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

| | | |
|---|---|---|
| **D.B., Appellant** | ) | |
| **and** | ) | **Docket No. 09-390** |
| | ) | **Issued: November 16, 2009** |
| **DEPARTMENT OF THE AIR FORCE, AIR NATIONAL GUARD, WISCONSIN NATIONAL GUARD, Madison, WI, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of the Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On November 24, 2008 appellant filed a timely appeal from the May 15 and October 6, 2008 merit decisions of the Office of Workers' Compensation Programs denying her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the 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***

This is the third appeal in this case. On June 21, 2007 the Board found that appellant filed a timely reconsideration request and that the Office erred in finding that it was untimely.[1]

[1] Docket No. 07-528 (issued June 21, 2007).

On May 8, 2008 the Board set aside the Office's August 8, 2007 decision and found that appellant submitted evidence on reconsideration that warranted a merit review of her claim.[2] The facts and the circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference.

In support of her emotional condition claim, on March 22, 2005 appellant stated that she was interviewed in November and December 13, 2001 during an investigation of her work unit. She was unaware of how the investigating officer obtained her name or why he wanted to question her. On January 11 and March 6, 2002 appellant was interviewed by two investigators about a security incident. She did not understand why the second interview was needed. On February 28, 2002 appellant's cryptographic access was suspended. She stated that her third line supervisor, Col. Cheryl Prisland, told her the suspension was not for cause. Appellant noted that this occurred one week after she spoke with an Equal Employment Opportunity (EEO) officer about a hostile work environment. She was relocated to medical squadron that was in another workgroup and building. In April 2002, appellant's commander, Lt. Col. David McLean, ordered her to active duty and gave her a letter of counseling. Appellant stated that she had never been ordered to active duty without prior knowledge and had never received a letter of counseling. In May 2002, her cryptographic access was returned. Appellant noted that her third line supervisor, Col. Thomas Hinman, told her that she would remain in the medical squadron for 90 days, but gave no reason; however, he mentioned her grievance for a hostile work environment.

In January 2003 appellant advised that she needed records to prepare for a performance appraisal appeal hearing; however, Lt. Col. McLean refused to give her the records. In April 2003 she underwent a security clearance interview which she alleged lasted seven and one-half hours while her previous interview, five years prior, lasted one and one-half hours. Appellant alleged that her coworkers and supervisors made unsubstantiated allegations that she had violated security or was mentally ill. After the interview, she was exhausted but had to work 12-hour days for the next seven days. In June 2003 appellant underwent another security clearance interview where she was questioned about a security incident.

In June 2003 appellant attended a reintegration meeting with coworkers from her unit at which coworker MSgt. Engelke attacked her character. She was advised to get counseling to deal with her return to the workgroup. In October 2004 appellant returned to her former workgroup location.[3] She stated that the Air Force Central Adjudication Facility (AFCAF) reinstated her top secret clearance but CMSgt Dwight Evans, her supervisor, compiled documents and letters from coworkers and sent them to AFCAF to suspend her security clearance. In November 2004 management offered to transfer appellant to a lower graded supply position. She stated that Col. Hinman told her that her commander did not intend on recommending her for selective retention (military) or allow her to extend her military enlistment

[2] Docket No. 08-277 (issued May 8, 2008).

[3] In return for appellant dropping a March 20, 2002 grievance for harassment, a May 21, 2003 settlement agreement noted that the employing establishment would investigate harassment claims and enforce a zero tolerance policy. The agreement provided that all documents on harassment in appellant's files would be expunged and she would return to her workgroup upon her getting proper clearance and credentials.

beyond her term of service. Appellant noted that loss of military membership would mean the loss of her job. She did not work from January 8 through February 14, 2005. Appellant received a January 2005 letter from CMSgt Evans asking that she report to work or provide medical documentation. In January 2005 her security clearance was suspended and she was transferred to a supply technician job. Appellant alleged the process was improper as her commander had early knowledge of her suspension. In February 2005 appellant received information from AFCAF about her suspension. She stated that CMSgt Evans and TSgt Lisa Hay wrote disparaging things about her.

