United States Department of Labor
Employees' Compensation Appeals Board

K.M., Appellant	)	
and	)	**Docket No. 10-1139**
	)	**Issued: April 25, 2011**
DEPARTMENT OF COMMERCE, U.S. CENSUS BUREAU, Washington, DC, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 18, 2010 appellant filed a timely appeal from the September 25, 2009 merit decision of the Office of Workers' Compensation Programs denying his emotional condition claim. Pursuant to the Federal Employees' Compensation Act[1] 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On February 6, 2008 appellant, a 45-year-old information services specialist, filed an occupational disease claim alleging that he experienced an aggravation of his bipolar disorder condition as a result of sexual harassment by a female coworker in the workplace beginning in

[1] 5 U.S.C. § 8101 *et seq.*

2005. He further alleged that his supervisors refused to intervene, investigate or stop the harassing activity.

In an accompanying statement, appellant detailed his allegations of sexual harassment by his coworker. He stated that she asked him to go to her house to take a nap during the lunch hour in 2005. When appellant refused, she told him that she would get their supervisor to "do [him] in." She consistently gave him frustrated looks and rudely slapped paper at his desk. In September 2006, appellant was placed in a cubicle next to the harassing coworker. His requests to two acting branch chief's to change this seating arrangement were not approved and he remained next to her, in an area where there were no occupied cubicles that were open towards them. Appellant alleged that one of the acting branch chiefs told him that she had seen his harasser "in action," but took no action.

On October 4, 2006 appellant's harasser approached his workstation. While leaning forward to point to something on his computer screen she allegedly began to place and then rubbed her breasts on his back. After appellant turned around, she leaned in the windowsill and turned her buttocks towards him. He informed his supervisor of the incident, but no action was taken. Appellant met with his second line supervisor three times during October 2006 to report the harassment. No action was taken. In November 2006, the harasser touched and rubbed him along the top left side of his ribcage. Appellant reported the incident to his supervisor. Although his supervisor promised that he would be moved, no action was taken. In December 2006, appellant informed a former supervisor of the sexual harassment and of his desire to be relocated away from his harasser. No action was taken. Appellant experienced severe stress due to the continued harassment and failure of the employing establishment to act.

In February 2007, appellant informed his supervisor that he was still feeling harassed and again asked to be moved. He was told "to take classes on personalities and not to hold grudges." After returning from leave for spinal surgery in May 2007, appellant's harasser was still seated next to him. On August 6, 2007 appellant again reported to his supervisor that he wanted to be moved from his current seat. His request was denied. On September 5, 2007 appellant asked permission to complete an assignment at an unoccupied workstation away from his harasser. His request was denied.

Appellant alleged that he missed substantial amounts of time from work due to work-related stress and in September 2007 his symptoms worsened to the point that he required psychiatric hospitalization. On December 13, 2007 his physician requested a reasonable accommodation and asked that he be moved to another division within his agency.

On March 3, 2008 Betty Moohn of the employing establishment controverted appellant's claim. She stated that in August 2006 he had informed his acting supervisor that a female coworker had "a crush" on him. Management twice offered appellant an opportunity to be located away from this coworker as part of the office's relocation to a new building in the late summer of that year. Appellant allegedly did not respond to those offers. Subsequently, he filed a sexual harassment claim regarding the same coworker. In an attempt to settle the claim informally, the employing establishment made another offer to relocate his office which he rejected.

On March 12, 2008 appellant denied that he twice refused Ms. Moohn's offers to be moved away from his harasser, Brenda Holmes. Prior to his office's move to a new building in September 2006, he informed acting branch chiefs Laura Sewell and Ms. Moohn that he had been assigned a seat next to Ms. Holmes in the new building and asked to be reassigned to a different seat, away from her, because of her sexual harassment against him. Appellant was told that changes to the seating assignments for the new building could not be completed prior to the move.

Appellant alleged that, during a conversation prior to this move in September 2006, Ms. Moohn informed him that she was well aware that Ms. Holmes had a "crush" on him and the "hots" for him, asking, "Why do you think she wears short skirts?" After the move to the new building in October 2006, appellant asked Timothy Olson, assistant division chief for partnership and data services, to move his seat away from Ms. Holmes. Mr. Olson repeatedly asked him "to go and try to work it out" with Ms. Holmes. Appellant's seat was not changed. On January 2, 2008 he filed an Equal Employment Opportunity (EEO) complaint. Appellant stated that Ms. Moohn did not offer to relocate him as a settlement offer. Rather, the agency offered to move Ms. Holmes. Appellant did not accept the offer because all of the terms were not acceptable.

