

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

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**D.M., Appellant** )

**and** )

**DEPARTMENT OF TRANSPORTATION,** )  
**FEDERAL HIGHWAY ADMINISTRATION,** )  
**Dover, DE, Employer** )

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**Docket No. 08-2367  
Issued: September 18, 2009**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On August 29, 2008 appellant filed a timely appeal from an Office of Workers' Compensation Programs' June 27, 2008 merit decision. Under 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 met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

**FACTUAL HISTORY**

Appellant, a 41-year-old information technology specialist, filed a Form CA-2 claim for compensation based on an emotional condition on September 1, 2006. She experienced stress and extreme anxiety in 2000 when management hired a subordinate employee, Gwen Mellin, to assist her and her supervisor with financial and administrative duties. Appellant alleged that it became evident that Ms. Mellin did not possess the basic qualifications the position required.

She was extremely recalcitrant, uncooperative and aggressive whenever any questions arose or any problems occurred. Appellant stated that her problems with Ms. Mellin culminated in a confrontation on May 8, 2006. She related that she developed a post-traumatic stress disorder (PTSD) condition, an obsessive compulsive disorder and uncontrolled anxiety with major depression due to her working conditions.

By letter dated November 16, 2006, the Office advised appellant that she needed to submit additional information in support of her claim. It asked her to describe in detail the employment-related conditions or incidents which she believed contributed to her emotional condition and to provide specific descriptions of all incidents which she believed caused her condition.

In a May 10, 2006 statement, appellant described a May 8, 2006 incident after she arrived at work that morning. She read an e-mail from John Dewar, her supervisor, which pertained to an employee survey her office had recently completed. After responding to Mr. Dewar's e-mail, appellant printed copies at the printer located in her area. She found Ms. Mellin at the printer holding appellant's printouts in her hand. Appellant stated that Ms. Mellin held the printouts over her head and screamed: "I [wi]ll give this to John!" She went back to her cubicle with appellant's e-mails from the printer. Appellant followed Ms. Mellin to her cubicle and stated, "Excuse me, those are none of your business, they are not your e[-]mails and I would like them back." She stated that Ms. Mellin thumbed through her e-mails looking for the e-mail she sent to Mr. Dewar regarding the employee survey, found the survey and stated, "I [wi]ll make a copy of this first!" When Ms. Mellin tried to rush past her, appellant raised her arm towards the bookcase to stop her, but did not grab, push or touch Ms. Mellin. She screamed at appellant, "Do n[o]t ... dare touch me or I [wi]ll call 911." According to appellant, Ms. Mellin shoved her way and started to scream, "Lance, dial 911 now!"

Appellant stated that this was the last time she came into contact with Ms. Mellin. After returning to her cubicle to file a report about the incident, she left the office and went downstairs to the parking lot. While walking out, a security guard told her that the police had arrived and were speaking with Ms. Mellin. Appellant subsequently spoke with the police and with Mr. Dewar in the parking lot and gave them her account of the incident. When informed that Ms. Mellin had accused her of grabbing her, she responded that she had not touched Ms. Mellin and alleged that it was Ms. Mellin who harassed her in the past. Appellant returned to work for the remainder of the day.

In a May 22, 2006 statement, appellant noted that she was given a notice of proposed suspension due to her conduct during the May 8, 2006 incident. In a response, she denied that she threatened or grabbed Ms. Mellin or impeded her freedom in any way. Appellant alleged that Ms. Mellin was inclined to rage at her whenever something displeased her. Since the May 8, 2006 incident, she experienced stress and anxiety and received psychiatric treatment.

Appellant contended that she was no longer able to perform her duties without emotion after six years of harassment and intimidation at the worksite. She reiterated that management had reprimanded her, denied her promotions, harassed her and allowed Ms. Mellin to scream at her.

On June 9, 2006 the employing establishment issued a three-day suspension to appellant on the grounds that she had confronted Ms. Mellin, causing her to feel threatened on May 8, 2006

instead of discussing the issue with her supervisor in accordance with administrative policy. Appellant filed a grievance against the employing establishment in response to her suspension. She contended that the incident resulted from management's refusal to exert its authority and undertake the proper disciplinary action towards Ms. Mellin. Appellant stated that she had served in an exemplary fashion until Ms. Mellin was hired in April 2000. She noted that when Ms. Mellin was hired as an assistant to the financial manager, her duties were clearly outlined. However, the employing establishment frequently had to reassign her duties to other employees due to her lack of skill and inability to complete them. Appellant contended that management failed to discipline or reprimand Ms. Mellin for her inadequate performance, but repeatedly accommodated her and gave her promotions to which she was not entitled.

