

Appellant first realized her condition was caused or aggravated by her employment on July 6, 2007 when she stopped work. She returned on July 10, 2007. The employing establishment noted that appellant had received performance counseling three days prior to filing a January 19, 2007 workers' compensation claim that was disallowed. The employing establishment advised that she continued to perform at an unacceptable level and that she received normal progress counseling. It also stated that appellant received notification of an adverse action being taken against her for filing a falsified claim.

On August 22, 2007 letter the Office requested that appellant describe in detail the employment-related conditions or incidents which she believed contributed to her illness. It also requested that she provide a comprehensive medical report from a treating physician regarding her condition and its cause.

The Office received a September 20, 2007 nine-page statement from appellant's husband, who noted that appellant fractured her right fibula on December 19, 2006 and returned to limited duty on May 7, 2007. From May 7 through 22, 2007, Brian Wood, appellant's supervisor, issued written counseling to her for her job performance. He noted that appellant had been off duty for over four months and that she was in her job for less than two months before her leg injury. On May 7, 2007 Mr. Wood trespassed into and rifled through the cabinets and desk drawers in her office and issued written counseling to her for a computer system security violation. Appellant's husband asserted that Mr. Wood did not state a reason for violating appellant's privacy. On May 8, 2007 appellant reported a security violation by Mr. Wood to Hilda Brown, a supervisor, and, afterwards, Mr. Wood gave appellant extra work and became very critical of her actions. She received written counseling nearly everyday. On July 2, 2007 Ronald Vorwaller, a second level manager, verbally proposed an adverse action against her for filing an on-the-job injury claim. Appellant did not receive a written copy of the proposal until July 5, 2007, which was forwarded to her through Mr. Wood, which she alleged was a Privacy Act violation. Mr. Wood noted that Mr. Vorwaller told appellant that she could not be accommodated and could not be on limited duty since the Office had denied her leg injury claim. On July 6, 2007 he sent appellant home because of her leg injury and inability to perform her full duties. Appellant received a motorized wheel chair on July 9, 2007, but her private insurance carrier refused to finance a wheel chair for workplace use. On July 9, 2007 she sought medical treatment for stress. Due to the effects of medication, appellant could not contact Mr. Wood of her absence from that day although her husband sent an e-mail to Mr. Wood. On July 10, 2008 Mr. Wood issued written counseling to her for failure to notify him of her July 9, 2007 absence, despite acknowledging receipt of her husband's e-mail. Appellant's husband also asserted that Mr. Wood took unlawful disparate action against appellant in her semi-annual performance appraisal.

On August 9, 2007 Mr. Wood abusively demanded that appellant provide him a supervisor report for her current claim. Appellant's husband had sent Mr. Wood a blank copy of the CA-2 supervisor report along with a designation of representative form indicating that he was to be appellant's contact. Upon receiving the documents, Mr. Wood violently slammed them onto appellant's desk and demanded that she complete it. Appellant was in tears, was consoled by a coworker and had to leave her work area. Her husband alleged that she was not trained for her current position and that Mr. Wood substantially increased her workload and made tight demands for her to complete several tasks, even though her position description did not have production quotas or rates. Appellant was denied overtime and voluntarily worked credit hours

to keep up with her assigned duties. Her husband indicated that Mr. Wood stopped her from using credit hours. He noted that several grievances and Equal Employment Opportunity (EEO) complaints were currently pending. Appellant's husband advised that, since July 1, 2007, appellant's migraine headaches increased substantially due to workplace stress. He alleged that appellant's supervisory line of command implemented a systematic process to remove appellant and that the actions taken against her were in retaliation for a civil action he had filed against the employing establishment.

In a July 24, 2007 e-mail from appellant to her husband, she stated that Mr. Wood erroneously told her that she did not control one of the documents she completed the night before. She stated that, when she pointed out that she did the task properly, Mr. Wood just marched away. Appellant also stated that she had made a mistake, but was afraid to tell Mr. Wood about it as he was always angry with her.

