

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

C.P., Appellant)

and)

DEPARTMENT OF THE ARMY,)
FORT McCOY, WI, Employer)

**Docket No. 10-2068
Issued: May 12, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 10, 2010 appellant filed a timely appeal from a July 15, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established an emotional condition causally related to compensable work factors.

FACTUAL HISTORY

On June 7, 2010 appellant, then a 53-year-old military pay technician, filed an occupational claim (Form CA-2) alleging she suffered stress causally related to her federal employment. She reported the date of injury as October 30, 2009, stating the "nature of work"

¹ 5 U.S.C. § 8101 *et seq.*

caused many incidents of stress and a “work environment incident caused stress reaction (suicide attempt).” Appellant stopped work as of May 23, 2010.

By letter dated June 11, 2010, the Office requested that appellant submit additional evidence regarding her claim. On June 21, 2010 it received medical evidence from Dr. George Melnyk, a psychiatrist, who diagnosed depressive disorder and post-traumatic stress disorder (PTSD). In a report dated April 28, 2010, Dr. Melnyk stated that appellant had been under his care since December 2007 and her condition rapidly deteriorated on or about November 1, 2009. Appellant also submitted treatment notes from a social worker.

In a June 7, 2010 statement, appellant noted that on June 12, 2001 she had a severe anxiety attack due to periodic harassment by Timothy Leonard, a coworker. On October 24, 2005 she received a reprimand for a data input error. Thereafter, appellant’s input was then closely monitored, causing anxiety attacks. She alleged that in July 2008 a coworker started working and she was soon subjected to and criticized about her work performance, and in August 2009 this coworker was discharged, causing appellant anxiety. On October 29, 2009 appellant had a performance appraisal and later that day her supervisor told her that “maybe this was the wrong job” for her. On October 30, 2009 she stated that she left copies of her daily reports with her supervisor, who told her that if she had read her e-mails she would know the supervisor had already copied them. Appellant also referred to a 1989 sexual assault that occurred before she began work at the employing establishment in 1995.

In a letter dated December 4, 2009, Jacqueline M. Smith, the employing establishment chief of the pay branch, noted that a December 2, 2009 meeting was held with appellant regarding her performance and related concerns. She noted that appellant’s supervisor did not recall making a statement that “maybe this [is not] the right job” for appellant, that her overall performance rating was successful and no adverse action regarding performance was being pursued.

By letter dated June 25, 2010, Ms. Smith stated that there was a 2001 incident where appellant threatened physical harm to Mr. Leonard because she believed he was harassing her. Management determined that Mr. Leonard was not a threat to appellant or anyone in the organization, and he was cleared of any allegation of harassment; but due to her perceptions, she agreed to move to another work area. With respect to the coworker’s departure, Ms. Smith stated that the reasons were not divulged and the coworker’s performance had no bearing on appellant’s performance. She reiterated that appellant received satisfactory annual performance ratings. Appellant had been absent without leave since May 23, 2010.

In a decision dated July 15, 2010, the Office denied the claim for compensation. It found that appellant had not substantiated a compensable work factor.

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.² 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.³

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 Act.⁴

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.⁵ 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.⁶

ANALYSIS

Appellant alleged that she sustained an emotional condition causally related to her federal employment. The initial question is whether she substantiated a compensable work factor with respect to her claim. If appellant has, then the medical evidence is examined to determine if causal relationship is established between a diagnosed condition and the compensable work factors. If she has not established a compensable work factor, then she has not met her burden of proof and the Board does not consider the medical issue.⁷

The Board notes initially that appellant has not attributed her condition to the actual performance of her regular or specially assigned duties under *Cutler*. The allegation briefly noted on the claim form was the "nature of work" without further explanation.

Appellant stated that in 2005 she was reprimanded for an input error and her work was subsequently monitored. Although the handling of disciplinary actions and leave requests, the

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

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

⁵ *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

⁶ *Margreat Lublin*, 44 ECAB 945, 956 (1993); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁷ *See C.S.*, 58 ECAB 137 (2006).

assignment of work duties and the monitoring of work activities are generally related to the employment, they are administrative functions of the employing establishment and not duties of the employee.⁸ As an administrative matter, appellant must establish error or abuse by the employing establishment to establish a compensable work factor. No evidence was submitted supporting a finding of error or abuse. The Board finds that appellant has not established a compensable work factor with regards to this allegation.

According to appellant another source of anxiety was the criticism of the work performance of a coworker in 2008 and the subsequent dismissal of the coworker in 2009. It is not entirely clear from her brief statement how the anxiety arose. To the extent that appellant is alleging she feared that her own performance would result in similar criticism and dismissal, this does not constitute a compensable work factor. The employing establishment noted that her performance was rated as satisfactory and no adverse action was pending. Appellant's own perception of what the employing establishment might do does not establish a compensable work factor.⁹ To the extent that she alleged a reaction out of concern for the coworker, this does not relate to the performance of her job duties. No compensable work factor is established regarding this allegation.

There are specific allegations with respect to October 29 and 30, 2009. Appellant alleged that on October 29, 2009 she had a performance appraisal and was later told that maybe she had the wrong job. The performance appraisal is an administrative action.¹⁰ No evidence of error or abuse was presented. The statements from Ms. Smith, who attended the meetings, did not corroborate appellant's allegation as to her supervisor's comment. Even on its face, the alleged statement would not rise to the level of verbal abuse.¹¹ As to October 30, 2009, appellant's allegation was only that her supervisor informed her if she had read her emails, she would know that the supervisor already had copies of the daily reports. No evidence of error or abuse was submitted.

In a June 7, 2010 statement, appellant referred to incidents at work that caused her anxiety. She asserted that in 2001 she was subject to periodic harassment from Mr. Leonard, a coworker. Appellant did not describe any specific incidents. The actions of a coworker which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.¹² An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.¹³ In this case, the record does not contain probative and reliable

⁸ *J.C.*, 58 ECAB 594 (2007).

⁹ The reason for requiring factual evidence from the claimant is to establish a factual basis for the contentions made, as opposed to the perceptions of the claimant. *See C.S.*, 58 ECAB 137, 142 (2006).

¹⁰ *Id.*

¹¹ Not every statement made in the workplace, even those that may make a claimant uncomfortable or feel offended, will give rise to coverage under the Act. *V.W.*, 58 ECAB 428 (2007).

¹² *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

¹³ *Helen P. Allen*, 47 ECAB 141 (1995).

evidence of harassment. Ms. Smith stated that the matter was investigated and Mr. Leonard was not found to have harassed appellant. Appellant did not provide any specific allegations or supporting evidence. The Board finds no compensable work factor with respect to this allegation.

The Board accordingly finds that appellant did not substantiate any compensable work factor. Appellant did not meet her burden of proof and the Office properly denied the claim for compensation.

On appeal, appellant reiterated that she was subject to verbal abuse, and both supervisors and coworkers made comments that were rude, unprofessional and inappropriate. As noted, she did not provide a detailed statement with respect to any specific comments from supervisors or coworkers. The allegations raised before the Office were not accompanied by any probative and reliable evidence that would establish a compensable work factor.¹⁴

CONCLUSION

The Board finds that appellant did not establish an emotional condition causally related to compensable work factors.

¹⁴ The jurisdiction of the Board is limited to evidence that was before the Office at the time of the final decision on appeal. 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 15, 2010 is affirmed.

Issued: May 12, 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