Appellant returned to work on February 14, 2005. In attempting to retrieve personal folders from her computer, she discovered someone had apparently tampered with them. Appellant copied her attorney on an e-mail about the matter. Lt. Col. McLean initiated a security information file on February 22, 2005. He issued a military reprimand on March 6, 2005 and a civilian reprimand on March 9, 2005 because he considered the e-mail copied to her attorney to be "official business." Appellant alleged that Lt. Col. McLean's actions were unfair. She asserted that, in March 2005, CMSgt Evans, gave her a note stating that she was not to have contact with any members of her unit or allowed to do any of her training responsibilities.

Appellant attributed her stress to grieving unsubstantiated allegations, meetings and character assassination by management and coworkers. She alleged her coworkers ostracized her from October 2001 to September 2004 and that she received harassing notes from September 2001 through March 2002. Appellant felt threatened by MSgt Engelke and filed a grievance. She alleged that they had a blow-up on September 18, 2001 and a confrontation in December 2001. Appellant alleged that MSgt Engelke attacked her character during a June 2003 meeting. She alleged that personal attacks occurred during a March 2002 relocation to the medical squadron by Major Levenick; her 2002 security investigation testimony; an August 2002 state information manager's meeting when Lt. Col McLean tried to issue a complaint against her; and her April 2003 security clearance investigation. Appellant alleged that, in October 2004, TSgt Hay undermined her authority with her functional area records managers. She alleged that she was assigned an unequal distribution of work, intensive labor assignments, and time consuming tasks from September 2001 through February 2002 and June 2004 through January 2005. These included June 2000 and June 2004 performance standards, August 2004 help desk tickets, and a December 2004 calendar project. From March 2002 to May 2003 appellant had grievance meetings and alleged that Lt. Col. McLean interrogated her about her work performance during a May 2002 meeting. She noted a May 2003 meeting with Col. Hinman and CMSgt Evans where a coworker and functional area records manager disagreed with information she gave to CMSgt Evans. Appellant also noted a March 2005 meeting with Lt. Col. McLean about selective retention. She further alleged several e-mails from management upset her.[4]

Appellant became upset with her performance appraisals. She stated that her September 2002 performance appraisal was late and her supervisor dropped her rating 22 points

[4] These included: an October 2004 e-mail from CMSgt Evans; February 2005 e-mails from Lt. Col. McLean regarding her status when she was not at work from January 8 through February 14, 2005; a March 2005 e-mail from CMSgt Evans which advised "you are not to have contact with coworkers."

from the previous 51.5 points. Appellant's September 2003 performance appraisal was late but her supervisor raised her rating to 69 points. This occurred after she appealed a January 2003 appraisal and a May 2003 grievance settlement. Appellant's June 2004 performance appraisal was on time but had 16 pages of rewritten standards. She provided her supervisor written input about the standards that she felt were unreasonable. Appellant did not sign her standards as her supervisor did not change them or answer her questions. In December 2004 she requested to meet with her supervisor mid-way through the rating period for a progress report and to renegotiate the standards. Appellant stated that they did not meet as she was ordered to leave the unit and building.

Appellant submitted copies of her performance standards and appraisals; e-mail and letter correspondence from management and coworkers; cryptographic and security clearance documents; a May 21, 2003 settlement agreement of a March 2002 grievance claiming harassment, which advised the matter was closed; various complaints and grievances filed and medical records.

