



In a letter dated June 21, 2007, appellant stated that the supervisor, Dr. Caldwell, made demeaning comments on a daily basis. According to her, the supervisor was condescending when speaking at the “morning huddles” with employees, saying things like “do you understand, or do I need to repeat myself again” and “this isn’t the only place to work in this hospital, if you don’t like it put in for another job and leave.” Appellant indicated that in January 2005 she was told to remove her belongings from her locker and a request was made to cut the lock on her locker. She stated that in May 2005 she received a proposed removal from employment and she had to defend the false accusations. In October 2005, appellant received a proposed reprimand for failure to safeguard confidential matters and had to endure demeaning comments like “fix yourself up, you look a mess” in front of patients. She also submitted a “report of contact” regarding a May 16, 2007 incident, stating that the supervisor demanded information regarding a scheduled medical appointment and was “in my face with pen in hand pointing at my face so close I could feel his breath on my face.” By letter dated September 27, 2007, appellant indicated that she had filed a grievance that had not been settled.

By decision dated February 13, 2008, the Office denied the claim for compensation. It found appellant had not established a compensable work factor.

On February 13, 2009 appellant requested reconsideration of her claim and submitted additional evidence. She indicated that she believed the supervisor tried to remove her from employment because of her activities as a union representative. Appellant submitted a February 6, 2009 statement from a coworker, Mr. Wizda, who stated that the supervisor treated appellant with disrespect. Mr. Wizda reported that appellant was removed from handling nursing home patients and committee assignments. He recalled an incident in which the supervisor stated to appellant that she did not know how to stand correctly and there are others who could easily take her place. Another coworker, Ms. Passetti, stated in a February 6, 2009 statement that the supervisor constantly verbally harassed and humiliated appellant. She did not provide any specific examples.

The evidence submitted on February 13, 2009 included memoranda of staff meetings, sections of employing establishment union agreements and grievance forms. An August 19, 2005 letter indicating a letter of proposed removal dated May 31, 2005 was rescinded.

By decision dated April 20, 2009, the Office reviewed the case on its merits and denied modification.

### **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> This burden includes the submission of detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>2</sup> Appellant also has the

---

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

<sup>2</sup> *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

burden to submit medical evidence with a rationalized opinion on causal relationship between a diagnosed emotional condition and compensable work factors.<sup>3</sup>

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 the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to her regular or specially-assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>4</sup>

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.<sup>5</sup> Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.<sup>6</sup>

### ANALYSIS

Appellant has claimed that she sustained an emotional condition causally related to her federal employment. The initial question is whether she has alleged and substantiated a compensable work factor with respect to her claim. While appellant suggested in her application for reconsideration that all actions of her supervisor should be compensable, the well-established legal precedent noted above establishes that not every condition that is somehow related to employment will be covered under the Act.

In this case, appellant has made general allegations that she was subject to harassment, a hostile work environment and retaliation by her supervisor. These allegations must, however, be established by probative and reliable evidence.<sup>7</sup> Although appellant indicated that she filed a

---

<sup>3</sup> *Brenda L. DuBuque*, 55 ECAB 212 (2004).

<sup>4</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

<sup>6</sup> *Margreate Lublin*, 44 ECAB 945, 956 (1993).

<sup>7</sup> *David C. Lindsey, Jr.*, 56 ECAB 263 (2005). As the Board explained, there must be a basis in fact for the contentions made, as opposed to the mere perceptions of the claimant.

grievance, the record does not contain any findings of harassment or retaliation by the supervisor, nor other probative evidence on which to establish a compensable work factor.<sup>8</sup>

Appellant has also alleged verbal abuse by the supervisor. This could be a compensable work factor, if the record substantiated specific instances of verbal abuse.<sup>9</sup> In this case, appellant has made only brief references to specific instances of alleged verbal abuse. She refers to incidents in which the supervisor allegedly stated “do I need to repeat myself” and “you look a mess.” A witness referred to an incident where the supervisor told appellant she was not standing correctly. While appellant may have been upset at the tone or content of the supervisor’s words, not every statement uttered in the workplace will give rise to a compensable work factor.<sup>10</sup> Even if a harsh or raised voice was used, this does not itself constitute verbal abuse or harassment.<sup>11</sup> The witness statement from Ms. Passetti referred generally to verbal harassment and humiliation but failed to state specific instances of this behavior. The allegations in this case do not rise to the level of verbal abuse sufficient to constitute a compensable work factor.

The record also contains documents regarding administrative matters and disciplinary actions, such as a proposed removal and reprimand. As noted above, an administrative matter is compensable only if there is evidence of error or abuse. There was no probative evidence of error or abuse submitted. A proposed removal in May 2005 was rescinded, but this does not itself establish error without additional evidence.<sup>12</sup>

The Board accordingly finds the evidence of record is not sufficient to substantiate a compensable work factor with respect to the present claim. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.<sup>13</sup>

### CONCLUSION

The Board finds appellant has not alleged and substantiated a compensable work factor with respect to her claim of an emotional condition causally related to her federal employment.

---

<sup>8</sup> The filing of a grievance or an Equal Employment Opportunity complaint does not establish harassment or unfair treatment occurred. *Charles D. Edwards*, 55 ECAB 258 (2004). The issue is whether the claimant has submitted sufficient factual evidence under the Act to establish a factual basis for the allegations.

<sup>9</sup> See *Harriet J. Landry*, 47 ECAB 543 (1996).

<sup>10</sup> *Judy L. Kahn*, 53 ECAB 321, 326 (2002).

<sup>11</sup> *Beverly R. Jones*, 55 ECAB 411, 418 (2004).

<sup>12</sup> *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>13</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 20, 2009 is affirmed.

Issued: August 6, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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