



condition was caused or aggravated by her employment on the same date. Appellant stopped work on October 22, 2007.

By letter dated February 13, 2008, the Office asked appellant to submit factual and medical information, including a detailed description of the employment factors or incidents that she believed contributed to her claimed illness. In a letter of the same date, it requested the employing establishment to provide comments from a knowledgeable supervisor addressing appellant's claim.

Appellant submitted a January 28, 2007 Veterans Administration physician's telephone consult which noted that she called about an alleged assault by a coworker. Also submitted were emergency room discharge instructions for an October 16, 2007 emergency room visit. Appellant came under the treatment of Dr. Heather Porter, a Board-certified family practitioner. On October 22, 2007 Dr. Porter diagnosed fatigue secondary to anxiety. Appellant reported arriving to work but not entering because she experienced anxiety and chest pain. Dr. Porter took appellant off work for one week. On January 22, 2008 he noted that appellant's symptoms worsened and she continued to have trouble with one of her coworkers. Dr. Porter diagnosed fatigue secondary to anxiety and took appellant off work for two weeks.

In a March 20, 2008 decision, the Office denied appellant's claim finding that the evidence was insufficient to establish that she sustained an injury in the performance of duty. It noted that she had not submitted sufficient evidence regarding the factual aspects of her claim.

### **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>1</sup> To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>2</sup>

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*,<sup>3</sup> the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.<sup>4</sup> There are situations where an injury or an illness has some connection with the employment but

---

<sup>1</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>2</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>3</sup> 28 ECAB 125 (1976).

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

nevertheless does not come within the concept or coverage under the Act.<sup>5</sup> When an employee experiences emotional stress in carrying out her employment duties, and the medical evidence establishes that the disability resulted from her 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 her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of her work.<sup>6</sup> 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 under the Act. 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 Act. 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.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

Appellant generally alleged that she was subjected to a hostile work environment that caused anxiety and depression. However, she did not submit any evidence addressing with specificity those particular work incidents or factors she believed caused a hostile work environment at the employing establishment. On February 13, 2008 the Office requested that appellant submit factual evidence, including a detailed description of the employment incidents that she believed contributed to her claimed illness. Appellant did not provide any additional factual information or discuss specific incidents with respect to her claim. She has not identified any regular or specially assigned duties to have caused her emotional condition. The record contains no probative evidence supporting appellant's assertions of a hostile work environment, such as detailed witness statements supporting particular incidents at specific times that she characterizes as a hostile work environment. To the extent that appellant alleges harassment, the Board has held that unsubstantiated perceptions of harassment do not constitute employment factors.<sup>8</sup> The Board finds that appellant has not submitted sufficient factual evidence identifying those employment factors alleged to have caused or contributed to her claimed emotional condition.

The Board finds that the evidence of record is not sufficient to establish a compensable work factor. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.<sup>9</sup>

---

<sup>5</sup> See *Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

<sup>6</sup> *Lillian Cutler*, *supra* note 3.

<sup>7</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, *supra* note 3.

<sup>8</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>9</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

**CONCLUSION**

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 20, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 5, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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