United States Department of Labor
Employees' Compensation Appeals Board

G.L., Appellant	)	
and	)	**Docket No. 08-1300**
	)	**Issued: December 4, 2008**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Long Beach, CA, Employer	)	

Appearances:
Thomas Martin, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 28, 2008 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated January 11, 2008 that denied her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition causally related to factors of her federal employment.

FACTUAL HISTORY

On May 20, 2005 appellant, then a 55-year-old medical technician, filed a Form CA-2, occupational disease claim, alleging that employment-related stress caused high blood pressure, sleeplessness, headaches, diarrhea, vomiting, shaking and generalized tenseness and nervousness. She stopped work that day. On the claim form, Usha Veeranna, appellant's supervisor, advised that appellant stopped work after a safety inspection report that she was

wearing acrylic nails which was against employing establishment policy. By letter dated June 1, 2005, the Office informed appellant of the type evidence needed to support her claim. Appellant was given 30 days to furnish the requested information.

By decision dated July 1, 2005, the Office denied the claim on the grounds that appellant had not established that she sustained an injury in the performance of duty. It noted that she had not responded to the June 1, 2005 letter. Form medical reports dated June 7 and 14, 2005 with illegible signatures, received on July 5, 2005, noted a history of conflict at work and diagnosed major depression. In a statement dated June 30, 2005, received by the Office on July 7, 2005, appellant alleged that she had worked in a hostile environment since February 1999, stating that she was micromanaged, spied upon and isolated. She listed specific incidents beginning on December 20, 1999 when a coworker "George" showed her a Christmas card that she considered pornographic, stating it was full of "low down, filthy, nasty, dirty smut which degraded women." Appellant stated that George saw her expression and snatched it from her, and that she immediately reported this to Glenn Hurley, her supervisor, who told her he had not seen the card and shook his head and laughed. She stated that this caused an anxiety attack throughout the entire Christmas holiday. Appellant listed a number of incidents including that Mr. Hurley inappropriately counseled her about showing a Bible to a coworker, had her sign a statement regarding discrimination policy but would not give her a copy for several weeks, that labels were pulled off her blood samples, that she was threatened by Mr. Hurley and "Valarie" who laughed at her and that on several occasions she had to go to the employing establishment police for confrontations with coworkers, and that in May 2005 Ms. Veeranna was hostile by asking for a doctor's report, medical restrictions and a jury summons, inappropriately requested that she be in a photograph, and inappropriately changed her shift, and that the safety inspector harassed her because she was wearing acrylic nails. She stated that she noticed stress symptoms in 1999 but they had not been present continuously, and that she filed an Equal Employment Opportunity (EEO) Commission claim that was dismissed because it was untimely. Appellant also submitted personal statements regarding the incidents that occurred on July 1, September 10, November 1, 2002 and July 12, 2004,[1] and a memorandum dated May 10, 2005 in which Ms. Veeranna notified appellant that her tour of duty was changed due to the needs of direct patient care.

The employing establishment submitted a position description, a May 9, 2005 report in which Dr. Antoine Roberts, Board-certified in orthopedic surgery, restricted appellant to 20 draws a day, and a May 16, 2005 request that appellant furnish medical documentation to support Dr. Roberts' restrictions. A May 14, 2004 employing establishment decision dismissed an EEO claim as untimely. In a May 20, 2005 memorandum, Ms. Veeranna informed appellant that a safety inspection had noted that she wore acrylic nails which were prohibited when performing patient care. Appellant was informed that she had previously been notified of this policy and was instructed to remove the nails prior to reporting for work on May 23, 2005. A copy of infection control guidelines was attached.

[1] Appellant's statements were regarding labels being removed from blood specimens, Valarie raising her voice and looking at appellant in a threatening manner and appellant's complaint that someone shut her computer down in her absence.