Appellant asserted that management allowed Ms. Mellin to scream at her, lie to her and lie about her, insult her in front of coworkers, contractors, visitors and guests; engage in repeated misconduct and manipulations; defame her character; cost her promotions, cash awards; and cause her to take countless days of leave in order to avoid Ms. Mellin and the hostile office environment. She asserted that these things went on long enough to directly cause her current emotional and physical debilitation. Appellant stated that she became so terrified of Ms. Mellin's misconduct and the hostile work environment that she became physically ill at the thought of having to return to the worksite. She asserted that she repeatedly tried to inform various management personnel and supervisors about her situation; however, everyone she tried to contact was uncooperative and unhelpful. Appellant stated that since she left work on May 11, 2006 she has required heavy sedation and has only left home for her physician's appointments.

In response to appellant's June 19, 2006 grievance, Jim St. John, the Director of Field Services, submitted a June 30, 2006 statement, which rebutted her allegations. He stated that her suspension was warranted, proper under the circumstances and consistent with agency policies. Mr. St. John denied that management's practices contributed to or promoted a hostile work environment. He advised that the merits of Ms. Mellin's performance and promotions concerned only management and Ms. Mellin, not appellant and did not constitute a hostile work environment.

Appellant submitted a July 7, 2007 statement in which she essentially reiterated her previous allegations.

In a report dated August 14, 2006, Dr. Elizabeth F. Masten, Board-certified in dermatology, stated:

“[Appellant] has been seen in my office since July 22, 2005. She has a progressive problem of lichen Simplex Chronicus which is manifesting itself as Prurigo Nodularis and Neurodermatitis. She has an Obsessive Compulsive Disorder. The prognosis is that her condition is controlled providing that she is under no stress and that she has therapy.

“A contretemps at her office has caused her considerable distress. It has aggravated her condition and accelerated the process over all.

“Her current therapy would be a less stressful environment, treat the infections that are developing on the skin with antibiotics and topical steroids.”

In an August 28, 2006 report, Dr. Robert M. Wilson, a specialist in family practice, stated:

“[Appellant] ... has been experiencing uncontrolled anxiety with her depression due to unforeseen circumstances at her place of employment. She has been taken out of work by her psychiatrist and by me on several occasions. I do not feel that [appellant] is psychologically capable to work in any job environment at this point in time.”

In an employing establishment memorandum dated September 22, 2006, management upheld the employing establishment’s suspension of appellant. It reaffirmed its prior findings regarding the May 8, 2006 episode and its denial of appellant’s allegations that it had fostered a hostile work environment. The employing establishment noted that the former division administrator indicated that he had personally counseled Ms. Mellin and appellant with regard to their interpersonal work relationship; they were both on notice not to engage in further interpersonal disputes. The employing establishment stated that it would expunge the suspension from appellant’s personnel file within 45 days and reduce its adverse action to a letter of reprimand, which would be removed from her file within one year provided she continued to behave appropriately at the workplace and there were no other instances of misconduct.

In an October 13, 2006 report, Dr. Melody Benson, Board-certified in psychiatry and neurology, stated:

“[Appellant] ... will be unable to return to work on October 18, 2006. I am recommending an extension of her leave of absence without pay. [Appellant] requires an absence from work due to a diagnosis of [PTSD] and panic disorder. This condition began as a result of a conflict at work on May 8, 2006. At this time, [appellant] is unable to perform the functions of her assigned position or any other type of work.”

In a November 17, 2006 report, Dr. Benson essentially reiterated her previously stated findings and conclusions and stated that appellant would be unable to return to work on November 17, 2006.

By decision dated January 26, 2007, the Office denied appellant’s claim on the basis that she failed to establish any compensable factor of employment and thus fact of injury was not established.

By letter dated November 15, 2007, appellant requested reconsideration.

Appellant submitted a May 15, 2005 work diary which provided a chronology of alleged incidents at work from May 1998 through March 2007, when she received a disability retirement from the employing establishment. The diary purported to document management’s failure to properly exercise its authority during the previous six years, showed a pattern of poor performance and misconduct on the part of Ms. Mellin, for which she was not held accountable and supported appellant’s allegations that the employing establishment tolerated a hostile work environment and condoned a disorganized, undisciplined and unstructured work atmosphere.

