

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

G.B., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
ASHEVILLE VETERANS ADMINISTRATION)
MEDICAL CENTER, Ashville, NC, Employer)

**Docket No. 10-1324
Issued: March 8, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 12, 2010 appellant filed a timely appeal from a November 13, 2009 merit decision 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

On July 3, 2007 appellant, then a 49-year-old program support assistant, filed an occupational disease claim alleging that she sustained an emotional condition due to being abruptly removed from her workstation to another clinic. In an attached statement, she noted meeting with management on February 20, 2007 to discuss her performance appraisal. On

Friday, February 23, 2007 Emily Browning, appellant's supervisor, told appellant that she would no longer be working in the minor surgery clinic and to report to the medical clinic on Monday, February 26, 2007. Appellant reported for duty on February 26, 2007 but was sent home due to job-related stress/anxiety. She addressed her medical treatment, the dates she had been unable to work, her various work assignments after February 26, 2007 and described work incidents until her lateral move to the Pharmacy Office in June 2007. Appellant received a letter from Ms. Browning requesting that she explain why she was seen in Target on Monday, March 26, 2007 at 6:42 p.m. after being on sick leave that day. In an April 4, 2007 incident, management sought to locate appellant when she was viewing a mandatory video and on April 12, 2007, upper management pointed appellant out to a woman.

In a May 4, 2007 report, Dr. Melissa K. Zepp, a Board-certified family practitioner, noted that appellant was seen multiple times for general anxiety disorder, the first visit occurring on February 28, 2007. She diagnosed adjustment reaction due to situational stress and general anxiety disorder. Dr. Zepp recommended that appellant change jobs to eliminate her stress and bring her blood pressure down. Medical records submitted indicate appellant was off work for intermittent periods and that she was hospitalized from May 10 to 15, 2007 for mood disorder, panic attacks and anxiety disorder.

The employing establishment controverted the claim and submitted statements from appellant's supervisors. In a February 23, 2007 report, Ms. Browning stated that she told appellant she was being temporarily detailed to the medical clinic and would return to the minor surgery clinic after the vacant GS-6 position in the medical clinic was filled. Appellant told her that she did not want to go, stating that it was not a good time for her, that she could not handle a move right now and that "this would kill her and her nerves could not take it." Ms. Browning explained that it was appellant's turn to be detailed as all the other GS-6's had already been detailed or permanently moved at one time or another. The statements from management indicated that certain actions were taken to assure that appellant was on duty for posting of the time cards and information was requested as necessary to determine the basis for reasonable accommodations. When appellant called in for sick leave on May 8, 2007, she was advised she had no sick leave balance, that the employer was short staffed and that she was to report to work within 59 minutes or be absent without leave (AWOL). She reported to the employee health unit when she got to work. In a July 24 2007 statement, Barbara Szymczyk, a manager, advised that on April 4, 2007 she and appellant's supervisor had to search for appellant, who did not inform her supervisor that she was going to view the mandatory film.

In a July 30, 2007 letter, the Office requested additional factual and medical information from appellant.

The Office received statements from appellant's coworkers regarding her emotional state at work; a letter from Dr. Zepp requested that appellant be moved from her present work environment; and reports from appellant's physicians and the employer's health unit listed various dates appellant was taken off work due to stress-related illness. It received a March 27, 2007 letter from Ms. Browning requesting an explanation as to why appellant was seen on March 26, 2007 at Target at 6:42 p.m. after taking sick leave for the day.

By decision dated February 22, 2008, the Office denied the claim finding that no compensable employment factors were established.

On March 13, 2008 appellant requested an oral hearing. In an August 8, 2008 statement, she asserted that management made false statements regarding her claim. Appellant contested Ms. Browning's statement that the move would kill her and her nerves could not take it. She alleged that she worked in a hostile work environment and was subject to harassment. Appellant highlighted the fact that she was asked to explain why she was at Target on a day she was on approved sick leave. She stated that her tour of duty was from 8:30 to 5:00 p.m. and she was on approved sick leave that day. Appellant alleged that, during an April 16, 2007 mediation, Ms. Browning gave her the letter as a retaliation to her calling in sick. She stated that the mediation meeting was then stopped.

Appellant's union addressed incidents in which the employing establishment was trying to locate her whereabouts. A June 8, 2007 e-mail indicates that Ms. Browning was transferring from appellant's section and management was not aware that she would be returning to her former position. During the February 20, 2007 meeting concerning appellant's performance appraisal, she was asked whether she wanted to move to another clinic. Both appellant and the union representative noted she responded "no" and "I don't want to be moved." She stated that when Ms. Browning told her on Friday, February 23, 2007 that she would be transferred on Monday, she stated that she would resign on Monday.

By decision dated September 9, 2008, an Office hearing representative found that appellant did not establish any compensable employment factors and affirmed the February 22, 2008 decision.

On August 28 and September 1, 2009 appellant requested reconsideration. She contended that management provided false statements and that Ms. Browning returned to her previous position on June 10, 2007 before she filed her claim the other managers in her section were either removed or given the opportunity to seek employment outside the employing establishment. Appellant stated that two other GS-6 clerks that worked with her in the minor surgery clinic were asked to detail into another clinic. They both indicated that she should not be removed from the minor surgery clinic and that they would go. Appellant submitted copies of e-mails concerning her performance rating; e-mails from one of the urologists and nursing staff working in the clinic that requested appellant not be transferred, a response from management indicating that there was a clerk staffing shortage and that they were trying to provide coverage at all clinics until there was authorization to fill vacancies.

