

sarcastic and angry tone yelled at her and demanded that she report to his office on October 6, 2008. On the claim form, the employing establishment controverted the claim by stating that the facts were not true, that the supervisor only informed her that she had not completed all the forms and requested her to come to his office on October 6, 2008 to complete them. The employing establishment noted that the supervisor's demeanor was mild mannered, reserved and soft spoken.

By letter dated October 24, 2008, the Office requested that appellant submit further information.

In a notarized affidavit by appellant's attorney dated October 23, 2008, he indicated that on October 3, 2008 appellant called him and sounded extremely upset. He noted that she was crying and had great difficulty in conveying her messages to him. After appellant calmed down, she informed him that her supervisor, Mr. Librich, angrily accused her of trying to bypass using her sick and annual leave by taking continuation of pay. She stated that Mr. Librich believed that she could not take continuation of pay because she should have filed a claim for an occupational disease, not a traumatic injury, in another claim. Appellant stated that Mr. Librich demanded that she come to his office and complete forms and return her equipment. Appellant's attorney indicated that he then called Mr. Librich who indicated that she must come in because she filled out traumatic injury claims and that all emotional claims were occupational disease claims. Appellant's attorney told Mr. Librich that this was incorrect at which point Mr. Librich told the attorney that he did not know what he was talking about. Mr. Librich insisted that appellant must use her medical leave and not take continuation of pay. Appellant's attorney noted Mr. Librich sounded sarcastic and hostile when discussing appellant's claims and it was clear to him that Mr. Librich was extremely upset over the fact that appellant had taken continuation of pay.

In a statement dated November 2, 2008, Pam Cartwright stated that she has been a friend of appellant for over 15 years and that on October 3, 2008 appellant called her and indicated that her supervisor called her in a loud tone of voice and told her she had no right to file for continuation of pay and demanded that she report to the office on Monday and return field equipment. She indicated that appellant was so frightened and anxious that she needed to talk to someone to help her calm down and that she remained relatively distraught for weeks. Kathleen Clugson also submitted a statement that appellant called her on October 3, 2008 and was extremely upset and distraught. Appellant told her that Mr. Librich had called her in and wanted her to bring in all her equipment, as she was not going to be doing any inspections. Ms. Clugson noted that appellant indicated that her supervisor's tone was abusive and she was extremely upset.

Appellant submitted a statement indicating that the other stress in her life was a contested guardianship proceeding in West Virginia with regard to her elderly mother.

A magnetic resonance imaging (MRI) scan technician submitted a statement indicating that on October 3, 2008 she was unable to complete the MRI scan on appellant due to her inability to relax and get her breathing under control.

In a statement received by the Office on November 20, 2008, appellant indicated that at 1:00 p.m. on October 3, 2008 she was at Sewickly Valley Hospital awaiting a medical examination when her supervisor, Mr. Librich, called her on her telephone. She indicated that, with no salutation or introduction, he said in a sarcastic and aggressive tone, "I saw the letter you put in my box, along with the CA-1 forms." Appellant alleged that Mr. Librich said in a demanding voice that she could not file a Form CA-1, only a Form CA-2. Mr. Librich told her she will not get continuation of pay because she could not file a CA-1 form. Appellant indicated that he then told her, "You WILL report to the Office on Monday, October 6 and you WILL change the CA-1 form to a CA-2 and you WILL then submit the CA-2 form." (Emphasis in the original.) She noted that Mr. Librich became louder and more agitated and stated that when she comes in on Monday, he would meet with her and discuss the matter of her claims. Appellant noted that Mr. Librich's tone was loud, angry and aggressive. She said he then stated in an angry and aggressive tone, "By the way, where is the brand new camera I just gave you? Huh? Where is it? I want that brand new camera I just gave you. Bring the camera in with you on Monday. In fact, bring all of your equipment in with you on Monday! I want everything including your laptop on my desk Monday morning. You are not doing inspections anymore. You are not on Continuation of Pay and you will need to turn in a leave slip or annual leave for all days not at work." Appellant indicated that she could not calm down after the telephone call. She called her lawyer, Kathy Clugon, Ms. Cartwright, her counselor and her physician. Appellant noted that her physician indicated that she should not return to work on October 6, 2008 and that her lawyer suggested that she deliver the equipment over the weekend.

