



## **FACTUAL HISTORY**

On June 20, 2003 appellant, then a 38-year-old visual information specialist, filed a claim for compensation alleging that her severe depression was the result of the actions of her supervisor, Jeri A. Chappelle. Appellant alleged as follows:

“Due to previous stressors created by my supervisor Mrs. Jeri Chappelle, and ongoing stress, harassment and retaliation that has continued almost on [a] daily basis. Since EEO [Equal Employment Opportunity] settlement I have relapsed into severe depression afflicting me so dramatically that I am unable to function under my normal capacities. Mrs. Chappelle continues to use retaliation and her position to provide a perpetual stressful environment that has become unbearable for me to come to work each day.”

In a decision dated September 9, 2003, the Office denied appellant’s claim on the grounds that her allegations of harassment, retaliation and administrative error were not substantiated and that her emotional reaction to administrative matters was not compensable.

Appellant requested an oral hearing before an Office hearing representative. At the hearing, which was conducted by telephone on August 20, 2004, appellant testified that she was harassed by Ms. Chappelle in June 2002, causing her to leave work until December 1, 2002. She explained that she had filed an EEO complaint because Ms. Chappelle harassed her, nitpicked, shared information with another employee and turned other employees against her. Appellant indicated that this complaint was settled in February 2003. She offered examples of the harassment she received:

“[Ms. Chappelle] would make me redo work over and over and she made constant corrections to the point where it takes weeks to get my projects done at a time. She will make me change a lot of graphics and designs. If I request for leave she gets, you know, she asks a lot of questions. She’ll require me to put under leave remarks what the leave was for. She was requesting for doctor’s notes and she wasn’t doing this with the others, but if I was coming back from leave with a note in my hand she made accusations that I wasn’t coming to work and that she would report me to the time people for being on leave when I was at work and she overcharged me. I tried to get leave and she agreed to have me take the time off later but she would send me an e-mail and she would communicate with me through the e-mail rather than speaking to me. She harassed me about a birthday party at work. She would not allow me to go to my father-in-law’s funeral in California. She was asking me questions like if I was getting along with my father-in-law and I told her that my husband was the only son. He was the only child, his only son, that I needed to go, and I think it was like on Wednesday and I had asked for the rest of the week off and she gave me 30 minutes of phone lecture. And then she sends a letter saying because of my daughter, as an example, for me to go to school she would not allow me to do that. I asked my husband to go and he worked 80 miles away from home every day.”

Appellant testified that she filed a second EEO complaint against Ms. Chappelle for harassment, retaliation and nitpicking. She left work after June 2, 2003 and received a disability rating from the Social Security Administration retroactive to that date. She stated that she submitted the same medical evidence to the Office. She also stated that she resigned her position on May 5, 2004. Following the hearing, Ms. Chappelle submitted her comments together with additional evidence. Appellant responded that the intensity of the harassment and stress she endured from Ms. Chappelle was evident from the documents submitted.

In a decision dated November 2, 2004, the hearing representative affirmed the Office's September 9, 2003 denial of benefits.

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>1</sup> The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."<sup>2</sup> "In the course of employment" relates to the elements of time, place and work activity. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in her employer's business, at a place where she may reasonably be expected to be in connection with her employment and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto. The employee must also establish an injury "arising out of the employment." To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration.<sup>3</sup>

Workers' compensation does not cover an emotional reaction to an administrative or personnel action unless the evidence shows error or abuse on the part of the employing establishment.<sup>4</sup> The Board has held that actions of an employer which the employee characterizes as harassment or discrimination may constitute a factor of employment giving rise to coverage under the Act, but there must be some evidence that harassment or discrimination did in fact occur. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.<sup>5</sup> Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such

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<sup>1</sup> 5 U.S.C. § 8102(a).

<sup>2</sup> This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

<sup>3</sup> See *Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp* (*Joseph L. Barenkamp*), 5 ECAB 228 (1952).

<sup>4</sup> *Thomas D. McEuen*, 42 ECAB 566, 572-73 (1991), *reaff'd on recon.*, 41 ECAB 387 (1990).

<sup>5</sup> See *Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

allegations with probative and reliable evidence.<sup>6</sup> The primary reason for requiring factual evidence from the claimant in support of his or 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.<sup>7</sup>

### ANALYSIS

Appellant attributes her severe depression to the actions of her supervisor, Ms. Chappelle, but her claim is one of unsubstantiated allegations. However, she has submitted insufficient evidence to support her allegations that Ms. Chappelle harassed her or retaliated against her. There is no evidence in this case that Ms. Chappelle committed error or abuse in the discharge of her supervisory duties, much less that she harassed and retaliated against appellant on almost a daily basis. Appellant has twice pursued her charges against Ms. Chappelle by filing an EEO complaint, but she has submitted no final decision or finding by that body to support the truth of the matters asserted.

Appellant clearly takes issue with how Ms. Chappelle treated her. There is no question that she perceived herself as the victim of harassment and retaliation. But as the Board explained, perceptions of harassment and retaliation alone will not establish that appellant is entitled to workers' compensation benefits. To discharge her burden of proof, appellant must submit probative evidence that Ms. Chappelle did in fact harass her or retaliate against her, or that she did, in fact, commit some error or abuse in an administrative or personnel matter relating to her. The evidence submitted consists primarily of appellant's allegations without supporting documentation from witnesses as to the allegations made in this case. The Board will affirm the Office's November 2, 2004 decision denying benefits.

### CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty. Because the evidence submitted does not establish a compensable factor of employment, appellant has not shown that her claim falls within the scope of coverage of the Act.

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<sup>6</sup> *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).

<sup>7</sup> *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 2, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 15, 2005  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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