United States Department of Labor
Employees' Compensation Appeals Board

K.B., Appellant	)	
and	)	**Docket No. 06-1734**
	)	**Issued: November 16, 2006**
DEPARTMENT OF THE AIR FORCE, EGLIN AIR FORCE BASE, FL, Employer	)	

Appearances:
William Hackney, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 24, 2006 appellant filed a timely appeal from the July 13, 2006 Office of Workers' Compensation Programs' merit decision denying her claim for an emotional condition. 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 in establishing that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On February 23, 2006 appellant, then a 39-year-old environmental engineer, filed an occupational disease claim alleging that she developed anxiety, depression and alcoholism due to her work environment. Appellant stopped work on May 17, 2005 and was removed from employment on November 1, 2005 due to poor performance.

By letter dated March 1, 2006, the Office advised appellant of the factual and medical evidence needed to establish her claim. It requested that she submit additional factual and medical information, including a detailed description of the employment factors or incidents that she believed contributed to her claimed illness. By a letter of the same date, the Office requested that the employing establishment address appellant's allegations and provide a copy of her position description and the physical requirements of the position.

Appellant submitted statements dated October 12, 2005 to March 7, 2006, alleging that she was harassed and discriminated against by Daniel Robeen, her supervisor, and Thomas Paris, her director. She was required to participate in agency sponsored functions where alcohol was available, which caused her depression, anxiety and alcoholism. Appellant was required to attend functions where alcohol was available during work hours including "director's calls," canoe trips sponsored by Mr. Paris, Thanksgiving and Christmas pot luck parties, parties at her supervisor's house during work hours, company picnics and meetings at Hooters restaurant. She alleged discrimination as she was one of the few females on the engineering team and felt uncomfortable confronting the men in her unit regarding her concerns. Appellant's work duties included assisting a coworker, Dawn Aymami, move in with Mr. Robeen and being required to arrange a baby shower for Ms. Aymami and having to pay for the lunches of Mr. Robeen and Ms. Aymami.[1] She alleged that she was harassed by coworkers when she spoke out about alcohol consumption during work hours. Appellant alleged that she was monitored by Mr. Robeen, who told her that she was under a "microscope or spotlight." In a May 17, 2005 report, Dr. Patricia Harrison, a Board-certified psychiatrist, noted treating appellant for work-related anxiety and diagnosed bipolar disorder and alcoholism. A May 19, 2005 report from Dr. Edward W. Chandler, a licensed clinical psychologist, noted treating appellant for panic attacks, severe depression and alcoholism.

The employing establishment submitted calendar entries and notes from Mr. Robeen dated February 5, 2004 to February 11, 2005. He noted that he made extensive corrections to appellant's work and that she failed to sign out of the office on a number of occasions. Mr. Robeen submitted performance evaluations from February 6, 2004 to March 29, 2005, which indicated that appellant did not properly notify management of her absences, there was inappropriate use of government telephones and untimely processing of reports and permits. In a memorandum dated October 6, 2004, Mr. Robeen issued appellant an opportunity to improve notice and provided her 90 days to demonstrate acceptable performance. In a memorandum dated October 6, 2004, Mr. Robeen informed appellant that he was concerned with her frequent unscheduled absences from duty and tardiness in reporting for duty which were adversely affecting the organization's mission and he set forth the proper leave request procedures. In a memorandum dated February 16, 2005, Mr. Robeen provided appellant with an extension of 60 extra days to demonstrate an acceptable level of performance. In an appraisal dated April 4, 2005, Mr. Robeen noted that appellant showed some improvement and he extended the performance improvement plan by 60 days. In a memorandum dated July 15, 2005, Mr. Robeen proposed to remove appellant for unacceptable performance. In a notification of personnel action dated November 7, 2005, appellant was removed from her job. In a statement dated May 9, 2006, Mr. Robeen indicated that he had counseled appellant verbally and in writing for

[1] The record indicates that Mr. Robeen and Ms. Aymami were married in November 2001.

poor performance. He held weekly counseling sessions to review her performance and provided quarterly feedback, which described areas for improvement. Mr. Robeen never asked appellant or anyone else to help. He stated that the whole office volunteered to help Ms. Aymami move on a Saturday morning. Mr. Robeen advised that the baby shower for Ms. Aymami was a voluntary event and that no one was forced or coerced into participating in any social activities. He noted that Ms. Aymami and appellant were close friends.

