

she had the same symptoms as in a previous claim filed on June 10, 2005.¹ Appellant stated that her job-related stress and panic attacks were caused by retaliation for filing seven Equal Employment Opportunity (EEO) Commission claims, that she was constantly attacked at work and that she was afraid that she would make mistakes. On February 1, 2007 she had flash backs to everything that had happened to her at work over the prior two to three years and noticed that her hair was falling out. Appellant stated that when she arrived at work that day she got a terrible headache, became numb around the mouth and chin, and that both hands began to tingle and went numb. She went to the employing establishment emergency room. Appellant was transferred to another hospital emergency room and was seen by her attending physician, Dr. Andrew Thymius, a Board-certified osteopath specializing in family practice, the next day. She related that she had on-the-job physical injuries and had to take a number of medications for these conditions and for stress.

In support of her claim, appellant submitted discharge instructions that diagnosed anxiety. In a February 2, 2007 report, Dr. Thymius noted appellant's complaint that she was harassed at work and that her hair was falling out. He diagnosed dermatitis and anxiety and recommended that she follow up with her psychiatrist.

In letters dated February 21, 2007, the Office advised appellant of the evidence needed to develop her claim and asked that the employing establishment respond. Gene Whisman, an employing establishment supervisor, responded that appellant did not follow employing establishment policies and that this resulted in progressive disciplinary action. He related that she was treated no differently than other employees, and that the only time she had to defend herself was when she disregarded management's direction or established policies.

In a December 12, 2006 treatment note, Dr. John P. Hutton, a Board-certified psychiatrist, described appellant's medication regimen and advised that she could not work from December 12 to 15, 2006. In reports dated March 13 to 17, 2007, he noted that he began seeing appellant in the fall of 2006 and that she was hospitalized March 14 to 17, 2007 for major depressive disorder, single episode, severe without psychotic symptoms, post-traumatic stress disorder, pain disorder associated with medical and psychological factors, chronic pain and severe psychosocial stressed that included lack of support and harassment at work. In a March 19, 2007 treatment note, Dr. Hutton advised that appellant's disabling symptoms of stress and depression were directly related to her employment stress and opined that she could not return to work.

Appellant also submitted evidence regarding EEO complaints filed on April 28, 2005 and August 22, 2006, a proposed mediation agreement, and a signed statement regarding patient privacy. A February 12, 2007 letter indicated that a desk investigation was to be conducted regarding several of her EEO claims. In a March 21, 2007 statement, appellant alleged that her stress was caused by almost constant harassment and reprisals for filing EEO claims, that she had been passed over for awards, improperly received admonishments and reprimands from employing establishment management, and that she was generally harassed. On February 1,

¹ The instant claim was adjudicated by the Office under file number 032055187, and the June 10, 2005 claim under file number 032040650.

2007 she had a flash back regarding illegally kept charts and again noted that she had several work-related physical injuries.

By decision dated April 17, 2007, the Office denied the claim on the grounds that appellant had not sustained an injury in the performance of duty.

On April 23, 2007 appellant, through her attorney, requested a hearing. She submitted an emergency room report dated February 1, 2007 which noted that she was admitted because she was lightheaded and nervous, and had a headache and numbness in her hands. Discharge diagnoses included anxiety.² Appellant did not appear at the hearing held on August 9, 2007. In an October 11, 2007 decision, an Office hearing representative affirmed the April 17, 2007 decision.

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.³

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*,⁴ 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.⁵ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁶ When an employee experiences emotional stress in carrying out his employment duties, and the medical evidence establishes that the disability resulted from his 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 his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.⁷

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

² The physician's notes and signature are illegible.

³ *Ronald K. Jablanski*, 56 ECAB 616 (2005).

⁴ 28 ECAB 125 (1976).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *See Robert W. Johns*, 51 ECAB 137 (1999).

⁷ *Lillian Cutler*, *supra* note 4.

providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁸ 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.⁹

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.¹⁰ 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.¹¹

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.¹²

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment. Appellant alleged that she was passed over for awards and was inappropriately disciplined. She also alleged that she was harassed by employing establishment management and was retaliated against for filing EEO claims. However, appellant did not submit sufficient evidence to substantiate her allegations. 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.¹³

Administrative and personnel matters include matters involving the discipline of employees¹⁴ and are not compensable unless the employee shows that management acted

⁸ See *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁹ *Id.*

¹⁰ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹¹ *Kim Nguyen*, 53 ECAB 127 (2001).

¹² *James E. Norris*, 52 ECAB 93 (2000); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹³ *J.F.*, 59 ECAB ____ (Docket No. 07-308, issued January 25, 2008).

¹⁴ *James E. Norris*, *supra* note 12.

unreasonably.¹⁵ Appellant submitted nothing to substantiate that she was inappropriately disciplined. Mr. Whisman reported that he counseled her because she ignored agency policies. The Board finds that the employing establishment was clearly within its rights in this administrative matter and appellant failed to establish this as compensable.¹⁶ Appellant's general allegation that she was passed over for awards is not sufficient to be considered a compensable factor. Cash awards and bonuses are analogous to receiving a promotion, which is an administrative matter and generally not compensable.¹⁷ Here again appellant did not submit any evidence to show that her failure to receive an award was error or abuse. The record is thus insufficient to establish that this alleged factor is compensable. Appellant therefore failed to establish a compensable factor of employment in these administrative matters.¹⁸

Appellant also indicated that she was retaliated against because she had filed EEO claims and was harassed by employing establishment management. In assessing the evidence, the Board has held that grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred,¹⁹ and in this case, appellant did not submit a final EEO Commission decision. Appellant included a proposed settlement agreement and a letter indicating that a desk investigation was to be conducted. She also generally alleged that she was harassed by the employing establishment. Mere perceptions of harassment or discrimination are not compensable under the Act,²⁰ and unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.²¹ In this case, appellant did not provide any witness statement or independent evidence to establish her allegations of harassment or to corroborate her assertion concerning retaliation for filing EEO complaints.²² She therefore failed to establish a factual basis for her claim of harassment and retaliation by probative and reliable evidence.²³

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

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

¹⁶ *See Barbara J. Latham*, 53 ECAB 316 (2002).

¹⁷ *Charles D. Edwards*, *supra* note 10.

¹⁸ *Kim Nguyen*, *supra* note 11.

¹⁹ *Michael L. Deas*, 53 ECAB 208 (2001).

²⁰ *James E. Norris*, *supra* note 12.

²¹ *Id.*

²² *See Mary J. Summers*, 55 ECAB 730 (2004).

²³ *Id.* Because appellant failed to establish a compensable employment factor, it was not necessary to consider the medical evidence. *Marlon Vera*, 54 ECAB 834 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 11 and April 17, 2007 be affirmed.

Issued: June 19, 2008
Washington, DC

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

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

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