



In an undated statement, appellant alleged that she encountered unjust prejudicial negative situations directed at her by a supervisor and a coworker. Appellant alleged that on December 20, 1999 Sergeant Nickelberry, her supervisor, reprimanded her for holding up the post rotations when she relieved another officer late for lunch. She alleged that on December 22, 1999 Sergeant Nickelberry called her at home and requested that she bring in medical documentation for her absence since December 20, 1999. Appellant alleged that when she returned to work on December 27, 1999 Sergeant Nickelberry directed her to report to his office and he closed the door, drew the blinds and gave her an official discussion regarding her refusal to come to the telephone on December 20, 1999 before she left work. She also alleged that he improperly denied her request for a union representative to be present during this discussion. Appellant alleged that on several occasions Sergeant Nickelberry directed her to meet him at various parking lots and give tickets to those vehicles without a valid parking permit. She also alleged that on several occasions he required that she accompany him in a search for employees without proper identification badges. Finally, appellant alleged that on September 5, 2000 Sergeant Nickelberry reprimanded her for backing up her police vehicle in an unsafe manner at a high rate of speed.

Appellant also claimed that Sergeant Nickelberry called out her name on the radio in a negative manner, that he called her on the radio more often than other officers, that Sergeant Nickelberry discriminated against her because she was female and Asian, and that he yelled at her on September 5, 2000 when he reprimanded her for backing up in an unsafe manner, which she claimed was unjust, and which, she alleged, he did in front of other employees, that was broadcast all over the facility.

Appellant also alleged that a coworker, Officer Michael Brown knocked on the door of the guard post where she was assigned on two occasions in order to scare and harass her, and that Officer Brown teamed up with Sergeant Nickelberry to keep her under surveillance and to harass her after she filed an incident report with the inspection service alleging that Officer Brown had falsely accused her of scratching his new car on October 9, 1999.

In a statement dated October 13, 2000, Officer Brown noted that he had found appellant asleep at her computer, that he did not sneak up or spy on her, that he knocked on the door to awaken appellant, that she was only a suspect in the car scratches his car sustained, and that appellant was continually trying to adjust her schedule so that she could also attend school.

On October 10, 2000 Sergeant Nickelberry responded to appellant's allegations noting that she got mad when he merely spoke to her about time management, that she left the building before he could instruct her about providing medical documentation, that he never raised his voice at her or was unpleasant towards her, that he asked her to perform the same duties that he had asked other employees to perform, and that his discussions with appellant were private and not in front of people. Sergeant Nickelberry also noted that, under Article 16, section 16.02 of the collective bargaining agreement, when an employee is being given a discussion for a minor infraction of the work rules, it was not considered to be discipline, and it states that discussions of this type "shall be held in private" between the police officer and the supervisor, such that the presence of a union representative is not contemplated.

By letter dated February 26, 2001, the Office requested further information identifying the employment-related stressors that allegedly caused appellant's claimed emotional condition.

In response appellant submitted an unsigned memorandum from Tour Two personnel dated April 8, 1999 which complained about Sergeant Nickelberry's behavior and conduct. On March 22, 2001 appellant restated her allegations and provided some further personal opinion evidence. Appellant claimed that several witnesses backed out from providing statements due to fear of reprisal. She reiterated that her rights were compromised because she was denied the presence of a union representative during her supervisor's discussion session.

By letter dated March 28, 2001, the team leader, Mr. Thysell, noted that appellant developed an interpersonal conflict with Sergeant Nickelberry when she learned that her request for a work schedule change was denied due to operational needs. He indicated that apparently appellant's work schedule interfered with her ability to attend classes at a local technical college.

A comprehensive psychological examination was conducted on February 6, 2001 which concluded that appellant suffered from major depressive disorder and panic disorder due to the stressful events with her supervisor and coworkers.

By decision dated December 13, 2001, the Office denied appellant's claim for a work-related emotional condition finding that the employment factors appellant identified as the cause of her claimed condition were either not proven to have occurred as alleged or were not compensable factors of employment.

Thereafter, appellant requested an oral hearing, which was held on August 14, 2002. In a decision dated October 23, 2002, the hearing representative affirmed the December 13, 2001 Office decision.

By letter dated August 13, 2003, appellant, through her representative, requested reconsideration and argued that the employing establishment abused appellant's rights by denying the presence of a union representative when requested and committed error and abuse by locking the door and closing the blinds prior to a "counseling" session. Counsel also alleged that the Office disregarded corroborating testimony and evidence. Additionally, appellant submitted a January 8, 2003 statement from a coworker, Artheree T. King, who repeated appellant's allegations about what happened during appellant's "counseling" session and also stated that Sergeant Nickelberry raised his voice and was angry when appellant backed up improperly.

By decision dated September 24, 2003, the Office denied modification and affirmed the October 23, 2002 decision.

