

on or about January 26, 2001.¹ She alleged that she had been subjected to racial and sexual harassment in the workplace which affected her ability to perform her job duties.

In a September 7, 2001 statement, appellant claimed to have been subjected to “rude comments” regarding her work relationship with station manager, Joseph S. Bradley. The situation was particularly bad in June 2000 after Mr. Bradley requested her assistance on a six-week project at another facility. Appellant indicated that supervisors occasionally commented on the workroom floor that she must have been up to Mr. Bradley’s “belly button” and wearing her “knee pads” to receive the six-week assignment.

While on assignment appellant became an acting supervisor (204B). In August 2001, a letter carrier, Tara Jean Bradford, allegedly confronted appellant in the parking lot and aggressively questioned her about why she was made a 204B. In September 2001, another supervisor, Tim Purdue, was visiting appellant’s facility and apparently witnessed her greeting Mr. Bradley’s brother. Mr. Purdue allegedly commented that “she’s got one Bradley brother now she wants the other one.”

Appellant also indicated that Ms. Bradford, who had since become a 204B herself, was very interested in her relationship with Mr. Bradley. Ms. Bradford often commented that appellant seemed like a woman in love. She would also inquire about appellant’s personal life and her marriage, which appellant found unnerving and inappropriate. Ms. Bradford also reportedly said to appellant on more than one occasion that she believed appellant was receiving special treatment. Appellant explained that it got to a point where Ms. Bradford just became rude and she would give dirty looks if appellant even talked to Mr. Bradley. She said that Ms. Bradford told her that, if she were white or blond, she too would be treated better.

According to appellant, Mr. Purdue was assigned to her facility in December 2001 and at that time he resumed making comments of a sexual nature. Appellant indicated that this occurred on a consistent basis and Mr. Purdue’s comments caused more problems between her and Ms. Bradford. In the presence of two other coworkers, Mr. Purdue reportedly said to appellant that she should know a lot about the “69” position.

Postmaster Charles J. Quinn reviewed appellant’s statement and responded on September 24, 2001. He indicated that he was unaware of any concerns appellant may have raised regarding inappropriate comments being made to her in June 2000. Mr. Quinn explained that Mr. Bradley, as station manager, had both the authority and responsibility to respond to appellant’s accusations. Mr. Quinn also claimed not to have been aware of any problems between appellant and either Ms. Bradford or Mr. Purdue. He reiterated that Mr. Bradley was responsible in the first instance for correcting any personality or harassment problems. Mr. Quinn also noted that he interviewed Mr. Purdue regarding the statements made about him and he “vehemently denied” any such actions.

The relevant medical evidence included treatment records from Dr. Kyung S. Han, a Board-certified psychiatrist, who initially diagnosed adjustment disorder with mixed emotion

¹ Appellant last worked on January 27, 2001.

(ICD-9 309.28).² Dr. Han later provided an additional diagnosis of employment-related post-traumatic stress disorder (PTSD). Dr. Raymond G. Mercier, a Board-certified psychiatrist, conducted a fitness-for-duty examination on behalf of the employing establishment. In a June 13, 2001 report, he diagnosed dysthymic disorder. Dr. Mercier explained that appellant's difficulties were primarily personal in nature and not a consequence of her employment.

The Office denied appellant's claim by decision dated November 2, 2001. Appellant subsequently requested a hearing, which was held on June 4, 2002. She testified about the incidents of harassment she previously described in her September 7, 2001 statement. Appellant reiterated the problems she had with Ms. Bradford and Mr. Purdue. She also identified supervisors Bob Loren, Dwayne Cassell and Brian Couch as the individuals she heard making sexual remarks about her on the workroom floor.

At the hearing, appellant submitted an August 7, 2001 deposition from Ms. Bradford. Ms. Bradford testified that she and Mr. Bradley were involved in a 15-month sexual relationship that ended in December 2000. She was dating Mr. Bradley at the time she asked him for an assignment as a 204B. Ms. Bradford received the assignment, but her relationship with Mr. Bradley deteriorated in December 2000 when he returned her to her regular letter carrier duties. Ms. Bradford believed Mr. Bradley's decision to return her to her regular duties was based on personal rather than professional factors. She advised Mr. Quinn of the situation in December 2000 and later filed an Equal Employment Opportunity (EEO) complaint.