On September 9, 2005 appellant requested reconsideration and submitted an October 29, 1992 letter advising her that her claim had been accepted for major depression, single episode.[2] On January 3, 2006 Lucinda Swan, of the employing establishment, advised that the Center for Disease Control had issued a directive, adopted by the employing establishment, that artificial nails were not to be worn by employees providing direct patient care, and that appellant had been informed of this policy in October 2004, again by the safety inspector on May 18, 2005, and that on May 20, 2005 she was instructed to remove her acrylic nails. Ms. Swan stated that appellant mainly performed venipuncture her entire shift because she was uncooperative about performing other duties in her job description, and that she created a hostile environment, causing several employees to resign and was terminated due to unavailability to work. She continued that staff members did not ask coworkers not to speak to appellant, who had problems with authority and taking instructions, and that she had alienated staff due to her bizarre behavior and volatile nature including continuously leaving her work area and not informing staff, engaging unwilling patients in prayer, and not providing appropriate medical documentation for her absences. Ms. Swan specifically noted that "George" was counseled regarding the December 1999 Christmas card incident, and that appellant had been counseled for distributing religious materials to patients and leaving it around the laboratory. She stated that in May 2005 appellant was asked to provide medical documentation for her new restrictions which were accommodated by changing her work shift to one that was less busy, and that, when appellant informed Ms. Veeranna, her supervisor, of a jury summons for May 17, 2005, she was instructed to follow the instructions on the summons and call the court the night before to see if she was needed, but that appellant did not report for work on May 17, 2005, despite the fact that the court indicated that she did not have jury duty. Ms. Swan described appellant's workstation, advising that, due to sterility needs, personal items were discouraged, and that administration would take down inappropriate personal items and those not in compliance with infection control guidelines. She stated that proper procedure was followed for all reported incidents, and that appellant was extremely disruptive when on duty.

The employing establishment also submitted a November 1, 2002 employing establishment police report noting that appellant reported that she was threatened by a contract phlebotomist; a March 13, 2003 letter of proposed reprimand for her unprofessional behavior, disrespectful conduct to and making inappropriate comments about coworkers, and her inappropriate hymn singing and display of religious material in the laboratory in view of patients; a July 12, 2004 police report noting that appellant reported that she and another female employee were involved in a verbal altercation regarding appellant's computer; and a sign-in sheet dated October 12, 2004 that noted appellant's attendance at a meeting in which safety procedures were discussed, including that acrylic nails were not to be worn. A number of statements by patients and coworkers complained about appellant's behavior. This included a December 20, 1999 statement in which Mr. Hurley noted that appellant complained that she was shown off-color material, but the person apologized and destroyed "whatever it was." Mr. Hurley advised that all parties were counseled and that any further incidents would result in disciplinary action. A May 20, 2005 letter from the Superior Court of California indicated that appellant's jury service was cancelled the evening prior to her scheduled date of appearance on May 17, 2005 and she did not attend jury service on that day. Leave analysis showed that

[2] This claim was adjudicated under file number xxxxxx504.

appellant did not work beginning in October 2004, returned briefly in May 2005, stopped on May 23, 2005 and did not return.

By decision dated February 2, 2006, the Office found that appellant's reaction to being shown a Christmas card that she considered pornographic on December 20, 1999 was a compensable factor of employment. It denied the claim on the grounds that the medical evidence did not establish that her condition was caused by the accepted factor.

On August 4, 2006 appellant, through counsel, requested reconsideration. In support of the request, appellant submitted an August 1, 2006 statement in which Michelle Williams stated that she witnessed "the mistreatment of [appellant] by the supervisors at the employing establishment and that some of her pictures were torn down and thrown on her workstation and her blood labels were switched. Alex B. Caldwell, Ph.D., provided psychological testing results dated May 17, 2006. In a June 6, 2006 report, Dr. Richard A. Greenberg, a psychiatrist, noted his review of Dr. Caldwell's testing and appellant's report of her background, the work environment and specific work incidents. He performed psychiatric examination and diagnosed major depressive disorder, recurrent, moderate, with psychotic features. Dr. Greenberg concluded:

> "It is my opinion that the present significant but not severe emotional disability from which Ms. Lambert suffers is the result of and was precipitated by a hostile work environment, undue supervisory criticisms and lack of support by her supervisor, specifically after being shown a pornographic Christmas card which was demeaning towards women in December 1999. Her disability results entirely from the industrial stressors."

By letter dated September 14, 2006, Ken Wendell of the employing establishment noted that Ms. Williams had been a part-time contract employee for a very short period, and advised that, beginning with her employment in July 1989, appellant constantly exhibited insubordinate and inappropriate behavior and created hostile environments, causing coworkers to initial grievances against her. In an October 31, 2006 decision, the Office denied modification of the February 2, 2006 decision, finding Dr. Greenberg's opinion insufficient to establish that appellant's condition was caused by the accepted factor.[3]

On October 21, 2007 appellant, through her attorney, requested reconsideration, and submitted a December 13, 2006 report in which Dr. Greenberg advised that appellant's "extreme emotional upset" was not the result of her supervisor's failure to take corrective action regarding the December 1999 card, but being exposed to the card which caused the loss of self-confidence and feelings of diminished self-worth.

