United States Department of Labor
Employees' Compensation Appeals Board

C.B., Appellant	)	
and	)	**Docket No. 08-504**
	)	**Issued: September 3, 2008**
DEPARTMENT OF THE ARMY, WOMACK ARMY MEDICAL CENTER, Fort Bragg, NC, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 10, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' September 14, 2007 merit decision denying her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), 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 in the performance of duty.

FACTUAL HISTORY

On March 21, 2006 appellant, then a 44-year-old medical data technician, filed a claim alleging that she sustained major depression due to harassment by supervisors and coworkers and

changes in work procedures and workload. She stopped work on March 8, 2006.[1] In an April 20, 2006 letter, the Office requested that appellant submit additional factual and medical evidence in support of her claim.

Appellant submitted a statement in which she discussed the incidents and conditions at work which she believed caused her emotional condition. She claimed that, when she first began working for the radiology transcription department in 1998, Sergeant Henry, a supervisor, denied her request to use accrued leave to grieve for her recently deceased mother. Appellant alleged that the employees of her work unit were divided along racial lines and that there was confusion regarding the roles of various employees. She alleged that she received a performance rating that was lower than she deserved and that Sergeant Henry did not adequately address her concerns regarding this matter. Appellant asserted that she was unfairly excluded from working to earn compensatory time and that she was improperly placed on the night shift.[2] She alleged that two coworkers, Rita Ruble and Ruby Lucas, unreasonably scrutinized her mammogram reports and took credit for producing them. Appellant claimed that Sergeant Savannah Praymous, who became her supervisor in 1999, was not able to rectify this or other concerns she brought to her.

After appellant was diagnosed with depression, Sergeant Pryce, a coworker, violated her privacy by telling another coworker about the diagnosis. Appellant claimed that Ms. Lucas, Ms. McCloud and several management officials began to treat her as a "basket case" and feared communicating with her. Doris Hunter, a department secretary, incorrectly told Ms. Lucas and Ms. McCloud that appellant had suffered a "nervous breakdown." Appellant claimed that after a move to another workplace in March 2000 she had to work overtime "around the clock" to keep up with her work assignments. She alleged that her workplace was noisy and that a notice was posted in the workplace which named the people who complained about the noise. Appellant asserted that not everyone had equal access to the workstations and that the Dictaphone system was constantly shutting down and causing a backlog of work. She claimed that Gerald Woodall, a health systems specialist, did not keep everyone equally informed about work matters and became hostile when she broached the subject with him.

Appellant claimed that Sergeant McCraven, who became her supervisor in 1999, showed partiality towards other employees and became hostile when she confronted him about this practice. She asserted that other managers did not adequately address her concerns regarding favoritism. Appellant claimed that a number of coworkers, including Antonia Rodriguez, made "smart remarks" to her and showed "plenty of attitude" let doors slam in her face and did not speak to her in passing. She asserted that Sergeant McCraven made mocking comments about her to her coworkers and claimed that he did not adequately manage the workload in her unit. Dr. Theodore Dorsey became hostile towards her shortly after he became her supervisor in mid 2001. In December 2002, he rudely slammed a report on her desk. Appellant believed that Patricia Qualls was hired in March 2002 for the purpose of taking job duties way from her and

[1] An employing establishment official submitted a statement in which he denied that appellant was subjected to harassment.

[2] Appellant indicated that she came to like working the night shift but was upset when she was switched to the day shift which involved more "bickering" by employees.

she indicated that she was angry about a letter Ms. Qualls wrote to a supervisor in May 2002, which unfairly questioned her mental stability.

Appellant asserted that in September 2002 she should have received a performance award that was received by other employees. She claimed that during an October 11, 2002 meeting with supervisors Ms. Qualls blurted out that she "needed a doctor." Appellant indicated that printing paper was placed on her desk and that Mr. Woodall harassed her about the matter. She claimed that Nina Jefferson, a coworker, unfairly complained to management that her perfume was bothering her and that other employees made insulting comments about the matter. Sergeant Anthony E. Buckmon, who became her supervisor in late 2002, unfairly denied a leave request. Appellant claimed that Sara Oswald, a coworker, who worked in the adjoining cubicle, made several harassing comments to her and falsely accused her of making a threat. She alleged that on one occasion that Sergeant Buckmon ordered her to type mammogram reports that were not her responsibility to type. Appellant asserted that in 2005 she was unfairly turned down for a promotion.