Appellant was treated by Dr. Stephen Rojewiez, a Board-certified psychiatrist. On December 8, 2007 Dr. Rojewiez described anxiety, agitation and depressed mood and diagnosed bipolar disorder, severe, noting that appellant had been hospitalized in a psychiatric facility from September 21 to 24, 2007. He requested that the employing establishment accommodate appellant's bipolar condition by moving him to a mutually agreed-upon office.

The record contains an affidavit from appellant dated May 23, 2008, in which he reiterated and elaborated on his allegations of harassment. Two weeks after the October 4, 2006, incident, he informed Ms. Moohn of the above-referenced incident. Ms. Moohn acknowledged that this incident constituted sexual harassment. In November 2006, after appellant reported that Ms. Holmes inappropriately rubbed his ribcage, Mr. Olson asked, "What do you expect me to do?" He told appellant that he would move Ms. Holmes next to Ms. Moohn's cubicle. On December 6, 2006 appellant informed Ms. Moohn of the November 2006 incident. Ms. Moohn asked him whether he thought this was sexual harassment. Appellant answered, "Yes." Ms. Moohn stated that she had a duty to take action if it was sexual harassment.

On August 6, 2007 appellant again requested to be moved away from his current workstation because it was located directly next to his harasser. The request was denied. On September 5, 2007 appellant's request for permission to complete an assignment at an unoccupied workstation away from Ms. Holmes was denied. On December 13, 2007 he filed a request for a reasonable accommodation with the agency, asking that he be reassigned to a mutually-agreeable different division within the employing establishment. On February 23, 2008 appellant received correspondence from Ms. Moohn indicating that she needed additional information from his physician to determine whether an accommodation was appropriate.

Sometime in December 2007, Ms. Holmes passed a Christmas gift to appellant as he was walking past her cubicle. In January 2008, she frequented his desk to speak about what appeared to be matters of no importance. Even after Ms. Holmes left appellant's current office, on or

about January 6, 2008, for employment elsewhere in the agency, she continued to try to contact him. On January 16, 2008 she called the secretary in search of him. The secretary's message to appellant read, "She said she hopes to see you at the Internet Training at 1:00 in T-5." Appellant decided not to go to work that day to avoid a possible confrontation.

On June 22, 2008 appellant asserted that he never objected to the employing establishment's offer to move Ms. Holmes away from him. He alleged that the employing establishment erred and acted unreasonably by violating its administrative order 202-985 (DAO 202-955), which provides guidance to supervisors regarding allegations of harassment prohibited by federal law. The record contains a copy of DAO 202-955. A manager or supervisor who receives an allegation of prohibited harassment from an employee must immediately report the allegation in writing to the servicing human resources officer. Where the allegation concerns a coworker in the unit, immediate measures should be taken to ensure that the opportunity for actual or perceived harassment does not continue. Examples of such measures include making schedule changes to avoid contact between the parties and using all available tools to separate the parties.

Appellant submitted a copy of an October 9, 2007 letter to Ms. Moohn, wherein he requested that his workstation be relocated away from Ms. Holmes because he continued to feel harassed and uncomfortable with his workstation next to her.

In an undated statement, received on August 15, 2008, Ms. Moohn stated that she became appellant's first line supervisor in May 2007 and was familiar with his work history and his claims of having been sexually harassed. Management had conducted an investigation of his claims and found no factual evidence, witnesses or documentation to substantiate or support his allegations of sexual harassment, retaliation or hostile work environment.

In an August 29, 2008 decision, the Office denied appellant's claim, finding that he did not establish that he sustained an emotional condition in the performance of duty. It found that he had failed to establish that he was sexually harassed or that the employer had not adequately addressed his allegations of harassment.

On September 29, 2008 appellant requested an oral hearing. He contended that the employing establishment did not adhere to its own administrative order DAO 202-955 by: failing to complete its internal investigation, which began on January 30, 2008; failing to separate the parties in dispute; and failing to provide reasonable accommodation.

In a letter dated November 11, 2008, appellant responded to Ms. Moohn's August 15, 2008 statement, noting that she was, in fact, his first line supervisor in 2005 to 2006, which is why he reported the harassment to her.[2] He alleged that he never received a copy of the employing establishment's investigative report, nor was he ever contacted after completing the initial questionnaire. Appellant asserted that the employing establishment did not complete its investigation, as required by its own procedures.

[2] Appellant provided a copy of an employee performance evaluation, signed by Ms. Moohn in the capacity of his rating official on November 11, 2005.

