



that appellant had been “instructed not to use the station [tele]phone for personal calls in accordance with established regulations.”

In an August 21, 2007 statement, Barbara Rossetti, supervisor customer service, detailed the events of that day involving an argument between appellant and Wendy Zizzo, a coworker. The argument related to appellant talking Chinese on the employing establishment telephone and saying the word “fifteen,” which Ms. Zizzo interpreted as referring to her and her using more than 15 minutes on a break. Ms. Rossetti stated that Ms. Zizzo related that appellant broke down and began to act irrationally. In talking with appellant, Ms. Rossetti stated that appellant became loud. Appellant informed Ms. Rossetti that she had been on the telephone, that it was not her lunch time or official break and her coworker had no right to question her about being on the telephone. Following her discussions with appellant and Ms. Zizzo, Ms. Rossetti informed the employees that the employing establishment’s telephone was to be used for personal use only during breaks and lunch. She stated that appellant became very upset following her directive regarding use of the employing establishment telephone.

In a letter dated September 7, 2007, the Office informed appellant that the evidence of record was insufficient to support her claim. She was advised as to the type of medical and factual information to provide and given 30 days to submit the requested information.

Subsequently, the Office received an August 21, 2007 authorization for examination and/or treatment (Form CA-16), a September 5, 2007 work capacity evaluation (Form OWCP-5a), September 8, 2007 notes by a nurse, an August 27, 2007 attending physician’s report and a September 5, 2007 certification of health care provider. Appellant submitted no further factual evidence.

On August 21, 2007 appellant was diagnosed with a panic attack as a result of a stress reaction.<sup>1</sup> The physician checked “yes” to the question of whether the condition had been caused or aggravated by an employment activity.

In an August 27, 2007 attending physician’s report, Dr. Joel A. Idowu, an attending Board-certified psychiatrist, diagnosed anxiety which he attributed to workplace stress.

In a September 5, 2007 certification of health care provider, Dr. Idowu diagnosed anxiety and depression which he opined had been triggered by workplace stress and harassment. He stated that appellant’s condition began on August 27, 2007 and that she was currently totally disabled from working.

In September 8, 2007 progress notes, Kathy San Filippo, R.N., noted that appellant related having depression, anxiety, stress and panic disorder. She noted that appellant was not working.

Dr. Idowu, in a September 24, 2007 work capacity evaluation form, diagnosed anxiety and depression. He concluded that appellant was totally disabled from working.

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<sup>1</sup> The signature on the form is illegible.

By decision dated October 10, 2007, the Office denied appellant's claim.<sup>2</sup> The Office found that the evidence of record was insufficient to establish that she sustained an injury as alleged. In reaching this determination, the Office found that the record contained no evidence describing the specific employment factor, event or practice which appellant believed caused her injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>5</sup>

To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether fact of injury is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.<sup>6</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.<sup>7</sup> An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.<sup>8</sup>

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 or her regular or specially assigned duties or to a requirement imposed

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<sup>2</sup> The Board notes that, following the October 10, 2007 decision, the Office received additional evidence. However, the Board may not consider new evidence on appeal. See 20 C.F.R. § 501.2(c); *Donald R. Gervasi*, 57 ECAB \_\_\_ (Docket No. 05-1622, issued December 21, 2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Anthony P. Silva*, 55 ECAB 179 (2003).

<sup>5</sup> See *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>6</sup> *Delphyne L. Glover*, 51 ECAB 146 (1999).

<sup>7</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404 (1997).

<sup>8</sup> *Id.*

by the employment, the disability comes within the coverage of the Act.<sup>9</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 or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>10</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 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>11</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>12</sup>

### ANALYSIS

On her claim form, appellant attributed her condition to being harassed by coworkers and management about making a telephone call on August 21, 2007. Ms. Rossetti, supervisor customer service, indicated that she informed appellant and her coworkers that the telephone was to be used for personal use only during breaks and lunch. The Board notes that instruction regarding work by a supervisor is an administrative function of the employer and not a duty of the employee.<sup>13</sup> 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.<sup>14</sup> The Board finds that appellant has not provided any evidence establishing error or abuse by the employing establishment.<sup>15</sup>

Additionally, appellant failed to provide a description of any other employment factors which she alleged caused her emotional condition. The Office advised her in its September 7, 2007 letter that she should submit a detailed factual statement describing the employment incidents alleged to have caused her emotional condition; however, she did not submit such a

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<sup>9</sup> 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>10</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>11</sup> *Robert Breeden*, 57 ECAB \_\_\_\_ (Docket No. 06-734, issued June 16, 2006); *Dennis J. Balough*, 52 ECAB 232 (2001).

<sup>12</sup> *L.C.*, 58 ECAB \_\_\_\_ (Docket No. 06-1263, issued May 3, 2007); *Jeral R. Gray*, 57 ECAB \_\_\_\_ (Docket No. 05-1851, issued June 8, 2006).

<sup>13</sup> *D.L.*, 58 ECAB \_\_\_\_ (Docket No. 06-2018, issued December 12, 2006) (mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent evidence of error or abuse).

<sup>14</sup> *L.S.*, 58 ECAB \_\_\_\_ (Docket No. 06-1808, issued December 29, 2006).

<sup>15</sup> As appellant has not established a compensable work factor, it is not necessary to address the medical evidence. *T.G.*, 58 ECAB \_\_\_\_ (Docket No. 06-1411, issued November 28, 2006); *Barbara J. Latham*, 53 ECAB 316 (2002),

statement. A claimant's burden of proof includes the submission of a detailed description of the employment factors or conditions which she believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>16</sup> As appellant failed to specifically identify any other factors to which she attributed her claimed condition, she has failed to establish an essential element of his claim.<sup>17</sup>

**CONCLUSION**

The Board finds that appellant has failed to establish that she sustained an emotional condition on August 21, 2007 in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 10, 2007 is affirmed.

Issued: April 25, 2008  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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<sup>16</sup> *David Apgar*, 57 ECAB \_\_\_\_ (Docket No. 05-1249, issued October 13, 2005).

<sup>17</sup> *Charles D. Gregory*, 57 ECAB \_\_\_\_ (Docket No. 05-252, issued January 18, 2006) (where an employee fails to identify specific employment factors believed to be responsible for a claimed condition, the employee does not meet his or her burden of proof in establishing a claim for compensation).