

stress. Donald R. Sambrook, from the employing establishment's injury compensation office, advised the Office that the agency did not believe appellant's stress was compensable by the Federal Employees' Compensation Act.

On February 2, 2004 the employing establishment's Associate Medical Center Director Linda D. Smith, notified appellant that she was being reassigned from the position of pharmacy technician to the position of administrative support assistant at the Wade Park facility. Ms. Smith explained that, the reassignment accommodated appellant's medical conditions, as a fitness-for-duty examination found her unfit to continue as a pharmacy technician.

In a decision dated December 30, 2005, the Office denied appellant's claim for workers' compensation benefits. The Office found that her reaction to being reassigned was not covered because reassignment was an administrative function of the employer and there was no evidence that the reassignment was in error or abusive. The Office did not accept that the employer harassed appellant or treated her in a disparate manner because she provided no evidence to establish her allegations. The Office did not accept that an employee hit appellant in the back. The Office explained that appellant provided no specific information, such as the date of the incident, who was involved, what led to the incident or any witness statements.

Appellant requested an oral hearing before an Office hearing representative, which was held on August 15, 2006. She submitted an October 26, 2004 report from Dr. Toni Love Johnson, a Board-certified psychiatrist. Dr. Johnson described appellant's history of injury, from when she hurt her neck and back in 2002 while pulling a cart that broke, to her reassignments and current complaints. She noted appellant's medications and findings on mental status examination. Dr. Johnson diagnosed major depression, single episode, not otherwise specified. She also noted significant work stress. Appellant submitted follow-up reports from Dr. Johnson through July 6, 2006.

Appellant submitted messages concerning the ergonomic evaluation of two of her workstations in 2004. She submitted pages four and five of a March 6, 2006 order from United States District Judge Christopher A. Boyko, who found that she had failed to state a claim under Title VII but who nonetheless granted her leave to proceed with her claims under the Rehabilitation Act. Appellant submitted her November 15, 2004 brief to the Equal Employment Opportunity Commission (EEOC). She also submitted a November 4, 2003 comment from Mr. Sambrook, who explained that he asked appellant's supervisor to verify whether she worked an administrative tour from September 2002 to June 2003, because that might entitle appellant to receive additional back pay.

In a decision dated October 27, 2006, the hearing representative affirmed the denial of appellant's claim as modified. The hearing representative found that the evidence submitted was sufficient to establish that appellant was reassigned effective February 22, 2004 from the position of pharmacy technician to the position of administrative support assistant and that the employer requested certain ergonomic accommodations for her. The hearing representative found, however, that these were administrative actions by the employer and that there was no evidence of error or abuse. She also found that the evidence did not establish that appellant received inadequate training. The hearing representative concluded that appellant established no compensable factor of employment.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.¹ There are disabilities, however, having some kind of causal connection with the employment that are not covered under workers' compensation, 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.² The Board has held, for example, that an oral reprimand generally does not constitute a compensable factor of employment,³ neither do disciplinary matters consisting of counseling sessions, discussion or letters of warning for conduct;⁴ investigations;⁵ determinations concerning promotions and the work environment;⁶ discussions about an SF-171;⁷ reassignment and subsequent denial of requests for transfer;⁸ discussion about the employee's relationship with other supervisors;⁹ or the monitoring of work by a supervisor.¹⁰

Workers' compensation law does not cover an emotional reaction to administrative or personnel actions unless the evidence shows error or abuse on the part of the employing establishment.¹¹ The Board has held that actions of an employer which the employee characterizes as harassment or discrimination may give rise to coverage under the Federal Employees, Compensation Act, but there must be some evidence that 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.¹² Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must

¹ 5 U.S.C. § 8102(a).

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Joseph F. McHale*, 45 ECAB 669 (1994).

⁴ *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

⁵ *Sandra F. Powell*, 45 ECAB 877 (1994).

⁶ *Merriett J. Kauffman*, 45 ECAB 696 (1994).

⁷ *Lorna R. Strong*, 45 ECAB 470 (1994).

⁸ *James W. Griffin*, 45 ECAB 774 (1994).

⁹ *Raul Campbell*, 45 ECAB 869 (1994).

¹⁰ *Daryl R. Davis*, 45 ECAB 907 (1994).

¹¹ *Thomas D. McEuen*, 42 ECAB 566, 572-73 (1991), *reaff'd on recon.*, 41 ECAB 387 (1990).