In a decision dated November 28, 2008, the Office denied appellant's claim because she had not established a compensable factor of employment.

LEGAL PRECEDENT

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. 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 Federal Employees' Compensation Act.¹ 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.²

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 employment factors.³ This burden includes the submission of a detailed

¹ 5 U.S.C. § 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

² *Gregory E. Conde*, 52 ECAB 410 (2001).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates the employing establishment either erred or acted abusively in the administrative or personnel matters, coverage may be afforded.⁵ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁶

As a rule, a claimant's allegations alone are insufficient to establish a factual basis for an emotional condition claim.⁷ Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.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 record establishes the truth of the matter asserted, the Office's decision must be based on an analysis of the medical evidence.⁹

ANALYSIS

Appellant has filed an emotional claim based on a specific incident, *i.e.*, a telephone conversation that took place with her supervisor on October 3, 2008. She alleged that, during this telephone call, her supervisor angrily accused her of trying to bypass her sick leave by taking continuation of pay and told her she could not file a claim for a traumatic injury as her claim was for an occupational disease. Appellant further alleged that, during this telephone call, her supervisor treated her with sarcasm and anger. On the claim form, the employing establishment indicated that her supervisor's demeanor was mild mannered, reserved and soft spoken. The thrust of appellant's argument is that her supervisor treated her unfairly and that this treatment caused an aggravation of her previously diagnosed general anxiety disorder. Because she attributes this emotional condition to the action of her supervisor with regard to administrative

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁶ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁷ *L.S.*, 58 ECAB ____ (Docket No. 0-1808, issued December 29, 2006).

⁸ *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); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

⁹ *See Normal L. Blank*, 43 ECAB 384 389-90 (1992).

and personnel matters, *i.e.*, her filing of several compensation claims, her claim, as a general rule, falls outside the scope of the Act.

As noted above, the Board has recognized an exception for administrative error or abuse, but appellant must do more than make allegations against management. Appellant must submit proof that management did in fact commit error or abuse against her. The Board finds that her allegations are unsupported by substantial evidence. The statements by her friends, the MRI scan technician and her attorney all deal with what she told them happened and are not independent corroboration as to what happened on the telephone call. Therefore, there is no independent evidence that her supervisor acted unreasonably nor is there any independent proof with regard to the subject matter of the conversation. Although appellant may file a traumatic injury claim for an emotional condition,¹⁰ there is no proof in the record that during this conversation appellant's supervisor told her that she could not file a claim for a traumatic injury. Appellant's attorney's statement with regard to his conversation with appellant's supervisor indicates that the supervisor told him that appellant must file an occupational disease claim, but this is not proof of what the supervisor told appellant. Furthermore, there is no evidence as to the circumstances of the other claims. It is possible that the other claims all involved incidents that occurred over the course of more than one shift, under which circumstances appellant's supervisor would have correctly advised her that these claims were for occupational diseases.¹¹ Moreover, there is no proof that appellant's supervisor acted unreasonably if he asked her to return her equipment. Under the circumstances of this case, the Board finds that appellant's emotional reaction to the telephone call or the request to return equipment must be considered self-generated, in that it resulted from her perceptions regarding the supervisor's actions.¹²

Accordingly, the Board finds that the Office properly denied appellant's claim for an emotional condition as she failed to establish a compensable factor of employment.¹³

CONCLUSION

The Board finds that appellant has not established that she sustained an emotional condition as a result of an October 3, 2008 incident.

¹⁰ An occupational disease or illness means a condition produced over a period longer than a single workday or shift. A traumatic injury means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. *See* 20 C.F.R. §§ 10.5(q) and (ee), respectively.

¹¹ *See* 20 C.F.R. § 10.5(q).

¹² *J.C.*, 58 ECAB __ (Docket No. 07-530, issued July 9, 2007).

¹³ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *See Margaret Krzycki*, 43 EAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 28, 2008 is affirmed.

Issued: November 25, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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