On April 19, 2005 the employing establishment legal counsel, Randi Milsap, disputed appellant's allegations. Ms. Milsap provided a review of events from June 2000 to the January 2005 suspension of appellant's security clearance. She noted that appellant filed an informal discrimination complaint on June 8, 2000 against her second-line supervisor, Lt. Col. McLean, and that a series of meetings were held to address her concerns. On July 3, 2001 appellant agreed that all matters were resolved. Two formal investigations were conducted from November 2001 to March 2002 concerning allegations of unprofessional relationships and fraternization within appellant's work group and a potential security breach. Appellant was a source of information relevant to the allegations of unprofessional relationships and fraternization. On February 27, 2002 appellant was temporary relocated to the medical squadron due to the impending outcome of the investigation to ensure no retaliation or reprisal would occur against her due to her testimony against Lt. Col. McLean. An adverse action was taken against Lt. Col. McLean as a result of the investigation. Ms. Milsap indicated that on February 28, 2002 appellant's access to classified cryptographic information was administratively withdrawn by her first-line supervisor based on his belief of a potential security breach. A periodic investigation of appellant's top secret security clearance was due in March 2002, during which appellant was informed that she would remain with the medical squadron until her clearance was validated, which was a requirement of her job. Ms. Milsap noted that the Federal Labor Relations Authority (FLRA) investigated the charge that the Labor Management Agreement had been violated when appellant was relocated and, on June 18, 2002, dismissed the charge and found no discrimination or retaliation. She noted that appellant filed grievances for intimidation, coercion and harassment but the grievances were eventually dropped.

Ms. Milsap noted that appellant had appealed her "marginal" ratings on her civilian technician performance appraisals for the period June 1, 2001 through May 31, 2002; however, on January 29, 2003 an Ad Hoc Review and Appeals Board sustained appellant's performance appraisal without change. Management was directed to establish new performance standards. Appellant, however, refused to acknowledge the new standards. Ms. Milsap noted that appellant filed a second grievance for intimidation, coercion and harassment. During settlement negotiations for the first grievance, the parties agreed the second grievance would be held in

abeyance and that upon validation of her security clearance appellant would be returned to her work area. Appellant's access to cryptographic information was returned in May 2002, her top secret clearance was validated in September 2004, and she returned to her work area in October 2004. In November 2004 Col. Hinman offered appellant another job that appellant declined. In January 2005 appellant's security clearance was suspended and she was relocated to another work site.

In a July 14, 2005 decision, the Office denied the claim finding that no compensable work factors were established. In an August 1, 2005 letter, appellant requested reconsideration. No additional evidence was submitted. On September 1, 2005 the Office denied appellant's reconsideration request.

On July 13, 2006 appellant requested reconsideration. She asserted the employing establishment did not safeguard her workers' compensation claim information and that anyone in her office had access to her file. Appellant alleged that the employing establishment used a disingenuous tactics identify her as a security risk, which resulted in her security clearance being revoked. She submitted reports from Dr. Marshall Fields, a Board-certified family practitioner, dated January 11 and 21, 2005.[5]

Appellant also submitted an April 19, 2006 arbitration decision which found that the employing establishment violated the labor/management agreement when it issued a March 9, 2005 letter of reprimand for sending e-mail to unauthorized accounts. The arbitrator, however, specifically found that the employing establishment did not violate appellant's right to counsel when it issued the March 9, 2005 letter of reprimand. The arbitrator advised the letter would be expunged from appellant's file and replaced with a memorandum stating verbal counseling was given on March 9, 2005. The arbitrator also found that appellant's other allegations of harassment and retaliation by her supervisors did not violate the labor/management agreement. These included the rewritten performance standards, appellant's relocation to the medical squadron in 2002, failure to provide requested documents in response to a Freedom of Information Act request, and the circumstances surrounding the loss of appellant's security clearance.

In a May 15, 2008 decision, the Office denied modification of the July 14, 2005 decision.