By decision dated November 13, 2009, the Office denied modification of its September 9, 2008 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.¹

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.² 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.³

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.⁴ 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.⁵ 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.⁶

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.⁷ Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and

¹ *D.L.*, 58 ECAB 217 (2006).

² *Ronald J. Jablanski*, 56 ECAB 616 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

³ *Id.*

⁴ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

⁵ See *William H. Fortner*, 49 ECAB 324 (1998).

⁶ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁷ *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).

reliable evidence.⁸ 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.⁹

ANALYSIS

Appellant attributed her condition to being detailed from her workstation at the surgery clinic to the medical clinic. She also generally alleged harassment and a hostile work environment. The Board must review whether these alleged incidents and conditions of employment are compensable employment factors under the terms of the Act. Appellant has not attributed her emotional condition to the regular or specially assigned duties of her position as a program support assistant. Therefore, she has not alleged a compensable factor under *Cutler*.¹⁰

Appellant attributed her emotional condition to administrative and personnel actions taken by management. As noted, administrative and personnel matters are not covered under the Act absent evidence which demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities.¹¹ Appellant alleged that she was transferred from her workstation in the minor surgery clinic to the medical clinic. When asked during a February 20, 2007 meeting concerning her performance appraisal if she would like to transfer to another clinic, she advised that she wanted to stay in her current position. When appellant was told on February 23, 2007 that her transfer to the medical clinic would be effective February 26, 2007, she again expressed her desire to stay in her current position. While she stated that she would resign on February 26, 2007, she went to work before leaving due to stress-related illness. Appellant's detail is not a compensable factor of employment absent a showing of error or abuse. It did not involve her ability to perform her regular or specially assigned work duties but rather constitutes her desire to remain in a specific work location.¹² While appellant did not like the employer's decision to detail her from her current position, the record does not establish that management acted erroneously in this administrative matter. The employing establishment advised that the transfer of clinics was temporary until a vacant GS-6 position could be filled. The transfer was routine and all other GS-6 employees had performed similar details. The evidence of record supports that there was a clerk shortage at the clinics of the employing establishment. While appellant presented evidence that the medical staff at the minor surgery clinic opposed her transfer, this does not establish error or abuse by the employer. The Board finds that this matter does not rise to the level of a compensable work factor as the

⁸ *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).

⁹ *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

¹⁰ *Supra* note 3.

¹¹ *Kim Nguyen*, 53 ECAB 127 (2001).

¹² *Hasty P. Foreman*, 54 ECAB 427 (2003).

evidence does not show that the employing establishment acted unreasonably and the employer provided evidence explaining the reasons for its actions.

Appellant also disputed her performance appraisal rating. Although the handling of evaluations is generally related to the employment, it is an administrative function of the employer and not a duty of the employee. An administrative or personnel matter will be considered to be an employment factor only where the evidence discloses error or abuse on the part of the employing establishment.¹³ Appellant has not submitted evidence showing that the employer's rating of her performance was unreasonable. This allegation does not rise to the level of a compensable employment factor.

Appellant further alleged that she was harassed about her use of sick leave when the employer sent a March 27, 2007 letter of inquiry regarding why she was at Target at 6:42 p.m. on March 26, 2007 after being on approved sick leave that day; however, the Board notes that matters related to the use of leave are generally not considered compensable factors of employment as they are administrative functions of the employer and not duties of the employee.¹⁴ She has not established error on the part of her supervisor to inquire as to her use of sick leave on the day in question.

Appellant also alleged that she was monitored by the employer at work.¹⁵ She stated that on April 4, 2007, the employer sought to locate her while she was viewing a mandatory video. However, in a July 24 2007 statement, Ms. Szymczyk explained that it became necessary to look for appellant because she did not inform her supervisor that she was going to view the video. The Board finds that the employer explained the reason why it inquired as to appellant's whereabouts at work. Appellant has not submitted evidence showing that the employer acted unreasonably in this administrative matter.

Consequently, there is no evidence to show that the employing establishment erred or was unreasonably in the administrative matters that appellant asserted were harassment. The employing establishment either explained its reasons for its administrative actions or appellant provided insufficient evidence to establish any particular action represented error or abuse.

Appellant generally alleged harassment or discrimination on the part of the employer. As noted, 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.¹⁶ Appellant did not sufficiently substantiate any allegations of harassment or discrimination by the employer. She, therefore, did not establish harassment or discrimination on the part of the employing establishment.

¹³ C.S., 58 ECAB 137 (2006).

¹⁴ C.T., 60 ECAB ___ (Docket No. 08-2160, issued May 7, 2009).

¹⁵ V.W., 58 ECAB 428 (2007) (the monitoring of work activities is an administrative functions of the employer and not a duty of the employee).

¹⁶ *Supra* note 9.

Since appellant has not established a compensable employment factor, it is not necessary for the Board to address the medical evidence.¹⁷

On appeal, appellant stated that she was medically retired in April 2008 and her emotional condition was caused by management's conduct from February 26 to June 1, 2007. As noted, the evidence submitted does not establish error or abuse by her managers. Appellant has not established a compensable employment factor with regard to these administrative matters or her allegation of harassment.

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.

ORDER

IT IS HEREBY ORDERED THAT the November 13, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 8, 2011
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

¹⁷ *Garry M. Carlo*, 47 ECAB 299 (1996). See *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).