

In a statement that accompanied her claim (Form CA-1), appellant indicated that, on the morning of August 16, 2007, she had just started her lunch break around 12:30 a.m. and needed to use the restroom. She reportedly had not used the restroom since prior to the start of her shift at 9:30 p.m. As appellant approached the restroom, she noticed that the custodian had her cart in the doorway, but had not yet begun to work. The custodian also had not displayed an orange flag, which was the customary practice for indicating that the restroom was closed. From the restroom doorway, appellant reportedly asked the custodian where the flag was and whether she could use the restroom. The custodian allegedly ignored appellant and walked the other way. Appellant then shifted the cart in the doorway and entered the restroom. At that point, the custodian immediately proceeded to assault appellant by physically shoving her into the corner.... The custodian allegedly held appellant in the corner with one hand while holding her mop in the other hand. Appellant eventually freed herself from the custodian's grip and entered one of the restroom stalls. But the custodian would not allow her to close the stall door. According to appellant, the custodian continued to stand in the stall doorway and every time she tried to close the door the custodian kept pushing and holding the stall door open. Although she was unable to obtain any privacy, she desperately needed to urinate so she decided to use the toilet anyway. Appellant said she pulled down her pants thinking the custodian would leave, turn around or close the door, but the custodian did not go away. Instead, the custodian placed her mop handle in the doorway so that appellant was unable to close the stall door. Appellant stated that the custodian persisted and would not allow her to close the door while she urinated, wiped and pulled her pants back up. The custodian reportedly stood there violating appellant's privacy the entire time. Afterwards, appellant washed her hands, left the restroom and immediately reported the incident to management. She claimed that the custodian's "physical bodily assault" and "invasion of privacy" left her feeling threatened and violated and fearful of what harm the custodian might be capable of in the future.

Within hours of the alleged assault the employing establishment interviewed both Ms. Hutchinson and appellant.¹ According to Ms. Hutchinson, she was mopping the restroom floor in front of the sink when appellant approached the custodial cart. From about a foot away, she twice gestured to appellant that the restroom was closed. Appellant reportedly responded that she had to go to lunch. Then she stepped over the bucket and walked pass Ms. Hutchinson and into a stall. Ms. Hutchinson then walked over to the stall and stuck a broom handle in the door to keep it from shutting and said to appellant "closed." Appellant did not leave, but instead pulled down her pants and "proceeded to do business." Ms. Hutchinson then waited while appellant washed her hands. After appellant left the restroom, she reportedly continued with her mopping. When asked whether she had placed her hands on appellant, Ms. Hutchinson responded "No." She also stated that she knew better than to touch people. Ms. Hutchinson similarly denied backing appellant into a corner.

Dr. Laura E. Marshak, a psychologist, saw appellant a day after the August 16, 2007 incident. In her report dated August 21, 2007, she noted that appellant contacted her for a session on August 17, 2007 and reported a steep increase of symptoms following an incident at work the previous day. The last time Dr. Marshak had seen appellant was approximately three

¹ The information appellant provided in her August 16, 2007 interview is reflected in her August 21, 2007 statement that accompanied the claim.

months prior. During their August 17, 2007 therapy session, appellant reported an inability to “turn off” her mind. Dr. Marshak noted that appellant had racing and repetitive thoughts focused on the work-related incident. Appellant spoke of feeling “violated” in terms of the forced invasion of her privacy during bodily functions. But equally problematic was her near-constant obsession and anger related to her perception regarding a lack of justice. Appellant described herself as “so flipped out” that she could not think about anything else. Dr. Marshak indicated that time off from work appeared necessary due to an exacerbation of appellant’s obsessive-compulsive disorder.

In a report dated October 1, 2007, Dr. Barbara Fardo, a family practitioner, indicated that appellant had been off work since August 16, 2007, when an incident took place between her and another employee. She reported that she had seen appellant three times since the episode at work. Dr. Fardo also noted that appellant had seen her psychologist twice since the August 16, 2007 incident. Accordingly, appellant’s psychiatric condition had been relatively stable prior to the work incident. Dr. Fardo diagnosed post-traumatic stress disorder, which she related to the events of August 16, 2007. She also noted a prior medical history of obsessive-compulsive disorder, generalized anxiety disorder and post-traumatic stress disorder related to childhood abuse. Dr. Fardo stated that the incident at work exacerbated appellant’s anxiety and post-traumatic stress disorder. The incident also “flared” appellant’s obsessive-compulsive tendencies. Dr. Fardo believed that appellant’s obsessive-compulsive disorder contributed to the August 16, 2007 incident. She explained that appellant was fastidious about her hygiene and entered the restroom despite the warning flag. Dr. Fardo also indicated that “[b]eing confined and threatened -- the door being blocked from [appellant] to exit from the rest room [--]” was a significant reminder of some of appellant’s childhood traumas and was emotionally overwhelming. She further commented that the incident “certainly” exacerbated appellant’s “psychological issues.”

