

affirmed the Office's finding that appellant did not establish her factual allegations of harassment and administrative error. The Board remanded the case for the Office to determine whether Richard Polumbo, a manager, struck her in the shoulder with a ladder on September 1, 2001. The Board noted that the Office had accepted that appellant sustained a shoulder injury on September 1, 2001 in file number 062042241. The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

By decision dated October 25, 2006, the Office accepted as factual that Mr. Polumbo pushed appellant into a machine while moving a ladder and injured her left shoulder. The Office found that this constituted a compensable employment factor. The Office determined, however, that the medical evidence was insufficient to establish that appellant sustained an emotional condition due to this compensable employment factor. The Office noted that the medical evidence supported that appellant may have a consequential emotional condition due to pain from her left shoulder injury in file number 062042241.

The following medical evidence is relevant to the issue on appeal. In a report dated November 3, 2003, Dr. Vincent E. Paul, a Board-certified orthopedic surgeon, diagnosed stress and anxiety due to employment. He stated:

“There is a lot of work stress going on, people telling her she is being watched. Her supervisor made her come in and get a note for coming back today because she had some shoulder pain doing laundry at home. That aggravated it and basically she is doing well with her shoulder but what is really going on is the mental side of it.... I think she is under a lot of stress, especially given the suicide of a person with a similar work-related injury at work.”

In a discharge summary dated December 12, 2003, Dr. Brian A. Farah, a psychiatrist, discussed appellant's hospitalization. He related that she “suffers from severe depression related to an injury in both her shoulders and some related pain. This has led her to be suicidal.” Dr. Farah diagnosed severe major depression with no psychosis and an anxiety disorder. He opined that he believed that “her depression is directly related to her pain” and requested that the Office approve her psychiatric hospitalization.²

On January 8, 2004 Dr. Thomas J. Gresalfi, a Board-certified psychiatrist, noted that appellant related a history of a “shoulder injury caused by a coworker.” Appellant was hospitalized from December 8 to 12, 2003 because of thoughts of driving her car into a tree. Dr. Gresalfi diagnosed major depressive disorder without psychotic features and to rule out post-traumatic stress disorder. In a report dated February 22, 2005, he listed permanent psychiatric restrictions for appellant, including not returning to the work location where the “harassment and intimidation by a supervisor occurred.” Dr. Gresalfi found that appellant could not repeatedly interact with Mr. Polumbo “who was involved in [her] injury and subsequent (alleged) harassment.” He opined that appellant should work a day shift.

² Dr. Farah referred to the December 8, 2003 admission report, completed by a nurse practitioner, for details regarding appellant's admission. He noted appellant's history of a work injury in September 2001 by a coworker and her allegation that management was harassing her at work due to a pending law suit.

The record additionally contains numerous duty status reports and reports dated 2003 to 2005 signed by either a nurse or nurse practitioner.

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 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.³ 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.⁴

To establish an emotional condition in the performance of duty, a claimant must submit factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition, medical evidence establishing that she has an emotional or psychiatrist disorder and rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.⁵

ANALYSIS

The Board previously determined that appellant did not establish her allegations of harassment or administrative error. The Board remanded the case for the Office to determine whether a supervisor struck her in the shoulder with a ladder on September 1, 2001. Physical contact by a coworker or a supervisor may give rise to a compensable work factor, if the incident occurred as alleged.⁶ On remand, the Office accepted as factual that on September 1, 2001 Mr. Polumbo pushed appellant into a machine while moving a ladder and injured her left shoulder. The Office consequently found that she had established a compensable employment factor.

Appellant's burden of proof is not discharged by the fact that she has established an employment factor which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, she must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.⁷

³ 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁵ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁶ *Denise Y. McCollum*, 53 ECAB 647 (2002).

⁷ *See Dennis J. Balogh* 52 ECAB 232 (2001).

In a report dated November 3, 2003, Dr. Paul noted that coworkers told appellant that she was being watched and that a coworker with a similar injury committed suicide. He diagnosed stress and anxiety due to her employment. As Dr. Paul did not relate appellant's stress and anxiety to the compensable employment factor, his opinion is of diminished probative value.⁸

In a discharge summary dated December 12, 2003, Dr. Farah discussed appellant's hospitalization for "severe depression related to an injury in both her shoulders and some related pain." He diagnosed severe major depression with no psychosis and an anxiety disorder. Dr. Farah attributed appellant's depression to pain. As he did not find that her depression was an emotional reaction to Mr. Polumbo pushing her into a machine on September 1, 2001, his report is insufficient to show that she sustained an emotional condition due to the identified compensable employment factor.⁹

On January 8, 2004 Dr. Gresalfi noted appellant's history of a shoulder injury caused by a coworker and her hospitalization for suicidal thoughts. He diagnosed major depressive disorder without psychotic features and to rule out post-traumatic stress disorder. Dr. Gresalfi did not address the cause of appellant's depressive disorder and thus his opinion is of diminished probative value.¹⁰

On February 22, 2005 Dr. Gresalfi listed permanent psychiatric restrictions for appellant, including not returning to the work location where the "harassment and intimidation by a supervisor occurred." He additionally opined that she should not interact with Mr. Polumbo because he had been involved in her injury and harassment. Dr. Gresalfi, however, did not specifically attribute any diagnosed condition to the incident with Mr. Polumbo on September 1, 2001. Thus, his opinion is insufficient to meet appellant's burden of proof.¹¹

Regarding the reports signed by a nurse or nurse practitioner, the Board notes that a nurse is not a "physician" under the Act and thus cannot render a medical opinion.¹² As the medical evidence fails to establish that appellant sustained an emotional condition related to the compensable employment factor, the Office properly denied her claim.

⁸ See *Beverly R. Jones*, 55 ECAB 411 (2004).

⁹ As noted by the Office, appellant may have a claim for a consequential injury due to her physical injury sustained on September 1, 2001 in file number 062042241. In a consequential injury situation, the subsequent injury "is compensable if it is the direct and natural result of a compensable primary injury." *Kathy A. Kelley*, 55 ECAB 206 (2004).

¹⁰ See *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹¹ *Roger W. Robinson*, 54 ECAB 846 (2003).

¹² *Vincent Holmes*, 53 ECAB 468 (2002).

On appeal appellant argues that the evidence should be reviewed under file number 062042241. The Board's jurisdiction, however, is limited to a review of final decisions of the Office.¹³

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the October 25, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 6, 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

¹³ *Karen L. Yaeger*, 54 ECAB 317 (2003). Appellant can submit the evidence in the current claim to the Office for review under file number 062042241.