In a May 6, 2005 statement, Mr. Paris stated that no alcohol was provided at the "director calls" and weekly staff meetings. He indicated that the unit did sponsor a yearly canoe trip for a sanctioned team building exercise and a Christmas party; however, alcoholic beverages were not provided by the employing establishment. Rather, some attendees brought alcohol for themselves. He indicated that his branch did sponsor a Thanksgiving dinner and appellant provided the vodka punch without his approval or knowledge. Mr. Paris contended that appellant's alcohol problem was not caused by her employment.

In a statement dated October 12, 2005, John Wolfe, a coworker, indicated that his section went to Hooters Restaurant only once for lunch and it was strictly voluntary and no alcoholic beverages were consumed. He noted that the office held a holiday open house where everyone was asked to bring a dish and all the coworkers brought food except for appellant who brought vodka punch. Statements from Karen Winnie, Natalie Reeber and Katherine Sculthorpe, coworkers, dated April 20 and May 5, 2006, indicated that drinking during duty hours and at the "director's calls" meetings was not permitted. They stated that, after team building activities, alcohol could be consumed, but participation in these events was strictly voluntary and there was never pressure to consume alcohol. They disputed appellant's allegation that women were not treated as professionals and were not given proper consideration. They advised that the workforce was 50 percent women between the civil service and contractor employees and the atmosphere of the organization was professional and conducive to career advancement. Although the majority of their coworkers were male, they never felt excluded from business meetings or discussions based on gender. They indicated that appellant was frequently absent from work. Other statements from Thomas Chavers, Cynthia Carreiro, Ailie Csaszar and Robert Stippich, coworkers, dated May 2 to 8, 2006, indicated that management promoted social events during lunch hours and alcoholic and nonalcoholic beverages were provided by individuals in the group who pooled their money to purchase beverages. They were never pressured to consume alcohol during the events and the events were rarely mandatory. In a statement dated May 9, 2006, Ms. Aymami noted that she and appellant became friends. She stated that alcohol was not provided by the employing establishment at the workplace, "director's calls" or team building events, but noted that those who desired alcohol purchased their own. Ms. Aymami indicated that there were three males and two females in their unit and she never felt excluded because of her gender. With regard to Ms. Aymami's baby shower, appellant offered to organize the event at a local restaurant and the event was paid for by the entire group of participants. Ms. Aymami noted that appellant was not required to participate in the social activities committee but volunteered to be a member.

In a statement dated May 12, 2006, Debbie Clerk, chief of workforce effectiveness, indicated that the vast majority of the office functions including "director's calls," off-sites and wingman days were team building events held during work hours and did not include alcohol; however, those who chose to consume alcohol would purchase their own. Appellant regularly

consumed alcohol at these events. Ms. Clark indicated that the group had lunch at Hooters restaurant three or four times in five years and no alcohol was consumed. She indicated that appellant was frequently absent from work. Ms. Clark advised that Mr. Robeen tried unsuccessfully to help appellant by providing her with verbal and written counseling for her poor performance and approved all of her leave requests, including 243 hours of advanced sick leave. Ms. Clark indicated that at no time did appellant indicate to Mr. Robeen that she was alienated because of her gender or that she was depressed due to her work environment.

In a July 13, 2006 decision, the Office denied appellant's claim finding that the claimed emotional condition did not occur in the performance of duty.

LEGAL PRECEDENT

To establish her claim that she sustained an emotional condition in the performance of duty, appellant 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 her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.[2]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,[3] the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.[4] 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 under the Act.[5] When an employee experiences emotional stress in carrying out her employment duties and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of an in the course of employment. This is true when the employee's disability results from her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of her work.[6] 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 under the Act. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.