By decision dated October 12, 2007, the Office denied appellant’s emotional condition claim. The Office found that appellant had not identified any compensable factors of employment.

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.²

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

² See *Kathleen D. Walker*, 42 ECAB 603 (1991).

pecially-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.³ 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 her allegations with probative and reliable evidence.⁴ 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.⁵

ANALYSIS

Appellant claims that a female custodian physically assaulted her and violated her privacy while in the ladies' room on August 16, 2007. As a result of this altercation, her preexisting psychiatric conditions were purportedly exacerbated and she developed another incidence of post-traumatic stress disorder. Before addressing the medical issues, one must first determine if appellant has identified a compensable employment factor as the reputed cause of her psychiatric conditions.

Physical contact by a coworker or supervisor may give rise to a compensable work factor if the incident occurred as alleged.⁶ Appellant stated that when she entered the restroom Ms. Hutchinson "immediately proceeded to assault [her] by physically shoving [her] into the corner...." She claimed that Ms. Hutchinson held her in the corner with one hand while holding her mop in the other hand. Appellant's version of events is not supported by the record. There were no reported witnesses to the alleged shoving incident and Ms. Hutchinson specifically denied either touching appellant or backing her into a corner. It is also noteworthy that Dr. Marshak, who saw appellant the next day, made no mention of an alleged physical altercation between appellant and Ms. Hutchinson. Similarly, Dr. Fardo's October 1, 2007 report does not include any reference to a shoving incident or physical altercation involving Ms. Hutchinson. If appellant had been physically assaulted as she alleged, one would reasonably expect her to report that traumatic event to either her psychologist or family physician. The Board finds that appellant has failed to substantiate her allegation that Ms. Hutchinson physically assaulted her in the ladies' restroom on August 16, 2007.

Appellant also alleged that Ms. Hutchinson violated her privacy by not permitting her to close the door to the restroom stall while she urinated. Both she and Ms. Hutchinson agree that, after she entered one of the restroom stalls, Ms. Hutchinson placed either a mop or broom handle between the stall door and the door jam, thus preventing the door from closing. Ms. Hutchinson indicated she stuck the handle in the door to keep it from shutting and said to appellant "closed." Appellant and Ms. Hutchinson also agree that appellant then removed her pants and

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Kathleen D. Walker*, *supra* note 2. 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).

⁵ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Denise Y. McCollum*, 53 ECAB 647, 648 (2002).

proceeded to urinate. In her August 21, 2007 statement, appellant reported that she “was unable to obtain privacy and still desperately needed to go to the restroom, I decided to proceed in using the toilet to urinate, thinking that when I pulled my pants down either she would leave, turn around, let me close the door...” Ms. Hutchinson apparently did none of the things appellant anticipated she would do once appellant removed her trousers and began to urinate.

Appellant stated that, as she “urinated, wiped and pulled her pants back up,” Ms. Hutchinson stood there “violating my privacy the entire time.” Given the situation, appellant did not have a reasonable expectation of privacy. Appellant proceeded to urinate when, admittedly, she was “unable to obtain privacy.” She was in the midst of a dispute regarding her attempted use of the restroom. And in defying Ms. Hutchinson’s admonition that the restroom was “closed,” appellant “proceeded to do business” while Ms. Hutchinson stood nearby propping the stall door open. As there was no privacy at the outset, Ms. Hutchison did not violate appellant’s privacy. Appellant deliberately chose to urinate in the presence of another individual. As such, any emotional reaction appellant reportedly experienced from urinating in Ms. Hutchinson’s presence would be self-generated. The Board finds that appellant has not established a compensable employment factor. Accordingly, the Office properly denied appellant’s claim for an employment-related emotional condition.

CONCLUSION

Appellant has not established that she sustained an emotional condition in the performance of duty on August 16, 2007.

ORDER

IT IS HEREBY ORDERED THAT the October 12, 2007 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: July 24, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees’ Compensation Appeals Board

David S. Gerson, Judge
Employees’ Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees’ Compensation Appeals Board