



No. xxxxxx519. Several coworkers stated that appellant did not belong in the urology department so she was transferred to the eye clinic and she felt as though she did not belong there either. Appellant asserted that she worked hard wherever she was assigned. She no longer had access to rooms and supplies that she once had or involved in meetings in her prior department or the eye clinic. Appellant did not stop work.

On April 30, 2009 the Office asked appellant and the employing establishment to provide additional evidence.

Appellant submitted a May 12, 2009 note from Dr. Russ Temme, a Board-certified psychiatrist, who excused her from work until May 18, 2009 due to an illness and treatment. Reports from Dr. Herbert C. Roehrich, a Board-certified psychiatrist, dated June 1 to July 28, 2009 noted that appellant was treated for stress from February 10 to 12, 2009 and from May 5 to 12, 2009. Appellant submitted treatment notes for her admission on these dates and copies of her prescription bottles.

In a May 14, 2009 letter, Kris Stephens, a supervisor, informed appellant that she had been absent from her position for the prior two weeks, had not returned to work or requested leave and had not provided medical documentation in support of her absence. She advised appellant that she was considered absent without leave (AWOL) and directed her to return to work on her next regularly scheduled shift or to request leave and provide valid medical documentation to support her continued absence. If appellant provided valid medical documentation in a timely manner, her AWOL would be converted to approve leave without pay. She noted on the bottom of the letter "hostile work environment continues my stress and depression." Appellant submitted copies of her work schedule from April 26 to June 6, 2009.

The employing establishment submitted a June 18, 2009 statement from Darla Johnson, a workers' compensation specialist, responding to appellant's allegations. Ms. Johnson noted that appellant filed a traumatic injury claim, File No. xxxxxx519, and was off of work for an extended period. While that claim was developed, appellant was not compensated and she alleged this caused stress. Her claim was subsequently accepted and she was paid for lost wages. Regarding appellant's allegation that she was treated unfairly due to her workers' compensation claim, Ms. Johnson contended that there was no evidence of this as appellant provided no witness statements to corroborate her allegations nor was the employer aware of any witnesses to unfair treatment. In response to appellant's assertion of stress from not working in the department for which she was hired, Ms. Johnson advised that appellant was presently not working in her permanent assigned work area due to accommodating her temporary physical limitations under claim File No. xxxxxx519. With regards to appellant's statement that she had always been a hard worker, she noted that no one questioned appellant's work ethic. As to whether appellant no longer had access to rooms or supplies, Ms. Johnson stated that appellant was not issued keys to the eye clinic rooms or supply closets because only permanently assigned employees were issued keys to those areas. As to whether she was involved in meetings in her former department or at the eye clinic, appellant was not required to attend meetings due to her temporary status as only permanent employees were required to attend. Appellant was only temporarily assigned to work in that area. As to whether she was involved in meetings in her former department or at the eye clinic, appellant was not required to attend meetings due to her temporary status as only permanent employees were required to attend.

In a decision dated August 5, 2009, the Office denied appellant's claim finding that the claimed emotional condition did not arise in the performance of duty.

On August 13, 2009 appellant requested a telephonic oral hearing which was held on November 4, 2009. She submitted reports from Dr. Roehrich dated July 22 to August 19, 2009 for treatment of stress which developed after she returned to work following an injury. It was noted that appellant transferred to another department. At the hearing, appellant testified that she felt underutilized in her temporary reassignment and that her coworkers had "an attitude."

In a December 29, 2009 decision, an Office hearing representative affirmed the August 5, 2009 decision. She found that appellant failed to establish any compensable employment factor.

### **LEGAL PRECEDENT**

To establish an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he or 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.<sup>1</sup>

Workers' compensation law does not apply to each and every 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 concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>2</sup> 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>3</sup>

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 the physician when providing an opinion on causal relationship and, which working conditions are not deemed factors of employment and may not be considered.<sup>4</sup> 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 the

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<sup>1</sup> *George H. Clark*, 56 ECAB 162 (2004).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *See Lillian Cutler*, 28 ECAB 126 (1976).

