

In support of her claim, appellant submitted an October 23, 2001 report from Burton C. Fredenthal, Ph.D., a licensed psychologist, who provided diagnoses of major depression, recurrent, moderate, acute stress disorder and work stress. He related appellant's report that she felt humiliated as a result of alleged harassment by her supervisor on September 11, 2001. Dr. Fredenthal opined that methods of supervision, changing of job assignments and misrepresentations of her job performance contributed to her depression. He stated that there was "no doubt that the current depression and stress is related to the reported incident on September 11, 2001."

In a letter dated March 12, 2002, Dr. Bruce Camilleri, a Board-certified internist, stated that appellant's "sedimentation rate for general inflammation was slightly elevated." A note dated September 4, 2001 documented instructions given on that date to appellant, by Acting Manager Susan Sederholm-Martin. The acting manager instructed appellant to "clock out" at 12:30 p.m., pursuant to her request for light duty, and advised her to provide updated medical documentation.

In an October 28, 2002 statement, Carrier Jeanne Holifield stated that she had witnessed harassment of appellant by Ms. Sederholm-Martin on a daily basis, sometimes several times per day. She indicated that the supervisor had taken away all of appellant's clerical duties, but had failed to assign new duties. Ms. Sederholm-Martin followed appellant, "nick-picked" and repeatedly asked her what she was doing. She instructed appellant to provide, at the end of each day, a detailed accounting of everything she had done during the workday. Each day, when appellant asked her for job assignments, the answer was the same, "nothing." Ms. Holifield stated that appellant felt intimidated by her supervisor's behavior. At a meeting held to discuss the type of medical documentation needed from appellant, Ms. Sederholm-Martin allegedly stated, "[Appellant] only hears what she wants to hear."

On October 6, 2004 the Office informed appellant that the information submitted was insufficient to establish her claim. The Office advised her to submit details of alleged employment incidents that caused or contributed to her emotional condition. The Office also asked for a medical report containing a description of her symptoms, a diagnosis and an opinion with medical reasons on the cause of her condition.

In a letter dated September 10, 2001, the employing establishment acknowledged appellant's allegation that she was not able to perform the duties of her job. The employing establishment asked for a written request for light duty and updated medical documentation to support her request. She submitted a November 21, 2001 letter from Dr. Bruce Soman, a treating physician, who diagnosed adjustment disorder with depressed mood. He agreed with Dr. Fredenthal's conclusion that appellant's supervisors made it hard for appellant to work due to mismanagement. The record contains a September 11, 2001 request for a light-duty assignment, signed by appellant.

In a November 1, 2004 narrative, appellant stated that she was sent home on September 11, 2001 by her acting manager. She contended that her supervisor's mismanagement caused her emotional stress, exacerbated her preexisting sarcoidosis and fibromyalgia. Appellant alleged that she was "not treated with dignity and respect due to mismanagement skills." Her acting manager closely monitored and asked her to document her activities. Ms. Sederholm-Martin

informed appellant that she had been instructed to take her duties away from her, thereby allowing her to “just show up and be harassed by other managers.” Appellant stated that her emotional condition improved after she was moved to a different work environment.

In an August 21, 2001 work excuse, Dr. Kern A. Reid, a Board-certified internist, noted that appellant was “off work” due to job-related stress until a psychological evaluation was completed. An October 10, 2001 work excuse indicated that appellant was on “stress leave” until she had undergone a psychological examination. In a note dated November 14, 2002, Dr. Reid stated that he had advised appellant to remain off work from September 2001 through May 2002, due to work-related stress and its deleterious effect on her chronic medical condition.

In a July 29, 2005 decision, the Office denied appellant’s claim. The Office found that appellant had failed to establish a compensable factor of employment.

On July 20, 2006 appellant requested reconsideration, based on “new evidence of legal argument through her EEO [Equal Employment Opportunity] and redress settlement.”¹ The record does not contain copies of the EEO and settlement documents.

By decision dated August 9, 2006, the Office denied modification of the July 29, 2005 decision, finding that appellant had failed to establish any compensable factors of employment.

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.²

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 illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers’ compensation. Where the medical evidence establishes that the disability results from an employee’s emotional reaction to his or her regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees’ Compensation Act.³ The same result is reached when the emotional disability resulted from the employee’s emotional reaction to the nature of her work or her fear and anxiety regarding her ability to carry out her duties.⁴ By

¹ Although the Office referred to appellant’s EEO claim and settlement agreement, the record does not contain a copy of those documents.

² *Leslie C. Moore*, 52 ECAB 132 (2000).

³ 5 U.S.C. §§ 8101-8193.

⁴ *Lillian Cutler*, 28 ECAB 125, 129 (1976).

contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.⁵ Moreover, although administrative and personnel matters are generally related to employment, they are functions of the employer and not duties of the employee. Thus, the Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.⁶ Likewise, an employee's dissatisfaction with perceived poor management is not compensable under the Act.⁷

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment, which may be considered by a physician when providing an opinion on causal relationship and which are not deemed factors of employment and may not be considered. When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.⁸ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.⁹ As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.¹⁰

With regard to emotional claims arising under the Act, the term "harassment" as applied by the Board is not the equivalent of harassment as defined or implemented by other agencies, such as the EEO Commission, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers' compensation under the Act, the term harassment is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by coemployees or coworkers. Mere perceptions and feelings of harassment will not support an award of compensation.¹¹

⁵ *Id.* See also *Peter D. Butt, Jr.*, 56 ECAB ____ (Docket No. 04-1255, issued October 13, 2004).

