

Appellant first became aware of her claimed condition on January 5, 2009. On the back of the form Tjnya J. Horne, appellant's supervisor, stated that she stopped work on January 2, 2009 and had not returned.

The record was initially supplemented with a December 16, 2009 letter in which the employer controverted appellant's claim, a certification of mailing from appellant to the employer, a January 13, 2009 letter from appellant addressed to a Family and Medical Leave Act (FMLA) coordinator and a position description. Medical evidence submitted included, an attending physician's statement dated May 8, 2007 and a disability note dated February 13, 2009.

In a December 21, 2009 letter, the Office requested that appellant submit additional factual and medical evidence in support of her claim.

The Office received additional documents including: a January 4, 2010 letter from Ms. Horne;¹ appellant's two-page handwritten letter dated January 7, 2010 and addressed to "Civil Rights Division, Public Corruption"; records of two separate telephone calls appellant made to the Office on January 12, 2010; and a copy of appellant's request for or notification of absence dated January 12, 2009.

On January 8, 2010 appellant filed another Form CA-2 for depression, stress and anxiety stating that she was constantly harassed at her home while her doctor had her off work. She claimed that she was subjected to abuse, bullying and intimidation.² Appellant included a January 11, 2010 statement from Ms. Horne, a January 12, 2010 letter in which the employer controverted appellant's claim and appellant's January 12, 2010 letter requesting a copy of her case file. In a January 12, 2010 letter, she asserted that her supervisor constantly ignored her doctor's orders.

In a February 1, 2010 decision, the Office denied appellant's claim on the grounds that she did not establish any compensable employment factors.

LEGAL PRECEDENT

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 an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation

¹ Ms. Horne indicated that appellant had not reported to work since January 2, 2009 and had not submitted any documentation in support of an earlier emotional condition claim. She indicated that appellant had filed numerous grievances and complaints with such organizations as the Equal Employment Opportunity Commission (EEOC) and the Office of Safety and Health Administration (OSHA). Ms. Horne stated that the main contact management had with appellant in the prior year was to forward her notices to "report for investigative interviews and subsequent discipline."

² This claim form was initially developed under a different file number but its documents are now contained in the present file.

Act.³ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.⁴

An employee has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.⁵ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁶

Administrative actions taken by the employer do not bear a direct relation to the work required of the employee. Absent evidence of error or abuse, such administrative functions are not considered employment factors.⁷

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.⁸ 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.⁹

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. The Office denied her emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must initially review whether these alleged incidents and conditions of employment are compensable employment factors under the terms of the Act.¹⁰ The Board notes that appellant's allegations do

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁶ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁷ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon*, 42 ECAB 566 (1991).

⁸ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁹ *Id.*

¹⁰ On appeal, appellant asserted that numerous documents were missing from the record. However, it appears that she is referring to documents from an earlier emotional condition claim she filed which is not the subject of the present claim. On appeal, appellant continued to make general allegations of management's wrongdoing, harassment and discrimination.

not pertain to her regular or specially assigned duties under *Culter*.¹¹ Rather, appellant generally alleged that managers committed error and abuse with respect to administrative matters and that she was subjected to harassment and discrimination.

Appellant generally claimed that the employing establishment engaged in improper disciplinary actions and wrongly handled leave matters, including use of FMLA leave. The Board finds that her allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.¹² Although the handlings of such matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹³ However, the Board has 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.¹⁴ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁵ Appellant did not describe the nature of her claims regarding management's wrongdoing with any specificity. She generally alleged falsification of her work and clock rings in January 2009. The employing establishment denied that it committed error or abuse with respect to administrative matters. Appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with regard to any investigative interviews, discipline or review of her work.¹⁶

Appellant also alleged that harassment and discrimination contributed to her claimed stress-related condition. She generally alleged that she was subjected to harassment, bullying, intimidation, discrimination and trumped up charges.¹⁷ To the extent that disputes and incidents alleged as constituting harassment and discrimination are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors; however, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur.¹⁸ Mere perceptions of harassment or discrimination are not compensable under the Act.¹⁹ In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination.

¹¹ See *supra* note 4.

¹² See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹³ *Id.*

¹⁴ See *supra* note 7.

¹⁵ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁶ The employing establishment indicated that appellant had been off work for about a year and noted that managers had limited contact with her during this period.

¹⁷ Appellant asserted that she was harassed at home while off work on her doctor's orders.

¹⁸ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

Appellant did not described the nature of her claims of harassment or discrimination with any specificity as to time, place, parties involved or the acts taken that she contends were harassment. She filed numerous grievances and complaints regarding matters at work, but the record does not contain any determinations resulting from these matters.²⁰ Appellant has not provided sufficient argument or evidence to establish a compensable employment factor under the Act with respect to her allegations of harassment and discrimination.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act. She has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.²¹

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

²⁰ A claimant must establish a factual basis for his or her allegations of harassment with probative and reliable evidence. *See Lori A. Facey*, 55 ECAB 217 (2004). Grievances and EED complaints by themselves do not establish that harassment or unfair treatment occurred. *See Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

²¹ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 9, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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