By decision dated January 9, 2009, an Office hearing representative set aside the August 29, 2008 decision and remanded the case for further development. The hearing representative found that appellant had made specific allegations of sexual harassment and the evidence was sufficient to establish a diagnosis of bipolar disorder. He found, however, that the case record lacked a copy of the report of the employing establishment's investigation, upon which the Office's decision was based. The Office was directed to instruct the employing establishment to provide a copy of the report and, if it was unable to provide a copy of the report, then appellant's allegation should be taken as truthful.

On remand, the Office instructed the employing establishment to provide all investigative data relating to appellant's allegations of sexual harassment. The employing establishment was advised that in absence of a full reply within 30 days, his statements could be accepted as factual.

The employing establishment submitted a September 19, 2008 statement from Ms. Holmes, in which she responded to questions posed by the employing establishment. In response to the question as to whether Ms. Holmes stated to appellant that he should go back to her house to take a nap during the lunch break because he looked tired in the fall or winter of 2005, she answered, "No." When asked whether she stated that she would get Ms. Moohn to "do him in" after he refused, she answered, "No." Ms. Holmes answered, "No" to the queries as to whether she gave appellant dirty looks following that incident, whether she touched and rubbed his rib cage in November 2006 and whether she pressed her breasts against him in October 2006, she stated, "No." When asked if she leaned on a windowsill with her backside towards him, she stated, "No, This is not believable." In response to the question as to where she sat in relation to appellant, Ms. Holmes indicated that, in the old building, she sat in front of him for about a year before she was moved to the back of the office for about a year. In the new building, she was seated next to him. When they were in the cubicles, Ms. Holmes sat next to appellant. Whenever she spoke with him, she did so in front of coworkers because of his allegations. Ms. Holmes stated that she "did n[o]t know appellant had a problem with [her]." In response to a question as to whether on January 16, 2008 she left a message with the secretary for him that she hoped to see him at the internet training at 1:00 pm., she answered: "No I left Field Division in December [2007] and started working in DMD in January 2008."

The record contains a copy of a March 22, 2007 report from Mr. Olson documenting a meeting with Ms. Holmes. He informed her that appellant had lodged an EEO sexual harassment claim against her for two past activities: "leaning over his shoulder and touching him," and "inviting him to her home to rest." Ms. Holmes stated that only one time several years ago had she invited him to her home to advise her on window fixes she was entertaining. She was extremely upset over the allegations and stated that she did not understand why appellant did not simply tell her or a supervisor that he did not want to sit next to her anymore. Mr. Olson told Ms. Holmes that the employing establishment settlement did not indicate wrongdoing on her part and that there would be no record in her file. He also assured her that he had high esteem for her work ethic and did not have any less trust in her due to these allegations. Ms. Holmes was visibly upset by the conversation. Mr. Olson stated that he asked three times if she was okay and she stated she would be just fine.

In a March 22, 2009 letter, George Barnett of the employing establishment responded to the Office's request for all investigative data regarding appellant's allegations. He stated that

Ms. Moohn denied that she informed appellant that Ms. Holmes had the "hots" for him. Mr. Barnett stated that appellant's representation exemplified a pattern of behavior in which appellant deflects responsibility for statements he himself has made while attributing false statements to his supervisors and coworkers. He noted that Mr. Olson had interviewed Ms. Holmes on March 22, 2007 following the filing of appellant's EEO complaint. In a written statement regarding the meeting, Mr. Olson documented that she was "extremely upset by [appellant's] allegations. Mr. Barnett stated: "Mr. Olson concluded [that] the sexual harassment alleged by [appellant] did not take place."

By decision dated May 22, 2009, the Office denied appellant's claim, finding that he did not establish that he sustained an emotional condition in the performance of duty. The claims examiner found that the evidence established that appellant was assigned to sit next to Ms. Holmes, with whom he worked on projects and that, on one occasion, she asked him to come to her home to advise her on window fixes she was entertaining. He found, however, that appellant had failed to establish that he was sexually harassed by Ms. Holmes.

The record contains a copy of a February 4, 2009 deposition of Ms. Moohn, who testified that appellant told her in September 2006 that he was being sexually harassed by Ms. Holmes, that Ms. Holmes had asked him to go home with her and take a nap and that he did not want to go. Before moving to the new building in 2006, appellant informed Ms. Moohn that he did not want to sit next to Ms. Holmes because she continued to harass him. In 2006, after the move, he reported that she was still harassing him and that he wanted to be separated from her. Ms. Moohn stated that she and Mr. Olson openly discussed the fact that appellant's workstation would not be moved until his EEO complaint had been resolved. She further testified that she did not speak to anyone at the employing establishment about an internal investigation into appellant's sexual harassment allegations.