⁶ See *Charles D. Edwards*, 55 ECAB 258 (2004); see also *Ernest J. Malagrida*, 51 ECAB 287, 288 (2000).

⁷ *Id.*

⁸ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁹ See *Charles D. Edwards*, *supra* note 6.

¹⁰ *Charles E. McAndrews*, 55 ECAB 711 (2004); see also *Arthur F. Hougens*, 42 ECAB 455 (1991) and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence established such allegations).

¹¹ *Beverly R. Jones*, 55 ECAB 411 (2004).

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. Rather, the issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹²

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition was caused or adversely affected by her employment.¹³ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.¹⁴

ANALYSIS

The Board finds that appellant has not established any compensable factors of employment under the Act.

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.¹⁵ 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.¹⁶ In the present case, appellant has not submitted sufficient evidence to establish her claim.¹⁷ She alleged that she was "not treated with dignity and respect due to mismanagement skills." Appellant contended that she was harassed by other managers after her supervisor took her duties away from her. Her allegations alone are insufficient to establish a factual basis for her claim.¹⁸ A coworker provided a statement to the effect that she had witnessed harassment of appellant by her supervisor on a daily basis, sometimes several times per day. She noted that appellant felt intimidated by the supervisor's

¹² *James E. Norris*, 52 ECAB 93 (2000).

¹³ *See Charles D. Edwards*, *supra* note 6.

¹⁴ *Ronald K. Jablanski*, 56 ECAB ____ (Docket No. 05-482, issued July 13, 2005). *See also Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

¹⁵ *See Lori A. Facey*, 55 ECAB 217 (2004). *See also David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁶ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁷ *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁸ *See Charles E. McAndrews*, *supra* note 10.

behavior. However, the statement did not identify specific instances of harassment in sufficient detail to establish a factual basis for the claim. General allegations that appellant was treated unfairly and disrespectfully by management are insufficient to establish that harassment did, in fact, occur. Thus, the Board finds that appellant has not established a compensable employment factor under the Act with respect to these above-described allegations of harassment and discrimination.

The record reflects that appellant filed an EEO complaint. Grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.¹⁹ Where an employee alleges harassment and cites specific incidents, the Office or other appropriate fact finder must determine the truth of the allegations. The issue is not whether the claimant has established harassment or discrimination under EEO Commission standards. Rather, the issue is whether the claimant, under the Act, has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.²⁰ Appellant has failed to do so in this case.

In the present case, appellant has not attributed her emotional condition to the performance of her regular duties or to any special work requirement arising from her employment duties under *Cutler*.²¹ She did not implicate her workload as having caused or contributed to her emotional condition. Appellant contended that her supervisor's mismanagement caused her emotional stress. She complained that she was sent home on September 11, 2001 by her acting manager; that her supervisor closely monitored, and asked her to document, her activities; and that her clerical duties were taken away from her. Appellant's coworker indicated that the supervisor took away all of appellant's clerical duties, but had failed to assign her new duties; "nick-picked;" and repeatedly asked her what she was doing. She instructed appellant to provide, at the end of each day, a detailed accounting of everything she had done during the workday. The Board finds that appellant's allegations that her supervisors improperly and otherwise unfairly modified and monitored her work assignments, relate 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.²² Although the handling of disciplinary actions, the assignment of work duties and the monitoring of work activities are generally related to the employment, they are administrative functions of the employer and not duties of the employee.²³ 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

¹⁹ See *James E. Norris*, *supra* note 12. See also *Parley A. Clement*, 48 ECAB 302 (1997).

²⁰ See *James E. Norris*, *supra* note 12. See also *Michael Ewanichak*, 48 ECAB 354 (1997);

²¹ See *Lillian Cutler*, *supra* note 4.

²² See *Lori A. Facey*, *supra* note 15. See also *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).

²³ *Id.*

establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.²⁴ The Board finds that appellant has not submitted sufficient evidence to show that the employing establishment committed error or abuse with respect to these matters. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant's coworker stated that each day, when appellant asked her supervisor for job assignments, the answer was the same, "nothing." At a meeting held to discuss the type of medical documentation needed from appellant, Ms. Sederholm-Martin allegedly stated, "[Appellant] only hears what she wants to hear." While the Board has recognized the compensability of verbal abuse in certain situations, this does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.²⁵ While the manner and tone of appellant's supervisors may have made appellant uncomfortable, the Board finds that the alleged statements of the supervisor did not constitute verbal abuse or harassment.²⁶ The supervisor's statements may have offended appellant, but did not rise to the level of coverage under the Act. Moreover, the statement regarding appellant's assigned duties relates to personnel matters, which are not compensable unless abusive.

Appellant reported that she felt humiliated by her supervisor's harassment. Her coworker stated that appellant felt intimidated by the supervisor's behavior. However, under the circumstances of this case, the Board finds that appellant's emotional reaction must be considered self-generated, in that it resulted from her perceptions regarding her supervisors' actions.²⁷ Appellant also noted in her November 1, 2004 letter to the Office that her emotional condition improved after she was moved to a different work environment. Her frustration from not being permitted to work in a particular environment is not a compensable factor under the Act.²⁸

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.²⁹

²⁴ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

²⁵ See *Leroy Thomas, III*, 46 ECAB 946, 954 (1995).

²⁶ See *Denis M. Dupor*, 51 ECAB 482, 486 (2000).

²⁷ See *David S. Lee*, 56 ECAB ____ (Docket No. 04-2133, issued June 20, 2005).

²⁸ See *Cyndia R. Harrill*, 55 ECAB 522 (2004).

²⁹ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, *supra* note 8.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of employment.

ORDER

IT IS HEREBY ORDERED THAT the August 9, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 22, 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