With respect to her relationship with appellant, Ms. Bradford testified to "friction" between them because she was jealous of the relationship between Mr. Bradley and appellant.³ According to Ms. Bradford, appellant was unaware that she and Mr. Bradley were romantically involved. She testified that appellant constantly talked to her about Mr. Bradley and on one occasion she just told appellant point blank that she thought appellant was in love with Mr. Bradley because she talked about him so much. Ms. Bradford acknowledged questioning appellant about her status as a 204B. She also testified that others suspected that there was a relationship between Mr. Bradley and appellant, including Mr. Couch and Mr. Purdue. Ms. Bradford testified that she "heard several statements from Mr. Couch and Mr. Purdue that they felt there was something going on with Mr. Bradley and appellant." Their comments implied that some sort of sex was going on between the two. One such remark was "Is [Leslie] in there on her knees in Joe's office?"

Mr. Bradley provided a June 26, 2002 statement. He confirmed that appellant had spoken to him about several inappropriate remarks made by supervisors Cassell, Couch and Loren. Mr. Bradley mentioned the "belly button" and "knee pads" remarks and he also noted that the named supervisors commented that, "if you need [appellant] just look under Mr. Bradley's desk." He brought the matter to Mr. Quinn's attention and the two discussed

² Dr. Han first examined appellant on February 15, 2001.

³ Ms. Bradford's jealousy stemmed from the fact that appellant spent a fair amount of time with Mr. Bradley at work. She testified that the way appellant interacted with Mr. Bradley it was as if she was the one having a relationship with him. Whereas appellant rode in Mr. Bradley's truck and had lunch with him on a regular basis, Ms. Bradford had to be discrete about her involvement with Mr. Bradley.

appropriate corrective measures. Mr. Bradley also mentioned the parking lot altercation between appellant and Ms. Bradford. He explained that, when he discussed the incident with Ms. Bradford, she acknowledged questioning appellant about her 204B position, but denied questioning her about any personal relationships. Mr. Bradley again spoke with Ms. Bradford in October 2000 after appellant complained of ongoing harassment. He said he told Ms. Bradford that the harassing comments and constant questioning about appellant's personal relationships had to stop. Ms. Bradford did not heed his warning and she immediately proceeded to verbally attack appellant in the supervisor's office. According to Mr. Bradley, appellant returned to his office "visibly upset and crying." When he confronted Ms. Bradford about this latest incident, she reportedly hung her head and did not deny that the altercation had occurred. Mr. Bradley said she assured him it would never happen again. With respect to Mr. Purdue's alleged remarks, Mr. Bradley noted that appellant took exception to the comment about her having had one Bradley brother and now wanting the other one. Mr. Bradley also personally heard Mr. Purdue's remark about the "69" position and immediately counseled him about it. He stated that several other employees heard Mr. Purdue's "69" remark.

The hearing representative also received a May 6, 2002 report from Dr. Gerald A. Shiener, a Board-certified psychiatrist, who diagnosed employment-related major depression with features of PTSD.

In a decision dated August 26, 2002, the Office hearing representative affirmed the November 2, 2001 decision denying appellant's claim. This decision, however, was set aside by the Board on April 1, 2004.⁴ Following remand, the hearing representative issued a May 22, 2006 decision affirming the Office's November 2, 2001 denial. He found that appellant did not establish any compensable employment factors.

LEGAL PRECEDENT

To establish that she sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.⁵

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from factors such

⁴ Docket No. 03-349. The Director filed a motion to remand based on an incomplete record and the hearing representative's apparent failure to review Mr. Bradley's June 26, 2002 statement. The record forwarded to the Board did not include a copy of Ms. Bradford's August 7, 2001 deposition.

