



## **FACTUAL HISTORY**

On June 13, 2006 appellant, then a 45-year-old clerk, filed a claim for an employment-related emotional condition. She stated that she was assaulted by a coworker on June 7, 2006.

In a June 28, 2006 letter, the Office informed appellant that the information submitted was not currently sufficient and that additional information was needed to establish her claim.

In an undated statement, appellant noted that on June 7, 2006 she and George Methvin, a coworker, were looking over routing slips when she was pushed by Silvana Martinez, a coworker. She looked down and saw Ms. Martinez leaning over, which scared her. Appellant stated that, when she asked Ms. Martinez what she was doing, Ms. Martinez replied she should move out of her way. She stated that Ms. Martinez should have excused herself. In a June 13, 2006 attending physician's report, Dr. Shantasri Mukhopadhyay, a Board-certified family practitioner, noted that on June 7, 2006 appellant was examining some paperwork with a coworker, Mr. Methvin, when Ms. Martinez hit her on her abdomen and pushed her back like a "football tackle." He diagnosed situational depression and anxiety following a physical assault at the workplace. Dr. Mukhopadhyay opined that appellant's condition was causally related to her employment as she has been verbally abused by Ms. Martinez and such abuse had now escalated into physical violence. He opined that appellant should not return to work until July 5, 2006 or when the threat of physical assault at the workplace was removed. A June 7, 2006 certificate from a nurse practitioner of the Central Texas Veterans Health Care System was also provided.

The employing establishment controverted the claim. In a June 19, 2006 email, Robin K. Bergland indicated that appellant, Mr. Methvin and Ms. Martinez had been working in the same outpatient clinic since June 13, 2004. She indicated that a problem arose between the two employees in January, in which both parties were spoken to. However, Ms. Bergland related that there were no other disputes between the two employees of which she was aware.

In a June 7, 2006 incident report, Ms. Martinez advised that appellant was difficult to work with and was creating a hostile environment for her. She stated that on June 7, 2006 appellant had an outburst and had yelled that Ms. Martinez should say "excuse me" and that she better not ever do that again. Ms. Martinez related that her hair had brushed against appellant's papers as she was reaching below appellant to get some routing slips from boxes that appellant was standing in front of. She denied touching appellant and stated that she had said "excuse me" twice, but appellant may not have heard her.

In a June 7, 2006 statement, Mr. Methvin, a coworker, stated that, when he entered the front desk area, appellant said "did you see her [Ms. Martinez] push me and I don't have to put up with her disrespecting me." He stated that he did not see anything that transpired between appellant and Ms. Martinez.

In a June 12, 2006 email message, Lorna Phifer, a coworker, stated that she saw Ms. Martinez stand up from a bent over position and say "excuse me." She indicated that some words were said between appellant and Ms. Martinez, after which Ms. Martinez walked away.

By decision dated August 4, 2006, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that the events occurred as alleged.

### **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.<sup>2</sup>

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 as 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.<sup>3</sup> 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.<sup>4</sup> 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>5</sup>

### **ANALYSIS**

Appellant alleged that she sustained an emotional condition as a result of an assault by a coworker. The Board has recognized the compensability of verbal and physical altercations or abuse in certain circumstances. However, this does not imply that every such incident will give rise to coverage under the Act.<sup>6</sup>

The Office denied appellant's emotional condition claim on the grounds that she did not establish that the June 7, 2006 incident occurred as alleged. Appellant's factual evidence of record consists of her claim form and a statement. She described working on routing slips with Mr. Methvin when she was pushed by Ms. Martinez. Appellant then described a verbal confrontation which followed. Her allegations, however, are not supported by the probative

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<sup>2</sup> See *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>3</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> See *Kathleen D. Walker*, *supra* note 2. 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).

<sup>5</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>6</sup> See *Harriet J. Landry*, 47 ECAB 543 (1996).

evidence of record. There are no witness statements or other evidence substantiating her allegations of an assault. Mr. Methvin denied seeing anything that transpired between appellant and Ms. Martinez. He stated that he had just entered the front desk area when appellant asked him if he saw Ms. Martinez push her. This contradicts appellant's claim that they were working together when the alleged incident occurred. Ms. Martinez denied that the incident occurred as alleged, noting that she was reaching below appellant to get some routing slips. She denied touching appellant, stating that her hair may have brushed against appellant's papers. Ms. Martinez immediately apologized.

Ms. Phifer's June 12, 2006 statement noted that she observed Ms. Martinez stand up and say "excuse me to appellant. The evidence of record does not support appellant's allegation that she was assaulted by Ms. Martinez. No coworkers supported the history related by appellant to Dr. Mukhopadhyay of being struck on the abdomen or of being pushed back like a football tackle. Appellant has not established this incident as a compensable employment factor.

Appellant bears the burden of proof to identify the factors of her claim. In this case, she has failed to adequately identify any employment factors that allegedly caused her condition. The Board finds that appellant has failed to discharge her burden to establish employment factors which caused her emotional condition.

#### **CONCLUSION**

The Board finds that appellant failed to establish that she sustained an emotional condition in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 4, 2006 is affirmed.

Issued: November 5, 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