In a September 12, 2007 statement, Mr. Wood noted counseling appellant on her performance three days before she filed her workers' compensation claim for a leg injury on January 19, 2007. After the claim was disallowed, appellant was given a letter of intent to suspend her for filing a false claim. After she returned to work, Mr. Wood noted that she was provided very light duty as well as coaching and instruction on her duties. After repeated instruction and time for improvement, Mr. Wood gave appellant performance counseling and, in her mid-year performance review, informed her that she was failing or minimally successful in several critical job elements. He indicated that counseling regarding her performance was provided on January 16, May 7, 17, 18 and 22, July 18 and August 28, 2007. On July 2, 2007 appellant was told that she needed to be mobile to perform her duties and that a physician's documentation on her restrictions was needed. She then filed a formal reasonable accommodation request. Mr. Wood confirmed receiving an e-mail from appellant's husband noting that she would be absent. However, this was unacceptable and that appellant was provided written counseling. Appellant was given training upon being hired for her job in November 2006 but was not performing up to expectations when she took extended leave for her January 2007 injury. Mr. Wood noted that he and Julie Varnell, another manager, along with other clerks in the unit, provided appellant coaching and assistance when she returned to work. Since appellant returned to work, she received counseling for unacceptable performance but, after the counseling and her mid-year review, he began to see improvements in her work. Mr. Wood noted that appellant filed a grievance over her January 2007 evaluation, but advised it was dismissed. He noted that she filed a grievance for absence without leave charges as well as an EEO complaint for discrimination on the basis of her disability.

In a July 9, 2007 report, a physician's assistant diagnosed recurring migraine and depression anxiety (situational). The Office also received materials pertaining to a right fibula fracture of December 19, 2006, for which appellant filed a claim.¹

By decision dated January 30, 2008, the Office denied the claim, finding that appellant failed to submit a statement identifying the specific employment factors she believed caused her condition. Appellant also failed to submit any medical evidence supporting a diagnosed medical

¹ The Office denied the December 19, 2006 claim in file number xxxxxx767.

condition. The Office advised that a third party could not file statements on her behalf and that there was no documentation of record to establish that she had appointed her husband to be her representative.

Appellant requested an oral hearing, which was held July 8, 2008. On August 5, 2008 she reiterated the allegations her husband made on September 20, 2007. The only discrepancy noted was that appellant alleged that she reported Mr. Wood for a security violation on June 10, 2007, while her husband listed May 8, 2007. The Office also received copies of material of record and with a February 22, 2008 letter from a physician's assistant.

In a September 9, 2008 decision, an Office hearing representative affirmed the denial of appellant's claim finding that she did not establish any compensable work factors.

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.²

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.³ 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.⁴

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.⁵ However, the Board

² *D.L.*, 58 ECAB ____ (Docket No. 06-2018, issued December 12, 2006).

³ *Ronald J. Jablanski*, 56 ECAB 616 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁴ *Id.*

⁵ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

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.⁶ 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.⁷

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 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.⁸ 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.⁹ 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.¹⁰

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.¹¹

⁶ See *William H. Fortner*, 49 ECAB 324 (1998).

⁷ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁸ *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).

⁹ *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).

¹⁰ *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

¹¹ *D.L.*, *supra* note 2; *T.G.*, 58 ECAB ____ (Docket No. 06-1411, issued November 28, 2006); *C.S.*, 58 ECAB ____ (Docket No. 06-1583, issued November 6, 2006); *A.K.*, 58 ECAB ____ (Docket No. 06-626, issued October 17, 2006).

ANALYSIS

Appellant alleged that her emotional condition resulted from certain employment incidents and conditions. The Office denied the claim on the grounds that she did not establish any compensable employment factors. The Board must review whether the alleged incidents and conditions of employment are compensable employment factors under the Act.

Appellant attributed her emotional condition to administrative and personnel actions taken by management. She was in her position for approximately two months before she injured her leg and was off work for approximately four months. The employing establishment stated that appellant had received performance counseling prior to being off work for her leg injury and continued to perform at an unacceptable level when she returned to work. The record reflects that appellant received written counseling concerning her job performance and other matters, such as a security violation on May 7, 2007 and failure to properly notify her supervisor of a July 9, 2007 absence from duty. In general, actions of the employing establishment in matters involving assessments of job performance,¹² use of leave¹³ and disciplinary matters consisting of counseling sessions, discussions or letters of warning for conduct¹⁴ are not considered compensable factors of employment absent evidence of error or abuse. In this case, there is no evidence of error or abuse by the employing establishment. Appellant's supervisor noted the reasons for the actions taken and the evidence of record does not establish error. While appellant characterizes these actions as harassment, she has submitted no evidence substantiating her allegations or otherwise showing that her supervisors erred in discharging their duties or were abusive towards her. Without persuasive evidence corroborating that her supervisors did in fact harass her, here mere perception of harassment is insufficient to establish a factual basis for her claim. Appellant's receipt of written counseling on matters concerning job performance, security matters and procedures for requesting leave and letters concerning proposed disciplinary matters are not compensable factors as the evidence does not establish error or abuse in these administrative actions.