On July 20, 2008 appellant requested reconsideration. She reiterated her allegations, stating that she prevailed in having the revocation overturned. Appellant retired from her civil service position in February 2006. She submitted part of a recommended decision from Administrative Judge Philip S. Howe to overturn the revocation of her security clearance.[6] Administrative Judge Howe found that there was a personality or personnel problem in the workplace, not a security concern. He noted that, while there were several errors in the commander's October 7, 2004 memorandum that did not accurately reflect certain events, those concerns were mitigated. Appellant also submitted materials previously of record.

[5] Dr. Fields January 11, 2005 report was previously of record.

[6] Only a portion of the decision was submitted and the portion of record bears no date of issuance.

In an October 6, 2008 decision, the Office denied modification of its previous decision.

## ***LEGAL PRECEDENT***

To establish a claim that an emotional condition arose in the performance of duty, a claimant 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 the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.[7]

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 employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to her regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of her work or her fear and anxiety regarding her ability to carry out her work duties.[8] By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.[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] However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.[11] In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.[12]

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

[7] *D.L.*, 58 ECAB ___ (Docket No. 06-2018, issued December 12, 2006).

[8] *Ronald J. Jablanski*, 56 ECAB 616 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[9] *Id.*

[10] *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

[11] *See William H. Fortner*, 49 ECAB 324 (1998).

[12] *Ruth S. Johnson*, 46 ECAB 237 (1994).

employee did, in fact, occur. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.[13] Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.[14] The primary reason for requiring factual evidence from the claimant in support of her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.[15]

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. 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.[16]

## ***ANALYSIS***

Appellant attributed her emotional condition to administrative and personnel actions taken by management. As noted, reactions to administrative and personnel matters are not covered under the Act unless there is evidence of error or abuse on the part of the employing establishment.[17]

Appellant alleged error during the official investigations that took place concerning her unit and regarding a security incident. The record reflects the employing establishment conducted investigations into allegations of unprofessional relationships and fraternization in appellant's work unit and of a potential security breach. Due to the impending outcome of the investigation regarding appellant's second-line supervisor Lt. Col. McLean, appellant was

[13] *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Arthur F. Hougens*, 42 ECAB 455 (1991) and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence established such allegations).

[14] *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

[15] *Paul Trotman-Hall*, 45 ECAB 229 (1993) (Groom, M., concurring).

[16] *A.K.*, 58 ECAB ___ (Docket No. 06-626, issued October 17, 2006); *T.G.*, 58 ECAB ___ (Docket No. 06-1411, issued November 28, 2006); *C.S.*, 58 ECAB ___ (Docket No. 06-1583, issued November 6, 2006); *D.L.*, *supra* note 7.

[17] *See supra* notes 8 and 9.

relocated from her unit to the medical squadron on February 27, 2002. The employing establishment explained the relocation was temporary and was to ensure no retaliation would occur against appellant due to her testimony in the investigation. Investigations are generally related to the performance of an administrative function of the employer and not to the employee's regular or specially assigned work duties; a compensable factor of employment does not arise unless there is affirmative evidence that the employer erred or acted abusively.[18] There is no evidence to establish that the employing establishment erred or acted abusively in matters relating to its investigations. The record reflects appellant was a source of information which initiated the investigation of allegations of unprofessional relationships and fraternization in appellant's work unit. Appellant's reaction to the interviews for each investigation is considered self-generated and she has not established a compensable work factor.

