



performance of duty.<sup>1</sup> Appellant stated that she experienced an “emotional reaction due to employment injury,” and noted that she first became aware of her injury on June 13, 2002 and first related it to her employment on June 27, 2002. She explained: “I was under such pain and discomfort since the injury that I began to get frustrated, aggravated and depressed to think that I would be revisiting the same feelings I once had during the original injury.” Appellant experienced stress and frustration with the employing establishment’s processing of her prior workers’ compensation claim. She stated: “I have been again denied life’s pleasures and the ability to actively participate in all normal physical” activities. The employing establishment reviewed the claim on July 12, 2004 and advised that appellant stopped work on June 6, 2002.

On May 6, 2005 the Office requested additional evidence concerning appellant’s claim.

By decision dated September 28, 2005, the Office denied appellant’s claim on the grounds that she did not establish a compensable employment factor.

On October 20, 2005 appellant requested an oral hearing and submitted an April 26, 1996 statement about her job stress. She alleged that after injuring herself on the job, she dealt with both physical pain from her injury as well as harassment from her supervisors, both “mentally and verbally.” Appellant asserted that “their form of light duty” included isolating her from other employees and that this caused her to experience “serious problems with my nerve system.” She reported that she was not able to sleep at night and experienced a loss of appetite. Appellant also stated that Dr. Charles K. Speller, an orthopedic surgeon, who was treating her for her physical symptoms, noted her tremendous stress. She contended that the employing establishment provided faulty information in connection with her other workers’ compensation claims.

In an April 25, 1996 treatment note, Dr. Robert J. Bacon, Jr., a Board-certified urologist, reported that appellant was diagnosed with major depression. Appellant also provided an April 25, 1996 prescription for Valium from Dr. Bacon. In an August 27, 1996 report, Dr. Speller, an orthopedic surgeon, noted that appellant experienced symptoms of pain and numbness in her right hand. He reported: “There is no significant improvement in [appellant’s] condition and she seems to continue to be under a lot of stress.” In an August 13, 1996 treatment note, Pat Thompson, Ph.D., an employing establishment psychologist, indicated that appellant sought counseling through the Employee Assistance Program. Dr. Thompson noted: “[Appellant] states she has experienced stress and states she has sought and been involved in treatment outside the [employing establishment] for stress. [She] appears to have made some improvements at this point.”

An oral hearing was conducted on August 29, 2006. Appellant testified that she experienced job stress. She explained that she experienced stress when, while performing

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<sup>1</sup> Appellant had previously filed a traumatic injury claim, file number 162038319, which was accepted for right hand contusion. In the course of her treatment for that injury, appellant’s physician requested authorization to refer her for treatment for an emotional condition. In an August 13, 2002 letter sent in connection with claim number 162038319, the Office denied authorization for such a referral, as her claim had not been accepted for an emotional condition. It requested that she provide additional information concerning any potential emotional condition she may have developed in the performance of duty.

kitchen work, she was required to go in the freezer, a task which caused her to have breathing difficulties. Appellant claimed that she dreaded this assignment because every time she was assigned to work in the freezer, she had to be rushed to the emergency room. She stated that this caused her to develop depression. Appellant testified:

“The things I went through on my job like never been sick before. They were putting me in the area that I knew I had to work and I was suffering with knee pains and stuff, wasn’t getting any help. Every time I filed a claim ... [the employing establishment] rejects it. So I mean I just went through a lot of stress.”

Appellant also testified that pain from her physical injuries was an additional cause of her depression. She also experienced stress over the employing establishment’s decision to terminate her employment. Appellant noted that she experienced additional stress and depression over financial difficulties following her termination. Her friend, Leon Foster, also testified regarding her characterization of her emotional state.

Following the hearing, appellant submitted an April 25, 1996 treatment note from Dr. Thompson, who reiterated that appellant attended counseling through the Employee Assistance Program.

The employing establishment responded to appellant’s testimony. Willie Turner, a workers’ compensation program manager, asserted that appellant’s physicians had found her capable of performing the duties of an information receptionist and did not mention a possible emotional condition. In an October 6, 2006 statement Barbara Marshall, appellant’s former supervisor, stated that she was not made aware of undue stress caused by appellant’s work or any physician’s report regarding stress.

By decision dated November 13, 2006, the hearing representative affirmed the September 28, 2005 denial of appellant’s emotional condition claim on the grounds that appellant did not establish a compensable factor of employment.

### **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 his/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.<sup>2</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 his/her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>3</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.<sup>4</sup> This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>5</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 factors of employment and which 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>6</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 asserted, the Office must base its decision on an analysis of the medical evidence.<sup>7</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof in establishing that she developed an emotional condition in the performance of duty. The record reflects that appellant was diagnosed with depression. Appellant related her depression to several sources: general job stress, stress from being asked to perform tasks in a freezer, harassment from supervisors, frustration over the filing of her other workers' compensation claims, her termination and pain from a previous employment injury.

