

She alleged that she developed depression, migraine headaches and elevated blood pressure in March 2005 due to her job. Appellant alleged that her condition was due to workplace discrimination, mismanagement,² a hostile environment and inadequate training. In April 2004, Kenneth Heaney, Assistant Deputy Chief of Staff, Special Operations Command and appellant's second level supervisor, berated and humiliated her in front of other individuals regarding her job performance. In May 2004 appellant was relieved of her duties as the project officer for a Gold Star Dinner³ by Alisha Sanders, Chief of the Family Readiness Division and her immediate supervisor, because she had been on sick leave for two days and was not prepared to complete the arrangements for the event. Ms. Sanders shouted at her. Appellant asked to discuss the matter later because she had a headache but Ms. Sanders refused and continued criticizing her. In July 2004 she received a notice of a proposed suspension for unsatisfactory job performance. Appellant was suspended for 14 days in August 2004 for failure to follow her supervisor's instructions and for disrespectful behavior. In September 2004 she returned to work after her suspension and was informed that a briefing was due in two days. Appellant was unable to meet the deadline. Ms. Sanders became upset with her and "stormed" out of the office. Appellant was afraid of losing her job. In December 2004 she received another 14-day suspension for failure to follow instructions and disrespectful behavior. On January 6, 2005 appellant advised Mr. Heaney that she had recently returned from sick leave and asked that they meet at a later time because she was not feeling well. Mr. Heaney proceeded to counsel her regarding procedures for submitting leave slips. He told her that she was his only "problem" employee among 72 employees. Mr. Heaney noted that Ms. Sanders and others in management wanted to terminate her but he dissuaded them. Appellant became fearful and anxious and went to the emergency room. She alleged that she was repeatedly harassed and threatened with termination which caused fear, anxiety, nightmares and post-traumatic stress symptoms. Ruth Barefoot, Acting Chief of the Family Readiness Division, in Ms. Sanders' absence, charged appellant with being absent without leave (AWOL) on January 28 and February 2 to 3, 2005. An investigation revealed that appellant was in duty status during that time and her pay and benefits were restored.⁴ She was removed from her position as of March 11, 2005. In a July 18, 2004 statement, Teresa Dudley-McCall, a coworker, discussed the reasons that she disliked Ms. Sanders' and Mr. Heaney's managerial styles. She criticized Ms. Sanders' handling of the Gold Star Dinner. Ms. Dudley-McCall opined that appellant was a good employee who was not treated properly by Ms. Sanders and Mr. Heaney. In a May 11, 2006 statement, Veronica Whitfield, a coworker, stated that appellant told her of ongoing workplace humiliation and belittling between 2003 and 2005. On some occasions, she saw appellant experiencing anxiety attacks and headaches after work.

² Appellant alleged that her supervisors lacked sufficient knowledge and experience regarding the Family Readiness Division.

³ A Gold Star Dinner is an event held for the families of soldiers who have died.

⁴ In a March 2, 2005 memorandum, Hans Meinhardt, Assistant Deputy Chief of Staff, provided findings following an investigation into appellant's absence from work for eight hours between January 28 and February 2 to 3, 2005. He interviewed several individuals and concluded that appellant was in the performance of her duties during the time she was charged with being AWOL. However, appellant had failed to keep her supervisor properly informed of her whereabouts during the workday.