In a report dated May 15, 2007, Dr. Benson stated that she had treated appellant since March 1998 for a depressive disorder associated with her infertility and hormonal irregularities. She placed her on medication, which initially improved her condition. Dr. Benson stated, however, that appellant's anxious and depressive signs tended to fluctuate over the years and correlated to various life and work stressors. She advised that appellant's work stressors first developed in September 2000 when she reported hives due to a conflict with a coworker (Ms. Mellin) and felt that management did not provide her with the proper support; appellant related that she continued to enjoy her work tasks but needed to avoid interactions with the coworker. Dr. Benson stated that appellant began to experience another increase in symptoms in 2004 when she began working for a new supervisor and in March 2005, when appellant had a hostile interaction with Ms. Mellin and required two days of medical leave to restabilize her mood. A change in appellant's medication was moderately successful until January 2006, when her work and financial stress worsened. She experienced skin eruptions with hives, nausea, diarrhea, increased sleep and decreased energy.

Ms. Benson indicated that appellant reached her breaking point with the May 8, 2006 work incident with Ms. Mellin. She opined that the double trauma of the police being called and being suspended from work led to an acute stress and anxiety disorder, which progressed to agoraphobia; she related that whenever appellant attempted to drive near her office, she developed tremulousness, nausea and sweating. Dr. Benson stated that appellant remains unable to return to work and feels enormous anxiety about the level to which her conflict with Ms. Mellin will rise. She related that appellant felt helpless because management had been unable to improve the situation. Dr. Benson advised that her concern is that the May 8, 2006 work incident had triggered associations to prior sexual abuse, thus leading to the excessive anxiety and avoidance consistent with acute PTSD.

In order to determine whether appellant had a psychiatric condition causally related to employment factors, the Office referred appellant to Dr. Randy O. Rummler, Board-certified in psychiatry and neurology. In a report dated May 21, 2008, Dr. Rummler diagnosed Axis I major depression, moderate; and Axis II personality disorder. He stated:

“[Appellant] states her problems began at work in 2000 when a woman was hired by her supervisor. She states this person was told to sit with her at her cubicle as the office was being renovated. [Appellant] was accused by this person of harassing her and embarrassing her in front of other [employees]. She states that her supervisor changed because the original supervisor could not take the actions of this newly hired person. [Appellant] states that over the [past] six years she was chronically undermined by this employee who had a lower pay grade.”

Dr. Rummler noted that appellant had a preexisting history of depression. Appellant told him that she was raised in a dysfunctional setting, as her parents divorced when she was nine years old and she was sexually abused by her uncle and grandfather. Dr. Rummler stated:

“There is no diagnosed psychiatric condition caused by the incident of May 8, 2006. [Appellant] had a long history of psychiatric illness since 1998. It is untenable to suggest that an incident where police were called with no charges made and [she] was suspended for three days triggered memories of sexual abuse

or PTSD (symptoms). The record, particularly the record [appellant] has brought and was not included in records sent directly for review, reflects many years in which [she] obsessively noted by date every apparent infraction or perceived slight from the employee with whom she was having difficulties ... apart from depression [her] symptoms appear better accounted for by personality issues which apparently had been ongoing for many years to the point of documenting dates over the past six years of numerous perceived slights at work.

“There is no psychiatric diagnosis related to May 8, 2006 therefore [appellant] is not disabled from work due to that diagnosis. Disability from work from May 16, 2006 to the present related to the incident May 8, 2006 is not supported [by] the medical evidence. [Appellant] is not disabled for work due to her preexisting psychiatric conditions. She was able to work for many years despite these conditions and they did not reach the level of disability.... There is no objective evidence of significant cognitive impairment during the time in question.”

By decision dated June 27, 2008, the Office denied appellant’s emotional condition claim. It modified the January 26, 2007 determination, however, to the extent that it accepted the May 8, 2008 incident with Ms. Mellin as a compensable factor of employment. It found, however, that the medical evidence of record did not establish that her claimed emotional condition was causally related to the accepted employment factor. The Office stated that the medical evidence appellant had submitted was not sufficient to establish that she had sustained her emotional condition in the performance of duty.

### **LEGAL PRECEDENT**

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.<sup>1</sup> There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.<sup>2</sup>

The first issue to be addressed is whether appellant has established factors of employment that contributed to her alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees’ Compensation Act.<sup>3</sup> On the other hand, disability is not covered where it results from an employee’s fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position or to secure a promotion. Disabling

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<sup>1</sup> See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

<sup>2</sup> See *Ruth C. Borden*, 43 ECAB 146 (1991).