### **LEGAL PRECEDENT**

To establish that she sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition;

(2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.<sup>1</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.<sup>2</sup> Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.<sup>3</sup>

### ANALYSIS

The multiple factors appellant alleged as causing her emotional condition, but were not established by independent, corroborating evidence as having occurred as alleged, include: (1) on two occasions Officer Brown knocked on the guard post door in August 1999 in order to frighten and harass her; (2) Sergeant Nickelberry called out appellant's name over the radio in a negative manner; (3) Sergeant Nickelberry teamed up with Officer Brown to keep her under surveillance and to harass her after she had filed an incident report with the inspection service alleging that Officer Brown falsely accused her of scratching his new car on October 9, 1999; (4) Supervisor Nickelberry discriminated against appellant because she was an Asian female when he directed her to write parking tickets for vehicles without valid permits in the parking lot; (5) Sergeant Nickelberry called her over the radio more often than other officers; and (6) Sergeant Nickelberry yelled at appellant on September 5, 2000 when he reprimanded her for backing up her police vehicle in an unsafe manner. Appellant provided no evidence, witnesses or other corroboration to support any of these allegations, and they were denied by the personnel involved. Therefore, these allegations have not been proven to have occurred as alleged.

The factors appellant alleged in causing her emotional condition which were supported as being factual include: (1) on December 20, 1999 Sergeant Nickelberry reprimanded appellant for holding up post rotations when she relieved another officer late for lunch; (2) on December 22, 1999 Sergeant Nickelberry called her at home between 9:00 p.m. and 9:30 p.m. to inform her of the requirement to bring in medical substantiation for her absence since December 20, 1999; (3) when appellant returned to work on December 27, 1999, Sergeant Nickelberry instructed her to report to his office, he closed the door, and gave her an "official

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<sup>1</sup> See *Kathleen D. Walker*, 42 ECAB 603 (1991). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

<sup>2</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

discussion” regarding her refusal to come to the telephone on December 20, 1999 before she left work, and he denied her request to have a union representative present; (4) on several occasions Sergeant Nickelberry directed appellant to meet him at various parking lots to issue tickets to those vehicles without valid parking permits; (5) on several occasions Sergeant Nickelberry directed her to accompany him in a search for employees without valid identification badges; and (6) on September 5, 2000 Sergeant Nickelberry reprimanded appellant for backing up her police vehicle in an unsafe manner at a high rate of speed.

Although the above-referenced incidents occurred as alleged, none of them rise to the level of compensable factors of employment. Most of these proven incidents fall into the category of administrative or personnel actions. As a general rule, a claimant’s reaction to administrative or personnel matters fall outside the scope of the Federal Employees’ Compensation Act.<sup>4</sup> However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.<sup>5</sup>

The incidents identified and proven fall into the category of administrative or personnel actions and include: (1) Sergeant Nickelberry giving appellant work direction and assignments that she did not agree with; (2) his monitoring of her work; (3) work performance criticism and disciplinary actions; and (4) instructing appellant about job requirements for obtaining sick leave.

As far as a supervisor giving an employee work instructions and directions that she disagrees with, the Board has held that assignments of work are administrative and personnel matters of the employing establishment, and not a duty of the employee, and, absent evidence of error or abuse, they are not compensable.<sup>6</sup> Regarding criticism and discussion of her work and related disciplinary actions, the Board has explained that oral reprimands or disciplinary matters consisting of counseling sessions, discussions, or letters of warning for conduct, do not generally constitute a compensable factor of employment.<sup>7</sup> Furthermore, Sergeant Nickelberry’s December 22, 1999 telephone conversation with appellant regarding the need to provide medical documentation for her requested sick leave is also a noncompensable administrative matter. Although the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.<sup>8</sup> Appellant has presented no evidence of error or abuse in the performance of these administrative actions, and therefore, they are not compensable under the Act.

Appellant also put forth multiple vague allegations about harassment and abuse by Sergeant Nickelberry and Officer Brown. She referred to various incidents without specifics, which she did not establish had occurred as alleged. For harassment to give rise to a compensable

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<sup>4</sup> *Id.*

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

<sup>6</sup> See *Janet D. Yates*, 49 ECAB 240 (1997).

<sup>7</sup> See *Janet I. Jones*, 47 ECAB 345 (1996).

<sup>8</sup> *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997).

disability there must be evidence that harassment did, in fact, occur. A claimant's mere perception of harassment is not compensable.<sup>9</sup> The allegations of harassment must be substantiated by reliable and probative evidence.<sup>10</sup> In this case, appellant failed to properly substantiate her allegations of harassment. Although Ms. King provided a statement in an effort to corroborate appellant's account of the December 27, 1990 meeting in Sergeant Nickelberry's office, Ms. King was not present during the meeting and her statement merely repeated appellant's own allegations about what happened during the "counseling" session. Inasmuch as appellant failed to substantiate or implicate a compensable employment factor as a cause of her claimed emotional condition, the Office properly denied appellant's claim.

### **CONCLUSION**

Appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty. Therefore, the medical evidence of record need not be considered.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 24, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 18, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>9</sup> *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

<sup>10</sup> *Joel Parker Sr.*, 43 ECAB 220, 225 (1991).