

December 2, 2006. At the time of the alleged incident, appellant had just recently begun a detail at the Hollowtree Warehouse working excess mail during the Christmas holiday.¹

On December 2, 2006 acting supervisor Timothy V. Arrington allegedly requested a sexual favor from appellant in exchange for having provided her a beverage. Appellant stated that she was on her lunch break when Mr. Arrington indicated that he was headed to McDonald's to get something to eat. She asked Mr. Arrington to bring her back some sweet tea. Mr. Arrington reportedly told her he would think about it. When he returned from McDonald's, he placed the tea on the table in front of her. Appellant reportedly thanked him and asked how much she owed him. She said Mr. Arrington then "patted his private area." Appellant responded, "[E]xcuse me." She indicated that there were two other people in the break room. When the others left, appellant asked Mr. Arrington again how much she owed him for the tea. This time he allegedly responded, "Some pussy."

Appellant indicated that she reported the incident that same day to Jack Perry, Jr., acting supervisor, who reportedly "started laughing." Mr. Perry acknowledged that appellant reported the alleged sexual harassment incident to him on December 2, 2006. However, he provided a slightly different account. According to Mr. Perry, appellant told him that Mr. Arrington asked her whether she wanted him to bring her something from McDonald's. Another variation was that the "some pussy" response preceded the crotch patting gesture. Mr. Perry also indicated that when appellant spoke to him about the incident she did so in a joking manner. He further indicated that appellant did not seem upset about the statement at all. Mr. Perry said he told appellant to see Larry A. Foster, who at the time was acting manager of distribution operations.² He also indicated that after he spoke with appellant on December 2, 2006 she returned to work. Appellant did not speak with Mr. Foster about the alleged sexual harassment at that time. She indicated that she spoke with Mr. Foster about the sexual harassment during a December 12, 2006 discussion about her job performance. Mr. Perry stated that he was unaware that approximately two weeks elapsed before appellant spoke with Mr. Foster about the alleged incident.

Appellant also claims to have told a female employee about the incident with Mr. Arrington. After listening to appellant's account of the events, the unidentified employee reportedly responded, "That's Bull." Appellant noted that "Bull" was Mr. Arrington's nickname.

On December 18, 2006 appellant learned that she would be returning to her regular duties at the Atlanta Processing & Distribution Center (PDC). Acting supervisor Michael Hayes reportedly told appellant she was being replaced because she had not been to work the past few days. He advised appellant to immediately report to Atlanta PDC. Later that same day appellant spoke with Mr. Foster about why she was being sent back to Atlanta PDC. She said Mr. Foster explained that cutbacks were being made and her assistance was no longer required.

¹ There are conflicting accounts regarding the expected duration of the detail. The employing establishment represented that the detail was scheduled to run from December 1 to 20, 2006. Appellant indicated that the detail began on December 2, 2006 and it was scheduled to run through December 29, 2006.

² Appellant denied that Mr. Perry told her to report the alleged incident to Mr. Foster.

On December 31, 2006 appellant initiated the equal employment opportunity (EEO) complaint process. She filed a formal EEO complaint on March 2, 2007. The basis of appellant's complaint was the alleged December 2, 2006 sexual harassment. She claimed that when she did not respond to Mr. Arrington's request for a sexual favor he started complaining about her work habits to Mr. Foster. Appellant also claimed that when she told Mr. Foster what happened, he did nothing to Mr. Arrington.

In an October 5, 2007 e-mail, Mr. Arrington provided his version of the sweet tea incident.³ He explained that Mr. Foster had called him into his office on December 18, 2006 to answer allegations by appellant that he had requested sexual favors in return for a sweet tea he had purchased on her behalf approximately 2½ weeks earlier. Mr. Arrington indicated that he told Mr. Foster the allegations were false and conjured up by appellant because she was upset he had verbally reprimanded her for bad work habits and had requested that she be relieved of her duties at the Hollowtree Warehouse and returned to Atlanta PDC.

As to the specific events of December 2, 2006, Mr. Arrington stated that he was going to McDonald's to buy lunch and appellant asked if he would pick up a sweet tea for her. When he returned from McDonald's, he gave appellant the sweet tea that came with his combo meal. Mr. Arrington said appellant asked him what she owed for the sweet tea and he replied "nothing." When appellant asked if he was sure, Mr. Arrington replied "yes." According to Mr. Arrington, that was the incident in its entirety. He said that he did not hear anything else about that day until Mr. Foster called him into the office. Mr. Arrington also claimed that there were witnesses available who would state that appellant showed no signs of intimidation or stress on the job for the entire 2½ weeks they worked together prior to her being informed she would be returning to Atlanta PDC on December 18, 2006. He indicated that this was the last date he had any form of contact with appellant.

The medical evidence that accompanied the claim included January 24, 2007 treatment records for nonspecific chest pain. Appellant had a cardiology work-up the following day and test results revealed an incomplete right bundle branch block and probable anteroseptal myocardial infarction. On February 22, March 18 and 19, May 22 and August 21, 2007, she was treated for headaches, including migraines.⁴ Appellant also received treatment for alopecia areata on April 6, May 4 and June 26, 2007. On August 6, 2007 she was diagnosed with acute stress reaction and insomnia. Appellant was seen again on August 16, 2007 for recurring chest pain and a repeat electrocardiogram was administered. This latest test also revealed abnormalities. On August 29, 2007 appellant again experienced chest pains and she went to the emergency room where she received a diagnosis of right bundle branch block.