<sup>3</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.<sup>4</sup>

### ANALYSIS

In the instant case, the Office accepted the May 8, 2006 confrontation with coworker Ms. Mellin as compensable. The Board finds that the May 8, 2006 incident is established as a compensable factor of employment.

However, appellant's burden of proof is not discharged by the fact that she has established an employment factor which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.<sup>5</sup>

There is a conflict in the medical evidence between Dr. Benson, appellant's treating psychiatrist, and Dr. Rummler, the Office referral physician, regarding whether appellant sustained any disability causally related to the compensable factor of employment accepted by the Office; *i.e.*, the May 8, 2006 confrontation with Ms. Mellin. Dr. Benson stated in her May 15, 2007 report that appellant had a preexisting history of depressive disorder associated with her infertility and hormonal irregularities for which she had treated her since 1998. She advised that appellant's condition had fluctuated over the years; she experienced periodic anxious and depressive signs correlating to various life and work stressors. Dr. Benson prescribed medication to treat her condition and advised her to avoid contact with the abrasive coworker (Ms. Mellin). She stated, however, that the May 8, 2006 incident between appellant and Ms. Mellin produced a double trauma of having the police called and being suspended from work, which led to an acute stress disorder and progressed to agoraphobia. Dr. Benson noted that appellant experienced enormous anxiety about the level to which this conflict could escalate and felt helpless because she believed management was unable to remedy the situation. She stated that her concern was that the May 8, 2006 work incident at work triggered associations to prior sexual abuse, thus leading to the excessive anxiety and avoidance consistent with acute post-traumatic syndrome.<sup>6</sup>

In contrast, Dr. Rummler opined in his May 21, 2008 report that it was implausible to suggest that an incident where police were called with no charges made and appellant was suspended for three days triggered memories of sexual abuse or PTSD symptoms. He stated that, given the fact that she had "obsessively" charted by date every apparent infraction or perceived slight from Ms. Mellin for several years, her symptoms appeared more attributable to personality issues than to the numerous perceived slights at work. Dr. Rummler noted that appellant was able to work for many years despite these symptoms and they did not reach the

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<sup>4</sup> *Id.*

<sup>5</sup> *See William P. George*, 43 ECAB 1159, 1168 (1992).

<sup>6</sup> The Board notes that work-related aggravation of a preexisting emotional condition, if supported by medical evidence, can provide a basis for compensability. *Mary J. Summers*, 55 ECAB 730 (2004).

level of disability. He therefore concluded that there was no psychiatric diagnosis related to May 8, 2006 and that appellant was not disabled from work due to any such diagnosis.

When such conflicts in medical opinion arise, 5 U.S.C. § 8123(a) requires the Office to appoint a third or “referee” physician, also known as an “impartial medical examiner.”<sup>7</sup> Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well-rationalized and based upon a proper factual background, is entitled to special weight. On remand, the Office should instruct the referee medical examiner to provide a well-rationalized opinion and determine whether appellant’s May 8, 2006 incident was a causative factor to her diagnosed emotional conditions.<sup>8</sup> After such development as it deems necessary, the Office shall issue a *de novo* decision.

With regard to appellant’s other allegations, the Board finds that she has failed to submit sufficient evidence to establish her allegations that management engaged in a pattern of harassment, intimidation or discrimination.<sup>9</sup> Mere perceptions of harassment or discrimination are not compensable; a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.<sup>10</sup> Appellant alleged that management had unfairly reprimanded her, denied her promotions,<sup>11</sup> harassed her and condoned Ms. Mellin’s abusive conduct. She also asserted that the employing establishment forced her to adjust to various duty and rule changes in an attempt to accommodate Ms. Mellin. Appellant, however, provided no corroborating evidence or witness statements to establish that these actions on the part of management had actually occurred. Mr. St. John rebutted appellant’s allegations that management’s practices encouraged or promoted a hostile work environment, that it treated her unfairly or that it subjected her to harassment in his June 30, 2006 statement.

The Office reviewed appellant’s allegations of harassment, abuse and mistreatment and found that they were not substantiated or corroborated. The Board finds that the episodes of harassment cited by appellant are not established as factual as she failed to provide any

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<sup>7</sup> Section 8123(a) of the Act provides in pertinent part, “(i)f there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.” See *Dallas E. Mopps*, 44 ECAB 454 (1993).

<sup>8</sup> See *William P. George*, 43 ECAB 1159, 1168 (1992).