Appellant submitted two investigative reports regarding her Equal Employment Opportunity (EEO) complaint of discrimination based on reprisal (prior EEO complaints), race, sex, age and disability (migraine headaches). She alleged that Ms. Sanders improperly issued 14-day suspensions in August and December 2004 for failure to follow instructions, conduct prejudicial to the efficiency of the service and disrespectful behavior. In August 2004 appellant was suspended because she changed the date of a scheduled event without the approval of Ms. Sanders, purchased the wrong flags for the Gold Star Dinner and made other errors concerning preparations for the dinner. Ms. Sanders counseled her on several occasions and assisted her with the project. Mr. Heaney also counseled appellant regarding the need to follow Ms. Sanders' instructions. After returning to work following the August 2004 14-day suspension, appellant was given two days to prepare slides for a Power Point slide presentation and briefing as part of a Family Advocacy Program Training Conference. Ms. Sanders and Mr. Heaney made corrections to the slides and asked her to revise them. Appellant alleged that she could not complete the requested changes on time because certain information was not available and she had insufficient time. Ms. Sanders indicated that appellant refused to make the requested changes to the slides. She issued the 14-day suspension and sought the termination of appellant from her position because she failed to follow directions and was disrespectful. Ms. Sanders and Mr. Heaney denied that they discriminated against appellant. Investigator Thaddeus Johnson determined that appellant failed to establish that her suspensions were improper.⁵

The employing establishment controverted appellant's claim. Ms. Sanders denied that she harassed or discriminated against appellant. She stated that appellant never claimed that she had a disability due to her migraine headaches. Ms. Sanders relieved appellant of some of her duties regarding the Gold Star Dinner, not all her duties. The preparations for the dinner were not being made in a timely manner by appellant; the dinner program to be printed was not correct; she questioned instructions given to her regarding the music for the dinner. When Ms. Sanders counseled her regarding incidents of tardiness, appellant became upset and started to walk out. Ms. Sanders stated that if appellant did not want to be counseled at that time they could discuss the Gold Star Dinner. She asked appellant not to leave but she continued walking and went home. Ms. Sanders sent her an e-mail informing her that she would replace her as the lead on the Gold Star Dinner. Appellant's August 2004 suspension was issued for her failure to follow instructions regarding the Gold Star Dinner and walking out of the office during a discussion after being asked to remain. The December 2004 suspension was issued because she refused to make changes on the briefing slides as requested and refused to discuss the matter with her supervisor. Each of appellant's suspensions was preceded with an opportunity to present a response. Each suspension was investigated and upheld. Ms. Sanders stated that appellant sometimes reported late for work, did not always advise her supervisor of her whereabouts and sometimes failed to see her assignments through to completion. In September 2004 Ms. Sanders asked appellant not to use her doctor of ministry title on any work products because this religious title was not a condition of her employment and had nothing to do with her federal job. Appellant continued to use the title despite Ms. Sanders' instructions.

⁵ In addition to her EEO complaints, appellant filed a grievance against the employing establishment that was not resolved in her favor.

Appellant submitted medical evidence in support of her claim. In notes dated May through December 2005, Sylvia Branson, a licensed clinical psychologist, stated that appellant's supervisor counseled her in an inappropriate manner and caused flashbacks to a counseling incident when she was a military chaplain. She diagnosed adjustment disorder and post-traumatic stress disorder. In reports dated August 2005 through January 2006, Dr. Valerie A. Murray, an attending psychiatrist, diagnosed anxiety, bipolar depression and post-traumatic stress disorder. She indicated that these conditions were caused by work stress, including harsh treatment from her supervisor who ultimately fired her.

By decision dated June 6, 2006, the Office denied appellant's claim on the grounds that the factual and medical evidence failed to establish that she sustained an emotional condition causally related to compensable factors of her employment.

On June 26, 2006 appellant requested a hearing. A telephonic hearing was held on November 8, 2006. Appellant testified that she had a disability when she was hired, chronic migraine headaches. Her disability was ignored by management and was aggravated by workplace incidents. Because of the disciplinary actions taken by management, appellant feared losing her job. On some occasions when her supervisors counseled her, she requested a postponement of the discussion because of her headaches but her supervisors continued the discussions. Queen Degraphenreid, a coworker, testified that appellant was experiencing problems at work but she did not provide details.

By decision dated January 25, 2007, the Office hearing representative affirmed the June 6, 2006 decision.

