician, filed an occupational disease claim alleging that she experienced stress and panic attacks due to various incidents at work. In a statement received with the claim, she discussed her history of illness and listed the factors that she believed caused her emotional condition. By letters dated July 27,

2005, the Office requested further information from both appellant and the employing establishment.

Appellant responded by letter dated August 27, 2005. She contended that she was exposed to “a hostile work environment consisting of harsh treatment, unfair treatment, innuendo and hostile acts” against her. Appellant received harsh treatment from a coworker and felt bullied and intimidated because the coworker could not discuss their differences in a civil manner.

Appellant alleged that it was stressful for her to witness Faye White, an employee, mistreat Tina Rounds, a former employee. She noted that Ms. White would call Ms. Rounds names and speak to her in an uncivil tone of voice. Appellant alleged that, when Ms. Rounds left the employing establishment, she was required to assume her work, which was two months behind. She felt overwhelmed with the workload until a replacement was hired. After Ms. Rounds left, Ms. White started to leave appellant out of conversations and only spoke to her in a harsh tone.

Appellant alleged that, at a January 20, 2004 staff meeting, Judy Twilley, her supervisor, brought up a problem with one of her job duties. She became humiliated when Ms. Twilley indicated that she made a mistake on the postage meter and that she should place a sign on it while processing more postage. Even though Ms. Twilley offered a solution, appellant felt that the supervisor was being judgmental because she made a mistake. Appellant believed that this could have been handled in a more informal manner. On June 1, 2004 Ms. Twilley discriminated against her with regard to incorrect information placed in her time and attendance record. Once the correct information was submitted, her record was corrected.

Appellant further indicated that, in July 2004, the employing establishment decided to move her mail table to a different area while she was away from the office for 10 minutes. This change was made without consulting her.

In a July 19, 2004 staff meeting, Ms. Twilley discussed appellant’s appraisal and informed the staff that she had filed a grievance.<sup>1</sup> Appellant indicated that the supervisor invited the staff to comment but that everyone passed, so the supervisor dismissed everyone except Peter Lundquist. She asked Ms. Twilley if she could take her heart medicine and she was questioned as to whether she could wait. Appellant stated that she was already 30 minutes past the time for taking her medicine and became anxious and shaky. She was finally allowed to take her medicine. Appellant alleged that, when she returned, Ms. Twilley stated that Mr. Lundquist felt uncomfortable working with her and that the supervisor ridiculed her for the remainder of the meeting. On August 5, 2004, at another staff meeting, she asked Mr. Lundquist to clarify something for her and he became rude, annoyed and would not answer the question. At a meeting, on August 23, 2004, Ms. Twilley expressed disdain that appellant had made “a simple mistake.” On October 13, 2004 an incident arose when appellant was accused by a coworker of disconnecting a call. Appellant felt that Ms. Twilley came to this conclusion before asking her

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<sup>1</sup> During the fact finding on appellant’s grievance, it was determined that appellant initiated the discussion regarding her performance plan in the July 19, 2004 meeting.

what happened. She indicated that she did not disconnect the call. Appellant stated that telephones were not supposed to ring more than three times without being answered and therefore employees were required to answer each others telephone. After this incident, Ms. Twilley made a new policy that employees were not to answer others telephones. Appellant stated that the policy was only enforced with regard to her.<sup>2</sup> She alleged innuendo by Ms. Twilley during a performance review in June 2004 when she told appellant that she had “a history.” Appellant also stated that Ms. Twilley told her that her coworkers did not feel comfortable around her when Ms. Twilley was not present. This upset appellant because she was accused of something unknown and could not defend herself. She alleged that on October 14, 2004 she found a salt-like substance over the entire surface of her desk which represented a hostile attack towards her. Appellant stated that this incident frightened her and caused her to fear the workplace and her coworkers. She became depressed because she realized that she could not count on her coworkers for support. Appellant attempted to follow-up on this incident with the authorities and experienced fear, anxiousness, constant worry and crying spells. In April 2005, she alleged that reserve documents were placed in her operational filing. Appellant argued that reserve documents were not her job and she did not know why the documents were placed with her work or why she was not told that she was supposed to file these documents.