Appellant submitted numerous documents, including copies of performance evaluations, job descriptions, e-mail communications with coworkers and supervisors and memoranda of record she wrote about various events.[3] In a number of e-mails and memoranda, produced between the Spring and Autumn of 2002, appellant indicated that she periodically worked overtime, including evenings and weekends. Appellant also submitted medical reports describing the treatment of her emotional condition, including reports of Dr. Susan Myers, an attending Board-certified psychiatrist.

The record contains a May 12, 2002 memorandum addressed to Sergeant Askew in which Ms. Qualls expressed concern about what she felt was appellant's angry and emotionally unstable behavior at work. Ms. Qualls believed that, given this behavior, appellant might act in a physically violent manner towards her coworkers. She requested that Sergeant Askew keep the information in the letter between them and "necessary staff."

In an October 12, 2006 decision, the Office denied appellant's emotional condition claim. It accepted one employment factor with respect to the May 12, 2002 memorandum written by Ms. Qualls.[4] The Office determined that she did not submit sufficient evidence to establish any other employment factors. It found that appellant did not submit sufficient medical evidence to show that she sustained her claimed emotional condition due to the accepted factor.

Appellant submitted additional documents, including more e-mail communications with coworkers and supervisors and memoranda to record she wrote about various events. She submitted additional medical evidence regarding the treatment of her emotional condition.

The record contains a December 2, 2002 document concerning a grievance appellant filed in which an employing establishment official indicated that certain actions would be taken with

[3] In the memoranda, appellant often detailed conflicts she had with supervisors and coworkers.

[4] The Office stated, "In May 2002, Ms. Qualls wrote a report about you and submitted it to your supervisor. The letter suggested that you are emotionally unstable."

regard to ensuring "equality of workload," preventing self-appointment of lead transcriptionists and distributing copies of performance evaluations. There is no finding in the document of wrongdoing by the employing establishment with respect to these matters. In a January 23, 2007 statement, a person with an illegible signature, asserted that Ms. Ruble and Ms. Lucas took credit for appellant's work and that beginning in March 2002 transcription personnel had to work "around the clock" to reduce a backlog.

In June 2007, appellant requested reconsideration of her claim. She submitted factual statements which provided further detail regarding her claimed employment factors. Appellant asserted that the breakdown of the Dictaphone machines was particularly common in 2004. She asserted that, despite employee shortages, backlogs of transcriptions were expected to be resolved within 72 hours and claimed that she had to work many evenings and weekends to resolve such backlogs.

In a July 25, 2007 statement, Mr. Woodall acknowledged that for a short-lived period after the March 2000 move to another workplace there were problems with the Dictaphone system which caused employees to work extra time.[5] He indicated that the Dictaphone system was an old system which sometimes needed to be repaired but asserted that the repairs were done in a timely manner. Mr. Woodall denied appellant's claims about the violation of her privacy regarding her medical condition. He indicated that the workplace had a normal amount of noise and denied that a notice was posted listing the names of people who complained about the noise.

In a September 14, 2007 decision, the Office affirmed its October 12, 2006 decision. It again found that appellant did not submit adequate medical evidence to show that she sustained an emotional condition due to the accepted factor, *i.e.*, Ms. Qualls May 2002 letter.

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 the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned 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 a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.[7]

[5] In a July 30, 2007 statement, another employing establishment official stated that Mr. Woodall meant the phrase "short-lived" to mean no more than one week. However, there was no additional statement from Mr. Woodall clarifying this phrase.

[6] 5 U.S.C. §§ 8101-8193.

[7] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

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 employment factors.[8] This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[9]

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.[10] 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.[11]

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of several of employment incidents and conditions. The Office denied appellant's emotional condition claim on the grounds that, although she established one employment factor, she did not submit sufficient medical evidence to show that she sustained her claimed emotional condition due to that factor. The Board must initially review whether the Office properly determined that only one alleged incident or condition of employment was a covered employment factor under the terms of the Act.

Appellant alleged that harassment and discrimination on the part of her supervisors and coworkers contributed to her claimed stress-related condition. She contended that the employees of her work unit were divided along racial lines and that two coworkers, Ms. Ruble and Ms. Lucas, harassed her by taking credit for producing her reports. Appellant claimed that Ms. Lucas, Ms. McCloud and several management officials treated her as a "basket case" due to her medical condition. Mr. Woodall, a health systems specialist, and several supervisors, including Sergeant McCraven and Dr. Dorsey, became hostile when she asked them to address various matters. Appellant asserted that a number of coworkers, including Ms. Rodriguez, made "smart remarks" to her, showed "plenty of attitude" towards her, let doors slam in her face and did not speak to her in passing. She claimed that during an October 11, 2002 meeting with supervisors Ms. Qualls, a coworker, blurted out that she "needed a doctor." Appellant claimed that Ms. Jefferson, a coworker, unfairly complained to management that her perfume was bothering her and that other employees made insulting comments about the matter. She asserted

[8] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[9] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[10] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[11] *Id.*

that Ms. Oswald, a coworker, who worked in the adjoining cubicle, made several harassing comments to her and falsely accused her of making a threat. Appellant claimed that a notice was posted in the workplace which named the people who complained about the noisy work environment.