Appellant's general allegations of job stress are insufficient to establish a compensable employment factor. She cited only one specific example, the employing establishment's requirement that she perform tasks including going in the freezer. The Board has held that stress or anxiety over an employee's normal or specially assigned work duties may constitute a compensable factor of employment.<sup>8</sup> However, in the present case, appellant has not provided sufficient information to establish a compensable employment factor. She alleged that working in the freezer was detrimental to her physical health and that she was rushed to the emergency room each time she was assigned to work in the freezer. However, she did not submit sufficient evidence to corroborate her allegation. Moreover, appellant did not fully explain what her duties were regarding the freezer, the dates she performed these duties, whether she was required to work there for extended periods of time or whether she was assigned to the freezer at all during her tenure as an information receptionist. As noted, she bears the burden of proving that she

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<sup>4</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>5</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>6</sup> *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>7</sup> *Id.*

<sup>8</sup> *See supra* notes 2, 3.

developed an emotional condition as a result of a compensable employment factor. This burden includes the submission of detailed factual evidence and explanation concerning the incidents or assignments she believes constituted a compensable employment factor.<sup>9</sup> Appellant has presented only vague allegations of general job stress and stress from being assigned to work in the freezer. She has not submitted sufficient evidence to establish these allegations as compensable factors.<sup>10</sup>

Appellant asserted that her supervisors mentally and verbally harassed her. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.<sup>11</sup> However, for harassment or 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>12</sup> Appellant alleged that supervisors made statements that she believed constituted harassment and discrimination, but she provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.<sup>13</sup> Appellant has not established her allegations of harassment.

Appellant also stated that she experienced stress due to the employing establishment's handling of her other workers' compensation claims. The Board finds that these allegations relate to administrative or personnel matters, which are unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.<sup>14</sup> The Board has held that the processing of compensation claims bears no relation to day-to-day or specially assigned duties. Although the handling of a compensation claim is generally related to the employment, it is an administrative function of the employer and not a duty of the employee and not compensable absent evidence of error or abuse by the employer.<sup>15</sup> The Board has also found that an administrative or personnel matter may 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>16</sup> Appellant asserted that the employing establishment denied her claims and submitted faulty information to the Office. The employing establishment denied these allegations and appellant did not provide evidence of incorrect

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<sup>9</sup> See *supra* note 5.

<sup>10</sup> See, e.g. *George Tseko*, 40 ECAB 948 (1989).

<sup>11</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>12</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>13</sup> See *William P. George*, 43 ECAB 1159, 1167 (1992).

<sup>14</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>15</sup> *David C. Lindsey, Jr.*, 56 ECAB \_\_\_\_ (Docket No. 04-1828, issued January 19, 2005).

<sup>16</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

information passed on to the Office or incidents in which Mr. Turner, the workers' compensation specialist who allegedly "denied" appellant's claims, refused to file a claim on her behalf. Appellant has not submitted sufficient evidence to establish that the employing establishment committed error or abuse with respect to her previous workers' compensation claims. The Board finds that appellant has not established a compensable employment factor under the Act with respect to these administrative matters.

Appellant asserts that she became depressed due to the termination of her employment. However, the Board has held that frustration from not being permitted to work in a particular environment or hold a particular position is not compensable under the Act.<sup>17</sup> The employing establishment stated that appellant's physicians had indicated that she was capable of performing full duty. The Board finds that appellant's reaction to her separation from the employing establishment is considered self-generated in that it results from her frustration in not being permitted to work in a particular environment or to hold a particular position.<sup>18</sup> As noted, an administrative or personnel matter may be a compensable employment factor only when a claimant establishes error or abuse on the part of the employing establishment.<sup>19</sup> Appellant has not presented evidence showing that the employing establishment erred or acted unreasonably with regard to her termination. Accordingly, the Board finds that the circumstances of appellant's separation from the employing establishment are not a compensable employment factor.

Finally, appellant alleged chronic pain from her employment injury as a source of stress and depression. On appeal, appellant cited *Arnold A. Alley*, for the proposition that chronic pain from an employment injury constitutes a compensable factor of employment. In *Alley*, the Board held that the employee did establish a compensable factor of employment, namely, chronic pain resulting from an employment injury, but did not establish that he developed an emotional condition due to his chronic pain because he did not show causal relationship between his chronic pain and the diagnosed emotional condition.<sup>20</sup> While appellant correctly asserts that chronic pain from an employment injury maybe a compensable factor of employment. She has not submitted any medical evidence showing that she has chronic pain due to her employment injury. Accordingly, the Board finds that she has not established chronic pain as a compensable employment factor.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof in establishing that she developed an emotional condition in the performance of duty.

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<sup>17</sup> See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

<sup>18</sup> *Tanya A. Gaines*, 44 ECAB 923, 934-35 (1993).

<sup>19</sup> See *supra* note 16.

<sup>20</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 13, 2006 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: July 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