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 employment but nevertheless does not come within the coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁶ On the other hand, the disability is not covered where it results from such factors as an employee's fear of reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁷

Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.⁸

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Lillian Cutler*, 28 ECAB 125 (1976).

⁸ *Michael Thomas Plante*, 44 ECAB 510 (1993).

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors of employment, which may be considered by a physician when providing an opinion on causal relationship, and which are not deemed compensable factors of employment and may not be considered.⁹ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.¹⁰ As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.¹¹ Where the claimant alleges compensable factors of employment, she must substantiate such allegations with probative and reliable evidence.¹² When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.¹³

ANALYSIS

Appellant alleged that her emotional condition was caused by a number of employment conditions or incidents.

A number of appellant's allegations concern personnel or administrative matters. The Board has held that an administrative or personnel matter will be considered to be an employment factor only where the evidence discloses error or abuse on the part of the employing establishment.¹⁴ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁵ In May 2004 appellant was relieved of her duties as the project officer for a Gold Star Dinner by Ms. Sanders who stated that she relieved appellant of some of her duties regarding the Gold Star Dinner, not all. The preparations for the dinner were not being made in a timely manner, the dinner program to be printed was not correct and appellant questioned instructions given to her regarding the music for the dinner. Ms. Sanders sent appellant an e-mail informing her that she would replace her as the lead on the Gold Star Dinner. She provided an explanation for the change in appellant's assigned duties regarding the dinner, that she was not performing all of her tasks in a timely and correct manner. Appellant has failed to establish error or abuse in Ms. Sanders' handling of the work assignments for the dinner. She alleged that disciplinary actions taken against her were unfair. In July 2004 appellant received a notice of proposed suspension for

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

¹⁰ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

¹¹ *See Charles E. McAndrews*, 55 ECAB 711 (2004).

¹² *Joel Parker, Sr.*, 43 ECAB 220 (1991).

¹³ *See Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁴ *Id.*

¹⁵ *Janice I. Moore*, 53 ECAB 777 (2002).

unsatisfactory job performance. She provided insufficient evidence to establish that the notice of proposed suspension was improperly issued. The record shows that an August 2004 suspension was issued for her failure to follow instructions regarding the Gold Star Dinner and walking out of the office during a discussion about the dinner after Ms. Sanders asked her to remain. The record shows that she changed the date of the dinner without the approval of Ms. Sanders, purchased the wrong flags for the dinner and made other errors concerning preparations for the dinner. There is insufficient evidence that management erred or acted abusively in issuing the August 2004 suspension. Regarding the December 2004 suspension, the record shows that appellant prepared slides for a presentation and briefing as part of an upcoming conference. Ms. Sanders and Mr. Heaney asked her to make certain corrections to the slides. She indicated that appellant refused to make any changes or to talk to her about the slides. The December 2004 suspension was issued for her failure to follow supervisory instructions and disrespectful behavior. The record shows that each of appellant's suspensions was preceded with an opportunity to present a response. Each suspension was investigated and upheld. The EEO investigative reports determined that appellant failed to establish that her suspensions were improper. She has failed to establish error or abuse in the handling of management's handling of the disciplinary actions. Therefore, this allegation is not deemed a compensable employment factor.¹⁶ Appellant alleged that she feared losing her job because of the disciplinary actions. However, a feeling of job insecurity is not compensable under the Act.¹⁷ On January 6, 2005 appellant advised Mr. Heaney that she had recently returned from sick leave and asked that they meet at a later time because she was not feeling well. Mr. Heaney did not dismiss her and proceeded to counsel her regarding procedures for submitting leave slips. Appellant alleged that Mr. Heaney told her that she was his only problem employee among 72 employees and noted that Ms. Sanders and other supervisors wanted to terminate her but he dissuaded them. There is insufficient evidence to establish error or abuse regarding Mr. Heaney's discussion with appellant in January 2005. Appellant did not establish that Mr. Heaney acted abusively when he continued the discussion regarding her use of sick leave or in his comments regarding her job performance. Therefore, this allegation is not deemed a compensable employment factor. Appellant alleged that she had inadequate training for her position. However, she submitted insufficient evidence to support this allegation. Therefore, it is not deemed a compensable factor of employment. Ms. Barefoot charged appellant with being AWOL on two occasions. Ms. Sanders stated that appellant sometimes reported late for work and did not always advise her supervisor of her whereabouts. An investigation revealed that appellant was in duty status during the days that she was charged with being AWOL. Her pay and benefits were restored. However, the investigation revealed that appellant had failed to keep her supervisor informed of her location during the workday. The fact that the investigation showed that she was not AWOL does not establish that it was improper for the employing establishment to conduct the investigation. Therefore, appellant's allegation regarding the AWOL charge is not deemed a compensable factor of employment. She alleged that her supervisors lacked sufficient knowledge and experience for their positions. However, appellant provided insufficient evidence in support of this allegation. Therefore it is not established as factual and is not deemed a compensable employment factor. Because there is insufficient evidence of error or abuse in the