⁵ See *Kathleen D. Walker*, 42 ECAB 603 (1991).

as 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.⁶ Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.⁷ 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.⁸

ANALYSIS

Appellant alleged that she heard at least four supervisors repeatedly remark about her engaging in a sexual relationship with the station manager. The hearing representative characterized these remarks as "gossip and innuendo" and found that they were noncompensable because they "had nothing to do with [appellant's] job duties as a mail carrier." The Board disagrees with the hearing representative's finding that the supervisors' remarks were noncompensable.

Verbal altercations and difficult relationships with supervisors, when sufficiently detailed and supported by the record, may constitute compensable factors of employment.⁹ Appellant overheard several supervisors remark about her and Mr. Bradley engaging in various sex acts. These comments included her reportedly being up to Mr. Bradley's "belly button" and wearing "knee pads." There were also remarks about appellant being on her knees in Mr. Bradley's office and under his desk. Mr. Purdue, in particular, was responsible for at least several offensive remarks. According to appellant, he commented about her being familiar with the "69" position and also remarked about her having had one Bradley brother and now wanting the other one. Mr. Purdue did not submit a statement in response to these allegations, but he reportedly denied any wrongdoing when questioned by Mr. Quinn.¹⁰ Both Mr. Bradley and Ms. Bradford indicated that they heard Mr. Purdue make sexually suggestive remarks about appellant. The hearing representative did not doubt that sexually suggestive comments were made about appellant in the workplace. But he incorrectly concluded that these remarks were noncompensable because they concerned appellant's "personal life" and had nothing to do with her assigned duties. This proposition is untenable. One cannot condone workplace harassment simply because the offensive remarks did not relate directly to the employee's assigned duties. Appellant has adequately documented that she was subjected to verbal abuse in the form of sexually offensive remarks by a number of her supervisors. Therefore, she has established a compensable factor of employment.

⁶ *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ See *Kathleen D. Walker*, 42 ECAB 603 (1991). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

⁸ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁹ *Marguerite J. Toland*, 52 ECAB 294, 298 (2001).

¹⁰ The Board questions Mr. Quinn's veracity given the fact that he was fully aware of the Bradford-Bradley relationship, but failed to disclose this material fact in his September 24, 2001 statement.

The Board further finds that appellant was harassed at work by Ms. Bradford.¹¹ The hearing representative did not take issue with whether the harassment occurred as alleged.¹² He merely dismissed Ms. Bradford's probing inquiries into appellant's personal life as noncompensable. Once again, the hearing representative reasoned that Ms. Bradford's suspicions of a personal relationship between appellant and Mr. Bradley did not relate to appellant's employment duties.¹³ The fact that Ms. Bradford chose to repeatedly question appellant over an issue that is inherently personal does not make the workplace events any less compensable. Accordingly, the Board finds that appellant established that Ms. Bradford repeatedly harassed her while at work.

The hearing representative's May 22, 2006 decision will be modified to reflect the Board's finding that appellant established two compensable employment factors; that she was subjected to verbal abuse and harassment from supervisors, including Mr. Purdue and she was repeatedly harassed by Ms. Bradford. Because the Office previously found no compensable factors established, it did not review the medical evidence of record. The case will be remanded to the Office for further development as it deems necessary followed by the issuance of an appropriate *de novo* decision on the merits.

CONCLUSION

The Board finds that the case is not in posture for decision.

¹¹ For harassment to give rise to a compensable disability there must be evidence that harassment occurred. *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996). A claimant's mere perception of harassment is not compensable. *Id.* The allegations of harassment must be substantiated by reliable and probative evidence. *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991).

¹² Mr. Bradley noted that he spoke with Ms. Bradford on more than one occasion about her behavior towards appellant.

¹³ The irony of the situation is that Ms. Bradford projected her own questionable conduct on appellant. It was she, and not appellant, who was engaged in an arguably unprofessional workplace romance with Mr. Bradley and she was admittedly jealous of appellant's work relationship with Mr. Bradley.

ORDER

IT IS HEREBY ORDERED THAT the May 22, 2006 decision of the Office of Workers' Compensation Programs is affirmed as modified and the case is remanded for further action consistent with this decision.

Issued: January 30, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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