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[12] However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[13] In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and she has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors or coworkers.[14] Appellant alleged that supervisors and coworkers made statements and engaged in actions which she believed constituted harassment and discrimination, but she did not provide sufficient corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.[15] Thus, she has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Appellant also alleged that she received performance ratings that were lower than she deserved, that she was unfairly excluded from working to earn compensatory time and that she was improperly placed on the night shift for a period. She asserted that in September 2002, she should have received a performance award that was received by other employees. Appellant claimed that supervisors, including Sergeant Henry and Sergeant Buckmon, unfairly denied leave requests on several occasions. She took issue with the fairness of work assignments and felt that her work was often unfairly scrutinized. Appellant alleged that on one occasion that Sergeant Buckmon ordered her to type mammogram reports that were not her responsibility to type. She asserted that in 2005 she was unfairly turned down for a promotion.

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions, issued unfair performance evaluation and awards, wrongly denied leave, improperly assigned work duties and work shifts, mishandled promotions and unreasonably monitored her activities at work, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do

[12] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[13] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[14] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[15] *See William P. George*, 43 ECAB 1159, 1167 (1992). In a January 23, 2007 statement, a person with an illegible signature asserted that Ms. Ruble and Ms. Lucas took credit for appellant's work. However, this statement is too vague in nature to establish that appellant was harassed as alleged.

not fall within the coverage of the Act.[16] Although the handling of such matters generally related to the employment, they are administrative functions of the employer and not duties of the employee.[17] However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[18]

The Board finds that appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters. The employing establishment denied that it committed wrongdoing with respect to administrative matters and appellant did not submit probative evidence, such as the findings of grievances, to support her claims. The record contains a December 2, 2002 document concerning a grievance appellant filed in which an employing establishment official indicated that certain actions would be taken with regard to several administrative maters, but there is no finding in the document of wrongdoing by the employing establishment with respect to these matters. Appellant has not established a compensable employment factor under the Act with respect to administrative matters.

The Office notes that it properly accepted one factor with respect to employing establishment wrongdoing in the administrative function of protecting an employee's privacy. It properly accepted a factor with respect to the apparent distribution of the May 12, 2002 memorandum addressed to a supervisor in which Ms. Qualls expressed concern about what she felt was appellant's angry and emotionally unstable behavior at work.[19]

Appellant claimed that, between the Spring and Autumn 2002, after a move to another workplace, she had to work overtime, including evenings and weekends, to keep up with her work assignments. She asserted that the Dictaphone system often shut down and caused a backlog of work. The Board has held that emotional reactions to situations in which an employee is trying to meet her position requirements are compensable.[20] The record contains documents which support appellant's claims including a statement of Mr. Woodall and her own e-mails and memoranda. Therefore, appellant has established an employment factor under *Cutler* with respect to the above-described overtime work and backlogs.[21]

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[16] *See Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[17] *Id.*

[18] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[19] The Board notes, however, that appellant did not establish any other alleged invasions of her privacy.

[20] *See Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

[21] Appellant also alleged that her work environment was unusually noisy. The Board has recognized that an unsafe or environmentally unpleasant work condition can constitute a factor of employment. *See Peggy Ann Lightfoot*, 48 ECAB 490, 494 (1997). However, appellant did not establish the factual aspect of this claim.

As appellant has established the above-described additional compensable employment factors, the Office must base its decision on an analysis of the medical evidence. The Office found only one compensable employment factor with respect to Ms. Qualls' letter. It did not analyze or develop the medical evidence with regard to these additional employment factors. The case will be remanded to the Office for this purpose.[22] After such further development as deemed necessary, the Office should issue an appropriate decision on this matter.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty. Appellant has established the above-described employment factors in addition to the previously accepted factor regarding Ms. Qualls' letter. The case is remanded to the Office for consideration of the medical evidence to be followed by an appropriate decision on appellant's emotional condition claim.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' September 14, 2007 decision is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: September 3, 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

[22] *See Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).