¹⁶ *Charles D. Edwards, supra* note 13.

¹⁷ *Peter D. Butt, 56 ECAB 117 (2004).*

handling of these administrative or personnel matters, these allegations are not deemed compensable factors of employment.

Appellant alleged that she was repeatedly harassed and threatened with termination which caused fear, anxiety, nightmares and post-traumatic stress symptoms. Mere perceptions of harassment or discrimination are not compensable under the Act. Appellant's burden of proof is not discharged with allegations alone. She must support her allegations with probative and reliable evidence.¹⁸ Appellant alleged that Mr. Heaney berated and humiliated her in front of other individuals regarding her job performance. Mr. Heaney denied that he discriminated against her and appellant provided insufficient evidence to establish her allegation as factual. In September 2004 appellant was informed that a briefing was due in two days. She was unable to meet the deadline. Ms. Sanders became upset with appellant and "stormed" out of the office. She denied that she or anyone else ever harassed appellant and there is insufficient evidence to establish that she did so. The two investigative reports regarding appellant's EEO complaints of discrimination indicated that she failed to establish wrongdoing by management. The Board finds that there is insufficient evidence to establish that appellant's allegations of harassment and discrimination are factual. Therefore, these allegations are not deemed to be compensable employment factors.¹⁹

Appellant alleged that she had a disability when she was hired, chronic migraine headaches. Her disability was ignored by management and was aggravated by workplace incidents. On some occasions when her supervisors counseled her, appellant requested a postponement of the discussions because of her headaches but her supervisors continued the discussions. Ms. Sanders stated that appellant never claimed that she had a disability due to her migraine headaches and appellant failed to provide sufficient evidence establishing her allegation of discrimination based on her migraine headaches. Therefore, this allegation is not deemed a compensable factor of employment.

The witness statements are not sufficient to establish that appellant sustained an emotional condition causally related to a compensable factor of employment. Ms. Dudley-McCall discussed the reasons that she disliked Ms. Sanders' and Mr. Heaney's managerial styles and Ms. Sanders' handling of the Gold Star Dinner. She opined that appellant was a good employee who was not treated properly by Ms. Sanders and Mr. Heaney. Ms. Whitfield stated that appellant told her of ongoing workplace harassment between 2003 and 2005. On some occasions, she saw appellant experiencing anxiety attacks and headaches after work. Ms. Degraphenreid stated that appellant was experiencing problems at work. The witnesses did not describe any specific incidents of discrimination or harassment by management. Therefore, their statements are insufficient to establish a compensable factor of employment.

¹⁸ *Cyndia R. Harrill*, 55 ECAB 522 (2004).

¹⁹ Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence. See *Barbara J. Latham*, 53 ECAB 316 (2002); *Garry M. Carlo*, 47 ECAB 299 (1996).

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to a compensable factor of employment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 25, 2007 and June 6, 2006 affirmed.

Issued: February 22, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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