¹² See *Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

substantiate such allegations with probative and reliable evidence.¹³ 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 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.¹⁴

Physical contact by a coworker may be compensable under the Federal Employees' Compensation Act. When a claimant cites a compensable incident of her employment, the issue becomes whether this incident occurred as alleged.¹⁵ A claimant seeking compensation under the Federal Employees' Compensation Act has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.¹⁶

An employer who has reason to disagree with any aspect of the claimant's report shall submit a statement to the Office that specifically describes the factual allegation or argument with which it disagrees and provide evidence or argument to support its position. The employer may include supporting documents such as witness statements, medical reports or records or any other relevant information.¹⁷

ANALYSIS

Appellant attributes her diagnosed major depressive disorder to her federal employment. Specifically, she attributes her condition to being reassigned four times, to harassment and disparate treatment and to being hit in the back by another employee. As appellant's claim proceeded, she also alleged a lack of accommodation, a lack of training for the position to which she was reassigned and an unauthorized release of her personal information. All of these matters, of course, relate to her federal employment. As she explained to the Board at oral argument, all of this happened at work. However, as noted, not everything that happens at work is covered by workers' compensation.

Appellant's reassignment to the position of administrative support assistant is not covered by workers' compensation as a general rule because administrative or personnel actions do not fall within the scope of the Federal Employees' Compensation Act. The only exception is where the evidence establishes error or abuse on the part of the employer. Here, there is insufficient evidence of record to establish that appellant's reassignment was administratively erroneous or in some way abusive. Appellant's reaction to the reassignment, therefore, is considered as self-generated. Her allegation does not constitute a compensable factor of employment.

¹³ *Joel Parker, Sr.*, 43 ECAB 220, 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*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

¹⁴ *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

¹⁵ *Karen E. Humphrey*, 44 ECAB 908 (1993).

¹⁶ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

¹⁷ 20 C.F.R. § 10.117 (1999).

When appellant alleges harassment and disparate treatment, she is alleging error or abuse by management. But she must submit evidence to substantiate her allegation or a belief to prove harassment and disparate treatment. Her belief must be substantiated by probative evidence. Appellant must make her case with evidence, that is independent of her own opinion, establishing the alleged misconduct. She argues that the medical records provide facts. However, a psychiatrist's report which records appellant's complaints is not substantiating facts. She is simply repeating the medical history that appellant told her. Dr. Johnson does not certify that the history is true.

Appellant has filed a complaint with the EEOC alleging harassment, discrimination, hostile work environment, disparate treatment and reprisal, but she did not receive a favorable ruling by the EEOC or the federal district court. Such a ruling, that the employer was guilty of at least one of these charges, could provide a basis for appellant's claim. There is, however, no such evidence in appellant's record. Pages from Judge Boyko's order do not find that the employer was guilty of any harassment or disparate treatment. Allowing appellant to pursue her allegations under the Rehabilitation Act is a procedural decision not a decision on the substance of her various allegations. The court did not find any violation of the Rehabilitation Act or any misconduct by management. Without proof of the alleged harassment and disparate treatment, appellant's emotional or psychiatric reaction is not covered by workers' compensation.

There is also no proof that appellant was hit in the back by another employee. Such an incident, if shown to be true, would fall within the scope of workers' compensation. But, again, there is no evidence in appellant's record that establishes her allegation. There are no witness statements to consider or response from the unidentified employee. As the Office pointed out, appellant has not identified the date, the circumstances or the identity of the employee involved. Her allegation alone does not establish the incident as compensable. There is also nothing in the record to show that the employer failed to accommodate appellant, failed to provide her sufficient training or inappropriately released her personal information.

At oral argument appellant contended that Mr. Sambrook treated her unfairly in controverting her claim. But regulations permit the employing establishment to submit statements to the Office describing disagreement with any aspect of an employee's claim. The Board finds nothing inappropriate in Mr. Sambrook's correspondence to the Office.

Where the claimant submits no evidence proving error or abuse by the employer, or proving physical contact by another employee, she has failed to establish a factual basis for her claim. As noted, mere allegations or perceptions of employer misconduct do not support an award of benefits. The Board finds that appellant has not met her burden of proof to establish that her major depressive disorder is compensable.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her major depressive disorder is covered by workers' compensation.

ORDER

IT IS HEREBY ORDERED THAT the October 27, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 2, 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