Appellant alleged that, following the July 19, August 5 and August 23, 2004 meetings, she had trouble driving home. She experienced discomfort in her chest and felt lightheaded while driving home on September 7, 2004; she had a severe panic attack and had to stop at a gas station. Appellant became dizzy, shaking and her head was pounding hard. She alleged additional panic attacks which occurred while she was driving between October 14 and January 20, 2005. Appellant also experienced an intense anxiety attack on January 22, 2005 while at home. She noted that, since that time, she had made a few attempts to drive but had not driven more than two miles at a time.

Appellant submitted documents with regard to her grievance asking that negative remarks be removed from her performance appraisal because they were not based in fact.

The employing establishment did not respond to the Office’s request for further information. However, the Office received a letter dated March 18, 2005 from the employing establishment with regard to appellant’s grievance and an accompanying “Proposed Disposition of Formal Grievance of [Appellant].” In these documents, representatives from the employing establishment indicated that appellant had filed a grievance that was rejected. It was noted that she “creates an atmosphere for a confrontation whenever errors are brought to her attention or when she is asked to do something she feels she should not do.” The employing establishment also contended that appellant’s communication skills needed improvement and that she

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<sup>2</sup> In an October 25, 2004 memorandum from appellant’s supervisor to her staff, she indicated that everyone was responsible for answering their own telephones and that it was not necessary to answer the telephone when the person was away from their desk.

perceived instructions (even when issued to all employees) as a personal attack on her. In a letter dated February 3, 2005, Ms. Twilley stated:

“I have worked with [appellant] since the early 1990’s and have observed her interactions with other employees and supervisors. [Appellant] is prone to outbursts during meetings, when instructions are being provided, during reviews, etc. When she feels her work is being scrutinized she gets very defensive and tends to personalize the situation. She does not take constructive criticism well and tends to harbor a ‘poor me, everyone is against me’ attitude. The comment ‘needs to improve communications with coworkers,’ in my opinion, is necessary and a reminder that she needs to work on her overall working environment, occurs with almost all employees during routine interactions and occurs frequently.”

Appellant also submitted medical evidence. In a January 17, 2005 note, Dr. Manikanda G. Raja, a Board-certified internist, stated, “[Appellant] has [increased] stress, anxiety and will be off work for a week. Were [sic] off work two days last week due to the same reason.” In a report dated February 25, 2005, Dr. Prakaschandra C. Patel, a Board-certified psychiatrist, indicated that he evaluated appellant on January 21 and February 9, 2005. He indicated that appellant suffered from panic disorder without agoraphobia and depressive disorder. Dr. Patel indicated that the panic disorder is a condition that occurred without specific reasons. He stated, “Harassment from her supervisor and the stress caused by it appears to have been the contributing factors for her depression and anxiety, leading to decompensation.”

By decision dated March 16, 2006, the Office denied appellant’s claim for compensation. The Office found that appellant has not established an emotional reaction to compensable factors of employment. Appellant’s claim was further denied for the reason that the medical evidence did not establish that her medical condition is causally related to her alleged factors of employment.

### **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 factors are causally related to her emotional condition.<sup>3</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 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 regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees’ Compensation

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<sup>3</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

Act.<sup>4</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 position.<sup>5</sup>

A claimant has the burden of establishing by the weigh of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.<sup>6</sup> This burden includes the submission of a detailed description of the employment factors or conditions, which the employee believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>7</sup>

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

The Board has held that actions of an employer which the employee characterizes as harassment or discrimination may constitute a factor of employment giving rise to coverage under the Act, but there must be some evidence that the harassment or discrimination did in fact occur. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.<sup>11</sup> Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.<sup>12</sup> The primary reason for requiring factual evidence from the claimant in support of her allegations of stress in the workplace is to establish a basis in fact for

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaffd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>6</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>7</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>8</sup> See *Matilda R. Wyatt*, 52 ECAB 421 (2001).