[2] *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[3] 28 ECAB 125 (1976).

[4] 5 U.S.C. §§ 8101-8193.

[5] *See Anthony A. Zarcone,* 44 ECAB 751, 754-55 (1993).

[6] *Lillian Cutler, supra* note 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.[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 was harassed and discriminated by Mr. Robeen and Mr. Paris in that she was required to attend agency sponsored functions where alcohol was available, which caused her depression, anxiety and alcoholism. She identified "director's calls," canoe trips sponsored by Mr. Paris, Thanksgiving and Christmas pot luck parties, parties at her supervisor's house during work hours, company picnics and meetings at Hooters restaurant. She also alleged that she was harassed and discriminated against by coworkers when she spoke out about the alcohol consumption during work hours. To the extent that incidents alleged as constituting harassment by supervisor's and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[10] 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.[11]

Appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by Mr. Robeen, Mr. Paris or her coworkers. She alleged that her supervisors and coworkers made statements and engaged in actions, which she believed constituted harassment. She provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred. Rather, the evidence supports that alcohol was not provided by the employing establishment and alcohol consumption was not encouraged by management. In a May 6, 2005 statement, Mr. Paris

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

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

[9] *Id.*

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

[11] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991). *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).

indicated that no alcohol was provided at the "director's calls" and weekly staff meetings. He advised that the unit sponsored a yearly canoe trip as a sanctioned team building exercise and some attendees brought alcohol and others refrained from drinking. Mr. Paris indicated that his branch sponsored a Thanksgiving dinner and appellant brought vodka punch without his approval or knowledge. Mr. Wolfe, a coworker, indicated that his section went to Hooters restaurant once for lunch and it was strictly voluntary and no alcoholic beverages were consumed. He indicated that the office held a holiday open house where everyone was asked to bring a dish and all the coworkers brought food except for appellant who brought vodka punch. Statements from Ms. Winnie, Ms. Reeber and Ms. Sculthorpe, coworkers, advised that drinking during duty hours and at the "director's calls" meetings was not permitted. They indicated that after team building activities alcohol could be consumed, but participation in these events was strictly voluntary and there was never pressure to consume alcohol. Other statements from Mr. Chavers, Ms. Carreiro, Mr. Csaszar and Mr. Stippich, also coworkers, noted that management promoted social events during lunch hours and alcoholic and nonalcoholic beverages were provided by individuals in the group who pooled their money to purchase beverages. They advised that employees were never pressured to consume alcohol during the events and the events were not mandatory. Ms. Aymami, a coworker, indicated that alcohol consumption was not provided or encouraged by the employing establishment at the workplace, "director's calls" or team building events, but those who desired alcohol could purchase their own. A statement from Ms. Clark, chief of the workforce effectiveness, indicated that the vast majority of the office functions including "director's calls," off-sites and wingman days were team building events held during work hours and did not include alcohol. She advised that the group had lunch at Hooters restaurant three or four times in five years and no alcohol was consumed. The factual evidence fails to support appellant's claim that she was harassed by her supervisors or her coworkers.[12] Thus, she has not established a compensable employment factor with respect to these allegations.

Appellant also alleged that she was discriminated against because she was one of the only females on the engineering team and felt uncomfortable confronting the men in her unit. However, she did not cite any specific examples of discrimination and the evidence of record, fails to support her contention that she was discriminated against because of her gender. Statements from Ms. Winnie, Ms. Reeber and Ms. Sculthorpe refuted appellant's claims that women were not treated as professionals and were not given proper consideration. They advised that the workforce was 50 percent women between the civil service and contractor employees and the atmosphere of the organization was professional and conducive to career advancement. They noted that they were not excluded from business meetings or discussions based on their gender. Ms. Aymami also indicated that there were three males and two females in their unit and she never felt excluded because of her gender. These statements fail to support any discrimination based on gender as alleged. The Board finds that appellant has failed to submit probative and reliable evidence to establish that her supervisors and coworkers discriminated