Appellant submitted a May 4, 2009 affidavit from Patricia M. Pace, who was employed as a secretary for the employing establishment from 1997 until March 2009. Ms. Pace stated that Mr. Barnett's March 2009 statements concerning the employing establishment's conversation with her were not truthful. She recalled receiving and writing the telephone message of January 16, 2008, to appellant from Ms. Holmes.[3] Ms. Pace remembered because she "thought it was odd." She was aware that appellant had filed a sexual harassment complaint and wondered why Ms. Holmes would be calling him. Ms. Pace also stated that she was aware that he was trying to have as little contact with Ms. Holmes as possible. Her initial reaction was not to leave the message for appellant because she thought it might upset him. However, as a secretary, it was part of Ms. Pace's job duties to receive and pass messages. So, when appellant called the office, Ms. Pace informed him of Ms. Holmes' message and left it at his desk.

On May 28, 2009 appellant requested a review of the written record.

In a May 18, 2009 letter, appellant contended that the contents of Mr. Barnett's March 27, 2009 letter did not constitute an investigative report. He alleged that no formal investigation was performed and that the employing establishment only recently contrived two investigations to give the appearance that an investigation had been conducted. Appellant

[3] The Board notes that Ms. Pace enclosed a copy of the January 16, 2008 message with her affidavit.

contended that the employer knowingly falsified statements and used these statements to undermine his sexual harassment claim. He noted that Mr. Barnett provided no facts or findings to support his conclusion that no sexual harassment took place, but relied solely on Mr. Olson's observation of Ms. Holmes' feelings during a March 22, 2007 interview. Appellant noted that Mr. Barnett did not even receive Mr. Olson's March 22, 2007 e-mail until March 5, 2009, seven months after the employing establishment asserted that it had completed an investigation. He contended that Ms. Holmes was not credible, as she denied leaving a message for him on January 16, 2008, when the record clearly reflected that she did. Ms. Holmes also stated on September 19, 2008 that she did not know that appellant had a problem with her, but that she had discussed the sexual harassment allegation with Mr. Olson a year before. Appellant contended that the employing establishment intentionally misrepresented Ms. Pace's statements and intent. The employing establishment also failed to provide written communications, as requested by the Office.

By decision dated September 25, 2009, an Office hearing representative affirmed the May 22, 2009 decision, finding that appellant had not established any compensable factors of employment. He found that the evidence established that Ms. Holmes left a message for appellant, but that the fact that a message was left did not rise to the level of harassment. The hearing representative further found that the record was devoid of evidence demonstrating that appellant was sexually harassed.

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 his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.[4] 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 his frustration from not being permitted to work in a particular environment or to hold a particular position.[5]

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.[6] However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.[7] In determining whether the employing establishment has erred or acted abusively, the Board will

[4] 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

[5] *Gregorio E. Conde*, 52 ECAB 410 (2001).

[6] *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

[7] *See William H. Fortner*, 49 ECAB 324 (1998).

examine the factual evidence of record to determine whether the employing establishment acted reasonably.[8]

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.[9] Aclaimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.[10] The issue is whether the claimant has submitted sufficient evidence under the Act to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[11] The primary reason for requiring factual evidence from the claimant is 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.[12]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a 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 and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.[13] 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 evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[14]

ANALYSIS

The Board finds that appellant has established a compensable factor of employment. Therefore, the case is not in posture for a decision and must be remanded for evaluation of the medical evidence.

The Board notes initially that appellant did not allege that his regular or specially assigned job duties caused his emotional condition. Rather, appellant alleged that his emotional

[8] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[9] *See Michael Ewanichak*, 48 ECAB 364 (1997).

[10] *See Charles D. Edwards*, 55 ECAB 258 (2004); *Parley A. Clement*, 48 ECAB 302 (1997).

[11] *See James E. Norris*, 52 ECAB 93 (2000).

[12] *Beverly R. Jones*, 55 ECAB 411 (2004).

[13] *Dennis J. Balogh*, 52 ECAB 232 (2001).

[14] *Id.*

condition was caused by sexual harassment. In order to establish his claim for sexual harassment, he must provide evidence that the acts alleged did, in fact, occur.

