

When the Office received no response to its development letter, it denied appellant's claim on September 11, 2007.

On that same day the Office received evidence. Medical evidence showed that appellant was diagnosed with job-related anxiety, including acute stress secondary to employee harassment. She was also diagnosed with major depressive disorder.

As for the employment factors to which she attributed her condition, appellant explained that she had become totally stressed out about her supporting statement, so she simply sent the Office all of her handwritten notes, which she admitted the Office might not be able to decipher. She essentially implicated "all the discriminatory acts against me from management and the Post Office." Her notes contained a partial list of the stressful incidents that happened at her duty station, involving the same people since 2004. These included a stressful situation with her supervisor, who purposefully provoked her on the loudspeaker, who had picked on her and harassed her from "Day One." Appellant felt he was trying to get her terminated for going off the workroom floor, "so he did things." She referred to a notice of termination on October 10, 2004 for being absent without leave.

Appellant filed at least one grievance and seven Equal Employment Opportunity (EEO) complaints relating to numerous incidents from 2004 to 2007. Among her EEO documents was a manager's memorandum on the February 12, 2004 investigation he conducted into allegations that a coworker, Sharon Williams, was harassing appellant. The manager reviewed the statements of two clerks and two letter carriers. Based on his interviews of the employees, he judged their statements to be highly credible. The employees had noticed that Ms. Williams frequently asked about appellant's whereabouts, made negative comments about her and -- it appeared to the employees -- had followed appellant both inside and outside the station. Three of the employees indicated that the harassment had been ongoing for six months, while one stated that he was aware of it for about three weeks. One employee related receiving a cell phone call from appellant stating that Ms. Williams had followed her to the parking lot. He then saw Ms. Williams drive her car from the opposite side of the parking lot and park it behind appellant's, leaving her headlights on.

The manager advised Ms. Williams that his investigation supported appellant's allegations of harassment. He placed Ms. Williams on notice that these behaviors were unacceptable and would not be condoned and that any continued behavior would lead to corrective action. The manager provided Ms. Williams with the district's Zero Tolerance Policy. After meeting with Ms. Williams, the manager learned that appellant and Ms. Williams were close friends but parted on unfriendly terms. After the parting, "the problems noted herein then surfaced."

Appellant submitted witness statements to support that Ms. Williams was harassing her. On January 30, 2004 one employee stated that on a daily basis Ms. Williams asked where appellant was and what she was doing. The manager stated that she was always peeking around corners looking for appellant. On January 29, 2004 another employee stated that appellant had many times witnessed Ms. Williams watching and following appellant. She stated that Ms. Williams peered around corners, followed appellant to the parking lot on breaks and went to the dock to see what she was doing. On January 28, 2004 another employee stated that

Ms. Williams seemed to have an obsession with appellant. He witnessed Ms. Williams peering through postal equipment to watch appellant walk across the workroom floor. The manager stated that she made comments on appellant's whereabouts. He heard Ms. Williams make negative comments about appellant every day without fail. The manager explained that appellant had a routine of going to her car for break and he saw Ms. Williams follow appellant and go to her own car for break. In an undated statement, another employee stated that he observed a confrontation between appellant and Ms. Williams over an all purpose container (APC). Appellant was about to grab an APC when Ms. Williams rushed passed her and grabbed the same APC. On August 24, 2004 another employee stated that he witnessed Ms. Williams harass appellant and try to provoke a confrontation.

On April 13, 2009 an Office hearing representative affirmed the denial of appellant's claim for compensation benefits. The hearing representative found no proof that the employing establishment erred or acted abusively in its administrative capacity. The Office hearing representative also found that appellant had submitted no documentation to show that the alleged harassment was work related. The only difficult relationship that was at all substantiated, she noted, was that with Ms. Williams, but their difficulties were the result of a personal relationship gone sour.

On appeal, appellant contends that she had a clean administrative record for 18 years but then started being harassed by a handful of supervisors once she was transferred. She lists names of supervisors with whom she did not have issues. Appellant reiterates her allegations with regard to several incidents at the employing establishment that she alleges led to her emotional condition.