On February 28, 2002 appellant's access to cryptographic information was administratively withdrawn and was not returned until May 2002. She remained in the medical squadron until her security clearance was validated in September 2004. Appellant returned to her prior job in October 2004, which closed a May 2003 settlement agreement. There is no evidence to establish that the employing establishment committed error and abuse regarding appellant's cryptographic access or her relocation to the medical squadron until her security clearance was validated. The record reflects that appellant must maintain a valid top secret clearance as a requirement of her job. In its June 18, 2002 decision, the FLRA made a finding of not discrimination or retaliation in this matter. There is also no evidence establishing that the employing establishment acted abusively in withdrawing appellant's access to cryptographic information. The record reflects appellant's periodic investigation of her security clearance was due in March 2002. While appellant has alleged the security clearance interviews were long and left her distraught and exhausted, there is no evidence nor has she alleged that such interviews were conducted in an abusive manner. Additionally, she received a favorable adjudication and renewal of her top secret clearance by the AFCAF and was allowed to return to her job. Appellant's reaction to the security interviews and the length of time she had to remain working in the medical squadron must be considered self-generated as there is no evidence of error or abuse. Her frustration and depression resulting from an involuntary transfer are not compensable[19] and results from frustration in not being permitted to work in a particular environment or to hold a particular position.[20] Appellant has not established error or abuse in these investigatory matters and they are not compensable employment factors.

Appellant alleged that she was ordered to active duty in April 2002 and given a military letter of counseling. She indicated that she had never received a counseling letter and was terrified to work under Lt. Col. McLean. Appellant also indicated that she was upset during several supervisor and commander meetings concerning her grievances, work performance and selective retention as well as various e-mails from management. She further alleged that she had an anxiety attack when she received a January 2005 letter from supervisor CMSgt Evans which asked for medical information or report to work when she was out of work from January 8

[18] *Ernest S. Pierre*, 51 ECAB 623 (2000).

[19] *Andrew J. Sheppard*, 53 ECAB 170 (2001).

[20] *Paul L. Stewart*, 54 ECAB 824 (2003).

through February 14, 2005. Generally, complaints about the manner in which a supervisor performs his or her duties or the manner in which a supervisor exercises his or her discretion fall, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor or manager must be allowed to perform his or her duties and employees will, at times, dislike the actions taken. Mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent evidence of error or abuse.[21] Appellant has not submitted sufficient evidence that management acted unreasonably in these matters. She has presented no evidence that the order to active duty and the letter of counseling was not properly handled or that the employing establishment acted unreasonably in these matters. Thus, these allegations do not rise to a compensable factor.

Appellant alleged an anxiety attack when Col. Hinman offered a voluntary transfer to a lower-grade position in November 2004. There is no evidence of record of any wrongdoing on the part of management in offering appellant such position. Moreover, she declined the offer. Although the handling of job transfers and the management of work assignments and schedules are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[22] Appellant has not established a compensable work factor in this matter.

Appellant indicated that meetings she attended from September 2002 to December 2004 regarding performance appraisals were upsetting. While appellant attended a hearing on January 9, 2003 pertaining to a performance appraisal, a review board upheld the performance appraisal without change in its January 29, 2003 decision. Pursuant to that decision, the employing establishment established a new set of performance standards. The Board has held that reactions to assessments of performance are not covered by the Act unless error or abuse is shown.[23] In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[24] While appellant took issue with the length of the rewritten standards, she did not submit evidence establishing that this was abusive. There is also no evidence before the Board that the employing establishment acted unreasonably in appraising appellant's performance or in issuing her new performance standards. Appellant also indicated that she never had a mid-year review to discuss the new standards but she did not show how this was erroneous or rose to the level of a compensable work factor.

Appellant alleged from September 2001 through February 2002 and June 2004 through January 2005, she was assigned an unequal distribution of work, intensive labor assignments and time consuming tasks. To the extent that she is alleging she was overburdened in the performance of her duties, she did not provide a detailed allegation or supporting evidence to

[21] *T.G., supra* note 16. Furthermore, disciplinary actions are administrative functions of the employer and are not are not compensable employment factors absent a showing of error or abuse by the employing establishment. *C.T.*, 60 ECAB ___ (Docket No. 08-2160, issued May 7, 2009).

[22] *L.C.*, 58 ECAB ___ (Docket No. 06-1263, issued May 3, 2007).

[23] *Effie O. Morris*, 44 ECAB 470 (1993).