In addition to her various physical ailments, appellant also received psychiatric care; first in April 2007 and then again in September and October 2007. On April 25, 2007 she was seen by Raymond L. Hoobler, Ph.D., who diagnosed adjustment disorder with mixed emotional features and occupational circumstances. At that time, appellant reported being frustrated with

³ The e-mail was directed to Mr. Foster and Patsy P. Banks, the employing establishment's Health & Resource Management Specialist.

⁴ She had a prior history of migraine headaches due to a 1995 head injury.

her work situation because her employer had not taken seriously her reported harassment. Dr. Hoobler also noted that appellant had been temporarily moved to the day shift, but now she was back on the night shift along with her alleged harasser. He further noted that appellant requested a transfer, but the request had been denied. Dr. Hoobler also reported that appellant had a pending EEO complaint. According to him, appellant wanted him to provide her with a medical statement indicating that she needed a shift change. When Dr. Hoobler declined, appellant immediately rose and walked out of the office expressing her displeasure. He stated that there was no clear evidence that appellant was unable to perform her work duties. Dr. Hoobler further noted that appellant did not express a desire for any intervention other than the shift change recommendation.

On September 5, 2007 appellant was seen by Dr. Harold Gould, who also diagnosed adjustment disorder with mixed emotional features. Dr. Gould noted a history of sexual harassment on the job at the post office. Appellant reported that since this had been going on she experienced hair loss and chest pain. She also told that she was still working with the male coworker who was harassing her even though she requested to be moved to another department. The harassment had reportedly been going on since January 2007, “after [the] coworker found out [appellant] filed a complaint against him.” Dr. Gould’s treatment notes also indicated that appellant denied any prior history of abuse.

After her initial consultation with Dr. Gould, appellant began weekly group psychotherapy sessions. The notes from the various sessions include some scattered references to sexual abuse and sexual harassment. The September 12, 2007 therapy session notes reflect that appellant had been “sexually harassed at work.” There is also mention of her having filed an EEO complaint. Appellant reported feeling unsafe at work and she feared that her harasser could harm her. She was reportedly experiencing nightmares, panic attacks and depression due to the hostile work environment. The treatment notes also mentioned that appellant was filing a workers’ compensation claim.

Appellant’s September 13, 2007 group therapy notes indicate that she felt unable to return to work because she was being stared at by a male coworker, which was creating a hostile work environment. The September 19, 2007 notes indicate that appellant “talked about her sex abuse on the job in depth.” On October 4, 2008 she indicated that she was “raped at age 14 [and] that is why the sexual abuser at work is so frightening.”⁵ The October 8, 2007 session notes reflect that appellant continues to work in the same building as the man “who is sexually harassing her.”

The Office initially denied appellant’s claim on November 29, 2007. Pursuant to appellant’s request, the Branch of Hearings & Review considered the written record and affirmed the prior denial by decision dated April 22, 2008. The Office hearing representative found that appellant had not corroborated her allegation that she was sexually harassed.

⁵ According to Dr. Gould’s September 5, 2007 report, appellant denied any prior history of abuse.

LEGAL PRECEDENT

To establish that she sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.⁶

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.⁷ Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.⁸ Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.⁹ 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.¹⁰

ANALYSIS

Appellant claims that, on December 2, 2006, acting supervisor Mr. Arrington first "patted his private area" then told her she owed him "some pussy" in exchange for having brought her sweet tea from McDonald's. Verbal altercations and difficult relationships with supervisors, when sufficiently detailed and supported by the record, may constitute compensable factors of employment.¹¹ For appellant to prevail on her claim, she must support her allegations with probative and reliable evidence.¹² Both appellant and Mr. Arrington agree that he brought appellant some sweet tea from McDonald's on December 2, 2006. However, that is the extent of

⁶ See *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁷ *Pamela D. Casey*, 57 ECAB 260, 263 (2005).

⁸ *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁹ *Kathleen D. Walker*, *supra* note 6.

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

¹¹ *Marguerite J. Toland*, 52 ECAB 294, 298 (2001).

¹² See *Kathleen D. Walker*, *supra* note 6. For harassment to give rise to a compensable disability there must be evidence that harassment occurred. *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996). A claimant's mere perception of harassment is not compensable. *Id.* The allegations of harassment must be substantiated by reliable and probative evidence. *Joel Parker Sr.*, 43 ECAB 220, 225 (1991).

their agreement. In his October 5, 2007 statement, Mr. Arrington indicated that after giving appellant the sweet tea she asked him what she owed and he replied “nothing.” When she asked if he was sure, Mr. Arrington indicated that he replied “yes.” He indicated that was the incident in its entirety.

As Mr. Arrington denied the accusation of sexual harassment, it was incumbent upon appellant to further substantiate her allegation. Appellant, however, has offered no evidence to corroborate her version of the December 2, 2006 sweet tea incident. The mere fact that she reported the incident to Mr. Perry later that same day does not substantiate her allegation that she was sexually harassed. Moreover, appellant’s filing of an EEO complaint regarding the same alleged harassment is not evidence that the harassment occurred. While EEO complaint findings may constitute substantial evidence relative to a workers’ compensation claim, the current status of appellant’s EEO complaint is unclear.¹³ The Board finds that appellant failed to establish that Mr. Arrington sexually harassed her on December 2, 2006 as alleged. Because she failed to establish a compensable employment factor, the Office properly denied appellant’s occupational disease claim.

CONCLUSION

Appellant did not establish that a compensable employment factor caused or contributed to her claimed physical and psychiatric conditions. Therefore, the Office properly denied her occupational disease claim.

¹³ *Beverly R. Jones*, 55 ECAB 411, 417 n.14 (2004).

ORDER

IT IS HEREBY ORDERED THAT the April 22, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 3, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board