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

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

<sup>11</sup> *Lillian Cutler*, *supra* note 5.

<sup>12</sup> *Joel Parker, Sr.*, 43 ECAB 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, *supra* note 6 (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

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.<sup>13</sup>

In cases involving emotional condition, 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.<sup>14</sup> 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 of asserted, the Office must base its decision on an analysis of the medical evidence.<sup>15</sup>

### ANALYSIS

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

Appellant alleged that her supervisor made incorrect comments on her performance appraisal, made changes to the time and attendance record, decided to move her mail table, discussed a matter regarding her handling of the postage meter at a meeting, accused her of disconnecting a call and changed the policy on answering telephones. She also alleged that she was initially rebuffed when she asked to take her heart medication at a meeting. In addition, appellant alleged that some filing was improperly placed on her desk. The Board finds that these allegations are related to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.<sup>16</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>17</sup> However, the Board has also found that 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. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>18</sup> In the instant case, the Board finds that the employing establishment acted reasonably. Appellant was allowed to leave the meeting and take

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<sup>13</sup> See *Paul Trotman-Hall*, 45 ECAB 229 (1993) (Groom, M.E., concurring).

<sup>14</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>15</sup> *Id.*

<sup>16</sup> See *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

<sup>17</sup> *Id.*

<sup>18</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

her heart medication. Ms. Twilley made notations in appellant's time and attendance record that were based on the information that she had at the time; when new information was submitted, the entries were changed. Appellant alleged that documents were improperly placed in her operational filing. She objected to her supervisor discussing a matter with regard to the postage meter and moving her mail table. Appellant also objected to comments made in her performance appraisal. The monitoring of activities at work is an administrative or personnel matter<sup>19</sup> as is a performance appraisal.<sup>20</sup> Appellant submitted insufficient evidence to establish that there was an error or abuse on the part of the employing establishment. Thus, these are not compensable factors of employment.

Appellant alleged that she was harassed when she filed her grievance. She also alleged harassment with regard to the tone of voice that several employees took with her. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for her allegations with probative and reliable evidence.<sup>21</sup> The Board finds that appellant's allegations do not establish harassment; rather they constitute her perception. Appellant did not submit sufficient evidence to establish as factual a basis for her perceptions of discrimination or harassment at the employing establishment. She did not establish that harassment or discrimination occurred.<sup>22</sup> The evidence instead suggests that the employee's feelings were self-generated and thus, not compensable under the Act.<sup>23</sup>

Appellant alleged that Mr. Lundquist refused to answer a question she asked. She also alleged that on October 14, 2004 she found a salt-like substance on her desk. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.<sup>24</sup> Appellant did not provide evidence to support these incidents and they are, therefore, not accepted as factual or as compensable factors of employment.

Appellant generally alleged that she had to do the work of Ms. Rounds, who had left the employing establishment, as well as her own and that this made her feel "overwhelmed." The Board has held that overwork may be a compensable factor of employment. As with all allegations, overwork must be established on a factual basis.<sup>25</sup> Appellant made a general allegation of performing additional duties formerly completed by Ms. Rounds. However, she did not sufficiently explain the duties or work she was required to perform. There is insufficient

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<sup>19</sup> *Barbara J. Latham*, 53 ECAB 316 (2002).

<sup>20</sup> *Felix Flecha*, 52 ECAB 268 (2001).

<sup>21</sup> *James E. Norris*, 52 ECAB 93 (2000).

<sup>22</sup> *Id.*

<sup>23</sup> *See Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>24</sup> *James E. Norris*, *supra* note 21.

<sup>25</sup> *See Bobbie D. Daly*, 53 ECAB 127 (2001).

evidence of record to document her overwork allegation. Therefore, it is not established as a compensable factor.

**CONCLUSION**

The Board finds that appellant has not established a compensable factor of employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 16, 2006 be affirmed.

Issued: January 12, 2007  
Washington, DC

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

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

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