<sup>4</sup> *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

matter establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>5</sup>

### ANALYSIS

Appellant alleged an emotional condition as a result of being harassed, unfair treatment and being transferred to another department. The Board must thus, initially 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 health technician. Therefore, she has not alleged a compensable factor under *Cutler*.<sup>6</sup>

Appellant made several allegations related to administrative and personnel actions. In *Thomas D. McEuen*,<sup>7</sup> the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment are not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board held, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employer in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment related. In determining whether the employer erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>8</sup>

Appellant alleged that she was not working in the department in which she was hired but was transferred from urology to the eye clinic to accommodate her restrictions under a separate workers' compensation claim. She alleged that coworkers stated that she did not belong in the urology department so she was transferred to the eye clinic where she also felt she did not belong. Matters relating to transfers and staffing assignments are administrative functions that are not compensable factors of employment under the Act. Absent error or abuse, as they do not involve the employee's ability to perform her regular or specially assigned work duties but rather constitute her desire to work in a different position or location.<sup>9</sup> The Board notes that matters related to the processing of compensation claims bear no relation to day-to-day or specially assigned duties and are an administrative function of the employer and not a duty of the employee.<sup>10</sup> Appellant has not established a compensable factor of employment in these matters. Ms. Johnson explained that appellant was not working in her permanent assigned work area as the employer was accommodating her temporary physical limitations due to an accepted injury in claim File No. xxxxxx519. The employer provided a reasonable explanation regarding

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<sup>5</sup> *Id.*

<sup>6</sup> *See supra* note 3.

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

<sup>8</sup> *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>9</sup> *Id.*; *see also Peter D. Butt, Jr.*, 56 ECAB 117 (2004).

<sup>10</sup> *David C. Lindsey, Jr.*, 56 ECAB 268 (2005).

appellant's temporary work assignment. Appellant presented insufficient evidence to establish that her employer acted unreasonably with regards to her transfer and the work assignments made to accommodate her work restrictions.

Appellant alleged that she no longer had access to certain rooms and supplies or was involved in meetings at her prior department or the eye clinic. The assignment of work is an administrative function.<sup>11</sup> The manner in which a supervisor exercises his or her discretion falls outside the ambit of the Act. Absent evidence of error or abuse, appellant's mere disagreement or dislike of a managerial action is not compensable.<sup>12</sup> The Board finds that she did not present sufficient evidence to establish error or abuse regarding her work assignments. The evidence does not establish that the employing establishment acted unreasonably. Ms. Johnson explained that appellant was not issued keys to the eye clinic rooms or supply closets because these were reserved for permanent employees and appellant was on a temporary assignment. She also noted that appellant was not required to attend meetings as only permanent employees were so required. There is no evidence to substantiate that the employer acted unreasonably in these matters. Appellant has not established administrative error or abuse in these matters and her allegations are not compensable under the Act.

Appellant generally asserted that she was a hard worker and felt stress from being underutilized. As noted, the manner in which a supervisor performs duties as a supervisor or the manner in which a supervisor exercises supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act. The Board has also held that an employee's dissatisfaction with holding a position in which she feels underutilized or holding a position which she feels to be unchallenging or uninteresting is not compensable but constitutes frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>13</sup> As noted, appellant did not submit evidence to establish that the employer acted unreasonably.

The May 14, 2009 letter from Ms. Stephens, a supervisor, advised appellant that she would be considered AWOL unless she provided medical documentation of her disability for work. Appellant cited this as evidence of a hostile work environment. The Board has held that matters regarding 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.<sup>14</sup> This allegation is unrelated to appellant's regular or specially assigned work duties. The letter of Ms. Stephens does not establish error on the part of the employer in advising appellant of the deficiency in medical documentation to support her absence from work. Appellant did not establish a compensable work factor in this matter.

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<sup>11</sup> *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

<sup>12</sup> *See Barbara J. Latham*, 53 ECAB 316 (2002); *see also Peter D. Butt, Jr.*, *supra* note 9 (allegations such as improperly assigned work duties, which relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties do not fall within the coverage of the Act).

<sup>13</sup> *Peter D. Butt, Jr.*, *id.*

<sup>14</sup> *C.T.*, Docket No. 08-2160 (issued May 7, 2009).

Appellant generally alleged that she was treated unfairly and harassed by management and co-workers. To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.<sup>15</sup> However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.<sup>16</sup> The factual evidence fails to support appellant's allegations. The record does not document that she was harassed. Appellant cited no specific instances of harassment occurring at a particular time, place or manner rather she made general allegations. The Board finds that the evidence is insufficient to establish that she was harassed by her supervisor or coworkers. Consequently, appellant has not established her claim for an emotional condition.<sup>17</sup>

### CONCLUSION

The Board finds that appellant did not sustain an emotional condition in the performance of duty.

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<sup>15</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>16</sup> *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence); *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>17</sup> As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 29, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 24, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

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

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