[24] *See Richard Dube*, 42 ECAB 916 (1991).

establish such allegation has a factual basis.[25] As with all allegations, overwork must be established on a factual basis to be compensable.[26] Thus, appellant has not established a compensable employment factor.

Appellant also failed to substantiate her allegation that the employing establishment failed to safeguard her workers' compensation claim and anyone in her office had access to her file. The Board notes that the development of any condition related to such matters would not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties.[27]

Appellant indicated that someone in her unit had tampered with her personal folders from her computer. She stated that she had copied her attorney in an e-mail regarding the matter and was penalized by Lt. Col. McLean three times for the event as he considered the e-mail to her attorney to be "official business." The record reflects that appellant received a March 9, 2005 reprimand letter about sending e-mail to unauthorized accounts. Appellant alleged and the April 19, 2006 arbitrator's decision found that the March 9, 2005 reprimand violated the labor management agreement. Reactions to disciplinary matters, such as a letter of reprimand also pertain to actions taken in an administrative capacity and are not compensable unless it is established that the employing establishment erred or acted abusively.[28] As the arbitrator found the March 9, 2005 letter of reprimand was in error as it violated the labor management agreement, appellant has established a compensable work factor in this regard.

In January 2005 appellant's security clearance was suspended by the AFCAF and appellant was relocated to another worksite. The record supports that appellant was required to maintain a top secret security clearance as part of her job and the employing establishment relocated appellant to another position that did not require a security clearance. Appellant alleged that the revocation was in error. A partial undated recommended decision by Administrative Judge Howe recommended that the revocation of appellant's security clearance be overturned. However, the complete decision is not in the record before the Board and it is not clear whether this finding became final. Upon the return of the case record, the Office shall obtain a full copy of this decision and any other relevant evidence pertaining to this matter.[29]

The Board also finds that appellant failed to submit sufficient evidence to establish that she was subjected to harassment or retaliation while at the employing establishment.[30] Appellant's allegations constitute mere perceptions or generally stated assertions of

[25] *Sherry L. McFall*, 51 ECAB 436 (2000).

[26] *Id. See also L.C., supra* note 22 (management of work assignments is an administrative matter).

[27] *See George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

[28] *See Sherry L. McFall, supra* note 25. *See also C.T., supra* note 21.

[29] *See R.E.*, 59 ECAB ___ (Docket No. 07-1604, issued January 17, 2008) (the Office shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source).

[30] *See supra* notes 14-16.

dissatisfaction with her superiors and coworkers which do not establish her claim. The arbitration decision of April 19, 2006 specifically found that the actions or incidents claimed by appellant were not sufficiently severe or adverse to constitute harassment. Additionally, the May 21, 2003 settlement agreement between appellant and the employing establishment advised appellant's March 20, 2002 grievance claiming harassment in the workplace was dropped. Appellant did not otherwise submit sufficient evidence to support her allegations of harassment and disparate treatment and the employing establishment denied such allegations.

The Office must further develop the factual evidence with regard to whether the revocation of appellant's security clearance in January 2005 represents a compensable factor. Furthermore, appellant has established a compensable work factor with regard to the March 9, 2005 letter of reprimand which violated the labor management agreement. As the Office found that there were no compensable employment factors, it did not analyze or develop the medical evidence.[31] Therefore, the case will be remanded to the Office for further development of the factual and medical evidence. After such further development as deemed necessary, it should issue an appropriate merit decision.

## ***CONCLUSION***

The Board finds that appellant has identified a compensable factor of employment with respect to the March 9, 2005 letter of reprimand and that the case requires further development regarding whether matters pertaining to the revocation of her security clearance represent a compensable factor of employment. The case is remanded for further development with respect to these matters. The Board affirms the Office's decision regarding other alleged work factors.

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

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the October 6 and May 15, 2008 decisions of the Office of Workers' Compensation Programs are affirmed in part and set aside in part and remanded for further proceedings consistent with this decision of the Board.

Issued: November 16, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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