By decision dated January 11, 2008, the Office denied modification of the prior decisions. It found Dr. Greenberg's December 13, 2006 report of diminished probative value because there was no indication that he was aware of the contents of the 1999 Christmas card

[3] By order dated September 14, 2007, Docket No. 07-1569, the Board found that no appeal was filed by either appellant or her representative, and the case was dismissed.

and that he did not fully explain how appellant's condition was a direct result of exposure to the card.

LEGAL PRECEDENT

To establish an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.[4]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,[5] the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.[6] There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.[7] When an employee experiences emotional stress in carrying out her employment duties, and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of her work.[8]

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.[9] 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.[10]

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[4] *Ronald K. Jablanski*, 56 ECAB 616 (2005).

[5] 28 ECAB 125 (1976).

[6] 5 U.S.C. §§ 8101-8193.

[7] *See Robert W. Johns*, 51 ECAB 137 (1999).

[8] *Lillian Cutler, supra* note 5.

[9] *See Dennis J. Balogh*, 52 ECAB 232 (2001).

[10] *Id.*

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.[11] Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.[12]

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. Mere perceptions of harassment or discrimination are not compensable under the Act. 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.[13] 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, 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.[14]

The primary reason for requiring factual evidence from the claimant in support of his or 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.[15]

ANALYSIS

The Board finds that appellant did not establish that she sustained any stress-related condition in the performance of duty. While the Office accepted that being shown a Christmas card in December 1999 that appellant deemed pornographic was compensable, the Board finds that this isolated incident does not demonstrate a persistent disturbance, torment or persecution, such that it would rise to the level of harassment contemplated under the Act.[16] The employee who showed the card to appellant immediately tore it up when noting that appellant was upset by it. The card is therefore not of evidence, and its contents are not described. Mr. Hurley

[11] *Charles D. Edwards*, 55 ECAB 258 (2004).

[12] *Kim Nguyen*, 53 ECAB 127 (2001).

[13] *James E. Norris*, 52 ECAB 93 (2000); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[14] *V.W.*, 58 ECAB ____ (Docket No. 07-234, issued March 22, 2007).

[15] *J.F.*, 59 ECAB ____ (Docket No. 07-308, issued January 25, 2008).

[16] *V.W.*, *supra* note 14.

appropriately counseled the parties regarding the card. Furthermore, appellant did not file a claim regarding this isolated event until May 2005, well over six years later.

Regarding appellant's other contentions, generally complaints about the manner in which a supervisor performs his or her duties or the manner in which a supervisor exercises his or her discretion fall, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor or manager in general must be allowed to perform his duties and employees will, at times, dislike the actions taken. Mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent evidence of error or abuse.[17] The record supports that appellant was notified in October 2004 that safety policy prohibited the wearing of acrylic nails, and she was again told this in a safety inspection in May 2005. An employing establishment is responsible for establishing safety policies. It was, therefore, reasonable for the employing establishment to ask that the nails be removed. Further, when her physician limited her to 20 draws a day, it was an appropriate exercise of supervisory duty for the employing establishment to request further explanation from appellant's physician, and to change her shift. The assignment of work is an administrative function which, absent error or abuse, would not be compensable.[18] In this case, Ms. Veeranna explained that, because appellant's physician had limited her activity, her shift was changed to one that was less busy

The Board also finds that appellant inappropriately took a day off, claiming she had jury duty, because the record contains May 20, 2005 correspondence from the Superior Court of California indicating that appellant's jury service was cancelled the evening prior to her scheduled appearance.

Regarding her general complaints that she was micromanaged and spied upon by Ms. Veeranna and other managers, and that coworkers isolated her and were hostile as exhibited by incidents involving specimen labels and her computer, appellant merely submitted Ms. Williams statement that she witnessed appellant being mistreated. The Board finds this statement too general in nature because it does not identify incidents with sufficient specificity to meet appellant's burden,[19] and there are numerous statements in the record by both patients and coworkers describing appellant's unprofessional behavior. Appellant also complained that she was forced to have her picture taken, but Ms. Veeranna explained that she was merely taking pictures of those who volunteered for a scrapbook, and appellant's picture was not taken because she declined. Finally, her EEO complaint was dismissed. Appellant therefore did not establish that she sustained an emotional condition in the performance of duty as alleged.[20]

[17] *T.G.*, 58 ECAB ____ (Docket No. 06-1411, issued November 28, 2006).

[18] *Jeral R. Gray*, 57 ECAB 611 (2006).

[19] *Robert Breeden*, 57 ECAB 622 (2006).

[20] As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Katherine A. Berg*, 54 ECAB 262 (2002).

CONCLUSION

The Board finds that appellant did not 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 January 11, 2008 be affirmed, as modified.

Issued: December 4, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board