

and when she returned “they seemed louder and more sexually oriented than before.” According to her, it was tolerable until Derek Hightower moved the rural carriers to the aisle next to the 48329 unit. Appellant stated that six months later she asked Mr. Hightower to move her case and was told he was working on it. She indicated that she used earplugs. As to the content of the conversations she overheard, appellant submitted brief notes such as “They’re all blondes at heart (women),” “She brought up the ‘washing machine’ (sexual innuendo),” “You’re no longer wanted in my ‘unit’.” In a separate statement dated July 28, 2006, appellant alleged that Mr. Hightower left a letter in the copy machine stating that he saw appellant shopping after filing her claim.

Appellant submitted a July 7, 2007 statement from Denise Harris, a coworker, who stated that she retired in 2004 and was aware of the “on going situation” at Waterford Annex and it was disturbing to have to deal with some of the conversations in the 48329 unit. In an undated statement, Joe Talbot, another coworker, reported the postmaster in 1992 would “never try to stop the foul sex talk and personal attacks.” He stated that he had seen appellant upset and crying because of the behavior on the workroom floor.

The employing establishment submitted statements from supervisors Leslie M. Champagne, Oscar L. Naylor and Heather Kaminiski that appellant had not mentioned any problems prior to the filing of the claim. The record also contains a July 26, 2006 letter from Mr. Hightower stating that appellant had a poor attendance record and two days after filing her claim he observed her shopping.

By decision dated August 17, 2006, the Office denied the claim for compensation. The Office determined that appellant had not established any compensable work factors.

Appellant requested an oral hearing before an Office hearing representative, which was held on February 20, 2007. She indicated that she heard the use of profanity and was subject to sexual harassment as a result of being exposed to sexual comments. The hearing representative inquired about personal attacks, appellant stated that one of them walked by her without turning and said you better watch your back.

Additional evidence was submitted at the hearing. A statement dated August 29, 2006 from Vicki S. Quinn, a former coworker, stated that prior to her retirement in 1998 she heard undesirable conversations on a daily basis. Appellant also submitted a settlement agreement dated August 28, 2006 with respect to a grievance. The settlement stated that the employing establishment was responsible for preventing sexual harassment and inappropriate behavior. In addition, management was responsible to investigate complaints and would be tasked on the movement of the cases of the rural carriers.

By decision dated May 9, 2007, the hearing representative affirmed the August 17, 2006 decision. The hearing representative found no compensable work factors had been established.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely

affected by factors of her federal employment.¹ This burden includes the submission of detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.²

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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his 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.³

With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁴ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.⁵

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.⁶ Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.⁷

ANALYSIS

The initial question presented is whether appellant has established compensable work factors with respect to her claim. Her primary allegation is that she was subject to sexual harassment in being exposed to conversations by other workers which she overheard and described as sexually oriented. It is not clear whether she filed a complaint with the Equal Employment Opportunity Commission or other administrative agency, as there is no evidence of

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁵ *Helen P. Allen*, 47 ECAB 141 (1995).

⁶ *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

⁷ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

record in this regard. She did file a grievance that the employing establishment failed to provide a nonabusive environment. The settlement agreement did not provide any admission or acknowledgment of sexual harassment or error by the employing establishment.

As noted, there must be probative and reliable evidence sufficient to establish a claim based on harassment. The conversations which appellant overheard were apparently not directed at appellant herself. She referred briefly to an incident in which someone told her to watch her back, without providing further detail. With respect to specific statements of a sexual nature, there was no corroborating evidence presented. None of the witnesses provided any specific information regarding the allegations. Witness accounts that do not provide a detailed description of the specific statements made are of limited probative value.⁸

It is evident that appellant regarded the conversations she overheard as inappropriate. But not every statement that is uttered in the workplace and which some might find objectionable is sufficient to establish a compensable work factor.⁹ In addition, there must be a sufficient factual basis for the Office to have a clear understanding of what was said, when it was said and by whom, in order to make a proper determination as to whether there is a compensable work factor based on harassment or verbal abuse. Appellant did not identify any of the individuals making the alleged remarks, the dates on which such comments were made or provide other relevant details. In this case the evidence of record is not of sufficient probative value to establish a compensable work factor.

To the extent that appellant alleges stress from the failure to the employing establishment to move her case, this is an administrative matter and would be compensable only if error or abuse is shown. The evidence does not establish error or abuse in an administrative matter. Appellant also referred to Mr. Hightower leaving a copy of his July 26, 2006 letter at the copy machine, but the allegation does not establish error or abuse.

The Board therefore finds that there are no compensable work factors substantiated by the evidence of record. The evidence does not establish that appellant was subject to sexual harassment or verbal abuse, nor is there evidence of administrative error or abuse. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.¹⁰

CONCLUSION

The evidence of record does not substantiate a compensable work factor, and therefore appellant did not meet her burden of proof to establish an injury in the performance of duty.

⁸ See *Joe M. Hagewood*, 56 ECAB 479 (2005); *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

⁹ See *Charles D. Edwards*, 55 ECAB 258 (2004).

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

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 9, 2007 and August 17, 2006 are affirmed.

Issued: February 6, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board