Although appellant contends that she was discriminated against due to her physical disability in her semi-annual performance appraisal, her reaction to her performance appraisal is not compensable in the absence of evidence showing error or abuse on behalf of the employing establishment in carrying out that administrative function. She has not shown that she received her rating in error or that the employing establishment acted abusively in issuing rating performance rating. For harassment or discrimination to give rise to a compensable disability under Act, there must be some evidence that the harassment or discrimination did in fact occur.¹⁵

Appellant alleged that Mr. Wood acted abusively towards her and harassed her concerning the completion of her workers' compensation claim as he should have been dealing

¹² See *Kathleen D. Walker*, 42 ECAB 603 (1991); *Thomas D. McEuen*, *supra* note 5 (holding that an unsatisfactory performance, without more, is insufficient to provide coverage).

¹³ *Gracie A. Richardson*, 42 ECAB 850 (1991).

¹⁴ *Barbara E. Hamm*, 45 ECAB 843 (1994); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

¹⁵ *Anna C. Leanza*, 48 ECAB 115 (1996).

with her husband. The handling of a workers' compensation claim is not related to the employee's job duties and is not considered a compensable work factor.¹⁶ Appellant's frustration with Mr. Wood's in handling of her workers' compensation claim does not arise from a compensable work factor.

Appellant alleged that she received inadequate training to perform her duties. Training is a personnel matter and is not compensable absent error or abuse.¹⁷ Mr. Wood stated that appellant was provided training upon being hired for the position in November 2006 and was provided coaching and instruction to familiarize her with her duties again when she returned to work following her leg injury. Appellant has submitted no evidence to support her allegation that she was inadequately trained for her position. As such, this assertion is not established as factual.

Appellant stated that she was monitored and criticized by Mr. Wood after she reported him for a security violation. Although the handling of security matters and monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹⁸ Appellant has not shown that her supervisor acted abusively in monitoring appellant's work.

Appellant also alleged that Mr. Wood substantially increased her workload and made demands on her time to complete the tasks even though her position description had no production quotas and was not subject to an individual production rate. She also asserted that she was denied overtime and not permitted to work credit time to keep up. The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable.¹⁹ The Board has also held that the assignment of work is an administrative or personnel matter of the employing establishment and not a duty of the employee and, absent evidence to support a finding of error or abuse by her supervisor, there no compensable employment factor alleged.²⁰ Appellant did not assert that her actual work duties caused her stress. Rather, she disagreed with the job assignments. Appellant has not submitted any evidence that she had difficulty completing her position requirements. She did not provide any evidence to establish that her workload or Mr. Wood's estimate of time to complete such tasks were erroneous. For this reason, the Board finds that appellant has not established that her emotional condition arose from the performance of her regular or specially assigned duties.²¹ Appellant's reaction to such conditions and incidents at work must be considered self-generated in that it resulted from her frustration in not being permitted to work in a particular environment

¹⁶ *David C. Lindsey, Jr.*, 56 ECAB 263, 270 (2005); *George A. Ross*, 43 ECAB 346 (1991). The handling of a compensation claim is an administrative function and is not compensable absent evidence of error or abuse by the employing establishment.

¹⁷ *James E. Norris*, 52 ECAB 93 (2000).

¹⁸ *David Cuellar*, 56 ECAB 626 (2005).

¹⁹ *Trudy A. Scott*, 52 ECAB 309 (2001).

²⁰ *See Janet D. Yates*, 49 ECAB 240 (1997).

²¹ *See Lillian Cutler*, *supra* note 3.

or to hold a particular position.²² While she alleged that she was denied overtime and not permitted to work credit hours to keep up, these are administrative functions of a supervisor.²³ The mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.²⁴ Appellant has not submitted any evidence to establish error or abuse by Mr. Wood in denying overtime or not allowing her to work credit hours to complete her assigned work. As she has not established error or abuse on the part of Mr. Wood in these actions, these implicated actions are not compensable factors of employment.

Appellant has alleged that the employing establishment has undertaken a systematic process to remove her from service. However, she provided no evidence to support this allegation. Thus, this is an unsubstantiated claim and any reaction appellant may have would not be considered in the performance of duty.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.²⁵

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of employment.

²² *Tanya A. Gaines*, 44 ECAB 923, 934-35 (1993).

²³ *Beverly R. Jones*, 55 ECAB 411 (2004).

²⁴ *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

²⁵ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *Karen K. Levene*, 54 ECAB 671 (2003).

ORDER

IT IS HEREBY ORDERED THAT the September 9 and January 30, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 10, 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