[12] *See Michael A. Deas*, 53 ECAB 208 (2001).

against her because of her gender. General allegations of harassment and discrimination are not sufficient[13] and in this case appellant has not submitted sufficient evidence to establish disparate treatment by her supervisor and coworkers.[14]

Appellant also alleged that she was harassed by coworkers when she spoke out about the alcohol consumption during work hours. In this case, appellant did not submit evidence or witness statements in support of her allegation and there is no evidence in the record to support such a contention. As noted general allegations of harassment are not sufficient and in this case appellant has not submitted sufficient evidence to establish disparate treatment by her supervisor and coworkers. Although she alleged that her coworkers engaged in actions which she believed constituted harassment, she provided no evidence to establish her allegations. The employing established submitted statements refuting her allegations. Appellant has not established a compensable employment factor with respect to the claimed harassment.

Other allegations by appellant regarding her work assignments relate to administrative or personnel actions. In *Thomas D. McEuen*,[15] the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is 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 noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[16]

Appellant alleged that her supervisors monitored her and indicated that she was under a "microscope or spotlight." Although the monitoring of activities at work is generally related to the employment, it is an administrative function of the employer and not a duty of the employee.[17] The employing establishment has either denied these allegations or contended that it acted reasonably in these administrative matters. Appellant has presented no evidence to support that the employing establishment erred or acted abusively with regard to these allegations. Mr. Robeen explained that appellant's job performance had declined and indicated that he monitored her work and provided regular counseling sessions in an effort to improve her job performance. The Board finds that the evidence does not show that the employing establishment acted unreasonably in its effort to monitor appellant's work as a way of improving her job performance.

[13] *See Paul Trotman-Hall,* 45 ECAB 229 (1993).

[14] *See Joel Parker, Sr., supra* note 11.

[15] *See Thomas D. McEuen, supra* note 7.

[16] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[17] *See Dennis J. Balogh*, 52 ECAB 232 (2001); *see also John Polito*, 50 ECAB 347 (1999).

Appellant also alleged that her condition was caused by incidents that included assisting Ms. Aymami to move in with Mr. Robeen, being required to arrange a baby shower and paying for the supervisor and coworkers' lunches. However, it is not established that these activities were assigned work duties[18] or that they otherwise were in the course of appellant's employment.[19] Rather, the evidence shows that appellant voluntarily participated in these activities. In a statement dated May 9, 2006, Ms. Aymami noted that appellant was a friend and had offered to organize a baby shower for her at a local restaurant. The event was paid for by the entire group of participants. Mr. Robeen, noted that appellant and Ms. Aymami were close friends and that appellant voluntarily agreed to help with the move and organize the baby shower. He noted that no one was forced or coerced into performing such activities. The coworker statements do not support that Mr. Robeen or others at the employing establishment forced or coerced appellant's participation in these activities. The Board finds that these activities are not established as involving appellant's regular or specially assigned work duties. Appellant has presented no corroborating evidence to support that the employing establishment acted unreasonably. She has not established a compensable factor of employment in this regard.

For these reasons, appellant has not met her burden of proof in establishing her claim for an emotional condition.

CONCLUSION

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.[20]

[18] *Donney T. Drennon-Gala*, 56 ECAB ___ (Docket No. 04-2190, issued April 26, 2005) (the assignment of work is an administrative matter).

[19] If viewed as social activities, the Board notes that the evidence does not indicate that these matters were within the course of employment as they did not occur as a regular incident of the employment, there was no express or implied requirement of participation and the employer did not derive substantial direct benefit from the activity. *See Ricky A. Paylor*, 57 ECAB ___ (Docket No. 05-1881, issued May 11, 2006); *Steven F. Jacobs*, 55 ECAB ___ (Docket No. 03-2251, issued January 14, 2004).

[20] 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 July 13, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 16, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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