

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**L.N., Appellant** )

**and** )

**DEPARTMENT OF VETERANS AFFAIRS, )  
VETERANS HEALTH ADMINISTRATION, )  
Des Moines, IA, Employer** )

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**Docket No. 08-486  
Issued: June 12, 2008**

*Appearances:*  
*Alan J. Shapiro, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 10, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated November 6, 2007, denying her claim for an emotional condition. 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 has established an emotional or physical condition causally related to compensable work factors.

**FACTUAL HISTORY**

On December 20, 2006 appellant, then a 54-year-old administrative support clerk, filed an occupational disease claim (Form CA-2), alleging that she sustained stress, depression and high blood pressure as a result of federal employment. In a statement received by the Office on February 8, 2007 she discussed her claim. Appellant stated that she worked in the transcription

unit and had difficulties with a coworker, Diane Devore, who “constantly found fault with my work. [Ms. Devore] rebuked me frequently in regard to my transcription. She was angry most of the time.” According to appellant, at least once a week, Ms. Devore would come to her desk and “shout at me, initially regarding my transcription of documents and later in regard to documents I uploaded.” She noted that she submitted a March 28, 2005 memorandum to her supervisor entitled “hostile work environment” regarding the actions of Ms. Devore.<sup>1</sup> Following the letter, appellant indicated the hostility continued, although the coworker did stop cursing and slamming the telephone. She stated that in June 2005 her position was eliminated and she had to work in Knoxville, Iowa, as a scanner, then she was returned to prior work site. Appellant alleged this was in retaliation for reporting a hostile work environment. In addition, she stated that she applied for other positions at the employing establishment, but was not selected. Appellant reported that in December 2005 she began working as a clerk in “Release of Information,” for which she was not adequately trained.

In a statement dated February 14, 2007, a supervisor, Carole Uknes, responded to the allegations. The supervisor stated that Ms. Devore was assigned to train appellant, and appellant had difficulty in learning the requirements of the job. Ms. Uknes reported that an investigation was completed regarding the allegations in the March 28, 2005 memorandum, but the allegations were not substantiated. According to the supervisor, several employees of the unit were displaced during a reorganization, and appellant was reassigned to Knoxville. With respect to hiring, Ms. Uknes indicated that selections were based on interviews and qualifications. The supervisor also indicated that appellant was trained on release of information and assistance was always available for difficult issues.

By decision dated April 19, 2007, the Office denied the claim for compensation. The Office determined that no compensable work factors were established. Appellant requested an oral hearing before an Office hearing representative, which was held on September 19, 2007. Appellant submitted evidence indicating she filed an EEO (Equal Employment Opportunity) complaint on January 22, 2007.

By decision dated November 6, 2007, the Office hearing representative affirmed the April 19, 2007 decision. The hearing representative found appellant had not established a compensable work factor.

### **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.<sup>2</sup> 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.<sup>3</sup> A claimant must also

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<sup>1</sup> The record contains a copy of the memorandum, in which appellant alleged Ms. Devore was constantly cursing, slamming phones and finding fault with appellant’s work.

<sup>2</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>3</sup> *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

submit rationalized medical opinion evidence establishing a causal relationship between the claimed condition and the established, compensable work factors.<sup>4</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 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.<sup>5</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors 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>6</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>7</sup>

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.<sup>8</sup> 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.<sup>9</sup>

### ANALYSIS

The initial question presented is whether appellant has alleged and substantiated compensable work factors. If there are no compensable work factors, appellant cannot establish an injury in the performance of duty.

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<sup>4</sup> See *Bonnie Goodman*, 50 ECAB 139, 141 (1998).

<sup>5</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>6</sup> See *Norma L. Blank*, 43 ECAB 389-90 (1992).

<sup>7</sup> *Id.*

<sup>8</sup> See *Brian H. Derrick*, 51 ECAB 417, 421 (2000).

<sup>9</sup> *Margreate Lublin*, 44 ECAB 945, 956 (1993).

Appellant's allegations essentially involve: (1) the actions of a coworker, Ms. Devore; and (2) the administrative actions of the employing establishment regarding a reassignment, the failure to select appellant for other positions, and the training she received for her work in a release of information office. As to the first allegations, appellant reported that she was subject to harassment and verbal abuse from her coworker. She stated the coworker yelled at her, criticized her performance and was constantly cursing. There is, however, no probative evidence of record sufficient to establish a compensable work factor in this regard.

The allegations are primarily of a general nature, rather than specific incidents. When appellant did make specific allegations, such as in her March 28, 2005 memorandum when she referred to the coworker swearing several times on March 23, 2005, the allegations do not rise to the level of verbal abuse. While the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to a compensable work factor.<sup>10</sup> Appellant also reported the coworker yelled at her, but the raising of a voice during the course of a conversation does not itself warrant a finding of verbal abuse.<sup>11</sup> Moreover, the supervisor reported that appellant's complaints were not substantiated by an employing establishment investigation. There is no probative evidence of record sufficient to establish a compensable work factor with respect to the actions of the coworker.

With respect to the allegations regarding administrative actions of the employing establishment, as noted above, there must be evidence of error or abuse by the employing establishment. Appellant alleged the actions were in retaliation for submitting the memorandum in March 2005, but no supporting evidence was submitted. The supervisor explained the actions of the employing establishment and there is no evidence of error or abuse in the case record submitted by the Board. It appeared appellant had filed an EEO complaint, but no findings or other probative evidence was submitted.

The Board notes the hearing representative referred to an allegation of a heavy workload. To the extent that appellant alleged that she had an emotional reaction to a heavy workload, she did not provide a detailed allegation or supporting evidence.<sup>12</sup> The Board accordingly finds that appellant has not alleged and substantiated a compensable work factor regarding her claim. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.<sup>13</sup>

### **CONCLUSION**

Appellant did not meet her burden of proof to establish an emotional or physical condition causally related to compensable work factors.

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<sup>10</sup> *Judy L. Kahn*, 53 ECAB 321, 326 (2002).

<sup>11</sup> *Carolyn S. Philpott*, 51 ECAB 175, 179 (1999).

<sup>12</sup> *See Sherry L. McFall*, 51 ECAB 436 (2000).

<sup>13</sup> *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated November 6 and April 19, 2007 are affirmed.

Issued: June 12, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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