LEGAL PRECEDENT

The Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of her duty.² When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her 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 and in the course of employment. This is true when the employee's disability resulted from her emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of her work. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.³

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

² 5 U.S.C. § 8102(a).

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

establishment.⁴ 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.⁵ 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.⁶ The primary reason for requiring factual evidence from the claimant in support of her allegation 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.⁷

When working conditions are alleged as factors in causing a medical 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. 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 opinion evidence.⁸

ANALYSIS

Appellant attributes her emotional condition, in large part, to harassment and discrimination from her supervisors. But that kind of claim is generally not covered by workers' compensation. Although there is an obvious connection to her work, the actions of a supervisor and of management in general usually fall outside the scope of the Act. Those actions are not considered a part of the employee's performance of duty, so any emotional injury that might arise from such disputes is not deemed to be, within the meaning of the Act, an injury sustained while in the performance of her duty.

The Board recognizes an exception, however, when the supervisor has committed a specific error or abuse against the employee. But there must be proof. An employee's perception and mere allegation of harassment will not support a claim for compensation benefits. This is where appellant's claim fails. Although she has made many allegations against her supervisors, she has submitted to the Office no proof of an administrative error or abuse. Indeed,

⁴ *Thomas D. McEuen*, 42 ECAB 566, 572-73 (1991).

⁵ 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).

⁶ *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).

⁷ *Paul Trotman-Hall*, 45 ECAB 229 (1993) (Groom, M., concurring).

⁸ *Dennis J. Balogh*, 52 ECAB 232 (2001).

she has pursued her allegations through at least one grievance and seven EEO complaints, but it appears she has not been successful in making her case because the record shows no final decision or finding of any administrative wrongdoing. The absence of any independent, probative evidence to establish a basis in fact for the contentions made against her supervisors leaves appellant's case without a foundation. The Board therefore finds that she has not met her burden of proof. She has not shown that her claim of harassment and discrimination by supervisors fall within the recognized exception to the general rule that the actions of a supervisor are not covered by workers' compensation.

There is another aspect to appellant's claim. Appellant attributes her emotional condition, in part, to harassment by a coworker, Ms. Williams. She submitted statements from a number of other coworkers substantiating the harassment. A manager confirmed that his investigation of the matter supported appellant's allegations against Ms. Williams. He interviewed coworkers and found their statements to be highly credible. As a result of his investigation, he put Ms. Williams on notice that her behavior was unacceptable and would lead to corrective action if continued.

This is something more than a mere perception or allegation of harassment. This is probative and reliable evidence that harassment did, in fact, occur. Because the record contains sufficient documentation to support appellant's allegation of harassment by a coworker, Ms. Williams, the Board finds that appellant has established a compensable factor of employment. She had established a basis in fact for the contentions made against Ms. Williams. The Office therefore must further develop and adjudicate this aspect of appellant's claim on the medical issue of causal relationship.

The Board will set aside the Office's April 13, 2009 decision and remand the case for further action. The Office shall prepare a statement of accepted facts, one that details the manager's memorandum and coworker statements regarding Ms. Williams' interaction with appellant and shall request a well-reasoned medical opinion on whether the documented harassment by Ms. Williams caused or aggravated a diagnosed psychological condition. After such further development of the evidence as may become necessary, the Office shall issue a *de novo* decision on appellant's claim for compensation benefits.

Appellant reiterates on appeal that she was harassed by a handful of supervisors once she transferred. While there is no question that she feels very strongly about how they treated her, she has given the Office no real proof of administrative error or abuse. The burden is hers and the Board finds that she has not met that burden when it comes to the allegations made against her supervisors. But her case will proceed on the limited issue of harassment by Ms. Williams, independent and reliable evidence of which appears in the record.

CONCLUSION

The Board finds that this case is not in posture for decision. Further action is warranted.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 13, 2009 is set aside and the case remanded for further action.

Issued: April 25, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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