<sup>9</sup> See *Joel Parker, Sr.*, 43 ECAB 220 (1991). (The Board held that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

<sup>10</sup> *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>11</sup> Regarding appellant’s allegation of denial of promotions, the Board has previously held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant’s ability to perform his regular or specially assigned work duties, but rather constitute appellant’s desire to work in a different position. See *Donald W. Bottles*, 40 ECAB 349, 352 (1988).



corroborating evidence for her allegations.<sup>12</sup> As such, they constitute mere perceptions or generally stated assertions of dissatisfaction with a certain superior at work which do not support her claim for an emotional disability.<sup>13</sup> Appellant has not submitted evidence sufficient to establish that management engaged in a pattern of harassment and intimidation toward her or created a hostile workplace environment.

The Board finds that the evidence of record does not establish that the administrative and personnel actions taken by management in this case were in error and are therefore not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.<sup>14</sup> Appellant has not presented sufficient evidence that the employing establishment acted unreasonably or committed error with regard to the incidents of alleged unreasonable actions involving personnel matters on the part of the employing establishment.

The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.<sup>15</sup> Appellant alleged that management caused her stress by tolerating incompetence on the part of Ms. Mellin and by ignoring her numerous efforts to eliminate the tension, disorganization and disruption, which developed at the worksite since Ms. Mellin was hired in 2000. She has failed to provide substantiation or corroboration for these assertions. Management denied that it fostered a permissive attitude toward Ms. Mellin or that it tolerated an unstable, undisciplined work environment. While the Board has held that emotional reactions to situations in which an employee is trying to meet her position requirements are compensable,<sup>16</sup> Mr. St. John correctly asserted that Ms. Mellin's performance and promotions were none of appellant's concern. The employing establishment indicated in its June 19 and September 22, 2006 statements that management had counseled Ms. Mellin and appellant with regard to their work relationship and placed both employees on notice not to engage in further interpersonal disputes. Management was acting within its administrative capacity in admonishing an employee for her continued, disruptive exchanges with another coworker. As appellant has failed to show that these actions demonstrated error or abuse

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<sup>12</sup> Although 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 coverage under the Act. *Harriet J. Landry*, 47 ECAB 543, 547 (1996). Appellant has not shown how such isolated comments would rise to the level of verbal abuse or otherwise fall within the coverage of the Act. *See Alfred Arts*, 45 ECAB 530 (1994).

<sup>13</sup> *See Debbie J. Hobbs*, *supra* note 1.

<sup>14</sup> *See Alfred* *supra* note 12 at 543-44 (1994).

<sup>15</sup> *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

<sup>16</sup> *See Lillian Cutler*, *supra* note 3.

on the part of management, they are not compensable.<sup>17</sup> Disciplinary matters consisting of counseling sessions, discussions or letters of warning for conduct pertain to actions taken in an administrative capacity and are not compensable as factors of employment.<sup>18</sup>

Regarding appellant's allegation that she developed stress due to the uncertainty of her job duties and her insecurity about maintaining her position, the Board has previously held that a claimant's job insecurity is not a compensable factor of employment under the Act.<sup>19</sup> Accordingly, she has presented no evidence that the employing establishment acted unreasonably or committed error with regard to these incidents of administrative managerial functions. A reaction to such factors did not constitute an injury arising within the performance of duty; such personnel matters were not compensable factors of employment in the absence of agency error or abuse.

The Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regularly or specially assigned employment duties are not considered to be employment factors.<sup>20</sup> 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. Although appellant has made allegations that the employing establishment erred and acted abusively in conducting its investigation of her six-year, acrimonious work relationship with Ms. Mellin, she has provided insufficient evidence to support her contentions. A review of the evidence indicates that appellant has not shown that the employing establishment's actions in connection with its investigation were unreasonable. She has not established a compensable employment factor under the Act in this respect.

### CONCLUSION

The Board finds that the case is not in posture for decision with regard to whether appellant sustained an emotional condition causally related to factors of her employment.

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<sup>17</sup> The Board notes that appellant's suspension was reduced to a letter of reprimand in the employing establishment's September 22, 2006 determination, which stated that the reprimand would ultimately be removed from her personnel file so long as there were no further incidents of misconduct and she continued to comport herself in an appropriate manner. However, the mere fact that personnel actions were later modified or rescinded, does not in and of itself, establish error or abuse. *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

<sup>18</sup> *Barbara E. Hamm*, 45 ECAB 843 (1994); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

<sup>19</sup> *See Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

<sup>20</sup> *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 27, 2008 decision is affirmed in part and set aside in part. The case is remanded to the Office for further action consistent with this decision of the Board.

Issued: September 18, 2009  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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