Appellant alleged that Ms. Holmes repeatedly harassed him: she asked him to go to her home to take a nap during the lunch hour in 2005; in October 2006 she rubbed her breasts on his back and leaned in the windowsill with her buttocks facing him; in November 2006, she inappropriately rubbed his ribcage; in January 2008, she frequented his desk to speak about unimportant matters; and she continued to try to contact him, even after she left the agency and left a telephone message for him on January 16, 2008 to the effect that she hoped to see him at internet training. His allegations were specific and consistent with his course of action, which involved repeated attempts to relocate his workstation away from his alleged harasser. The record reflects that appellant notified his supervisors on numerous occasions that he felt harassed by Ms. Holmes and uncomfortable with his workstation next to her. The record contains a January 16, 2008 message of a telephone call to him from her, confirming that she attempted to contact him at that time and expressed an interest in seeing him. Appellant did not provide any witness statements to corroborate the alleged harassment. The Board notes, however, that the actions alleged, by their very nature, would not likely have occurred in public view. To deny a harassment claim solely on the grounds that there were no witnesses to the claimed offenses, would ignore this simple fact.

The employing establishment disagreed with appellant's allegations of harassment. It did not, however, provide adequate evidence or argument to support its position. In the January 9, 2009 decision, the Office found that the record required further development because it lacked a copy of the employing establishment's report of its formal investigation into his allegations of sexual harassment. On remand, it instructed the employing establishment to provide a copy of the investigative report, as well as all investigative data relating to appellant's allegations. In response to the Office's request, the employing establishment did not submit a formal investigative report, as instructed. Rather, it submitted a March 22, 2009 letter from Mr. Barnett, a September 19, 2008 statement from Ms. Holmes and a March 22, 2007 report from Mr. Olson documenting a meeting with Ms. Holmes.

Mr. Barnett stated that the employing establishment had conducted an investigation, which consisted of interviews with Ms. Holmes, communications with Mr. Olson and Ms. Moohn, a review of time and attendance records, a review of the workers' compensation case file and efforts to identify witnesses to the alleged sexual harassment. The only supporting evidence provided, however, were the three documents referenced above. Mr. Barnett made no reference to specific interviews with coworkers or other supervisors or to other documents that might be relevant to a determination of the accuracy of appellant's allegations. His letter does not constitute a formal investigative report and does not adequately refute appellant's allegations.

Mr. Barnett's presentation of the facts regarding Ms. Holmes' January 18, 2008 telephone call to appellant differs from that of Ms. Pace, who took the message for appellant. He stated that on March 27, 2009 Ms. Pace did not recall speaking to appellant at all or handing him a message of a January 2008 telephone call from Ms. Holmes. Ms. Pace characterized Mr. Barnett's March 2009 statements concerning the employing establishment's conversation with her as untruthful, noting that she did recall receiving and writing the telephone message of January 16, 2008 to appellant from Ms. Holmes. She remembered because she "thought it was

odd." Ms. Pace was aware that appellant had filed a sexual harassment complaint and wondered why Ms. Holmes would be calling him. She stated that she was aware that he was trying to have as little contact with Ms. Holmes as possible. Ms. Pace's initial reaction was not to leave the message for appellant because she thought it might upset him. As secretary, however, it was part of her job duties to receive and pass messages. Therefore, when appellant called the office, Ms. Pace informed him of Ms. Holmes' message and left it at his desk. Ms. Pace's comments are consistent with the evidence of record and provide a concrete recollection of the events surrounding the telephone call. The Board finds her statement credible and sufficient to support appellant's allegations.

Appellant also alleged that the employing establishment violated its administrative order 202-985 (DAO 202-955), which provides guidance to supervisors regarding allegations of harassment prohibited by federal law. 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 that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.[15]

According to section 4 of DAO 202-955, if a determination of validity of a report of harassment cannot be made, the responsible manager or supervisor must immediately provide in writing to the servicing human resources officer a summary of the allegations of harassment. A manager or supervisor who receives an allegation of prohibited harassment from an employee must immediately report the allegation in writing to the servicing human resources officer. Where the allegation concerns a coworker in the unit, immediate measures should be taken to ensure that the opportunity for actual or perceived harassment does not continue. In this case, the evidence reflects that appellant reported the sexual harassment to his supervisor as early as October 2006, but that the employing establishment did not report the allegations to human resources until he requested medical accommodations on December 13, 2007. The record reveals that he repeatedly requested that his workstation be relocated away from Ms. Holmes due to the alleged harassment. In contravention of its own administrative order, the employing establishment did not comply with appellant's request. The Board finds that the employing establishment erred in these matters and its actions in this regard constitute compensable employment factors.

Appellant has established compensable employment factors as to harassment by a coworker and error in the employer's response to his allegations. The case will be remanded for consideration of the medical evidence.[16]

CONCLUSION

The Board finds that the case is not in posture for decision on whether appellant sustained an emotional condition arising from his federal employment.

[15] *Michael Thomas Plante*, 44 ECAB 510 (1993).

[16] *See Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2009 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further development in accordance with this decision.

Issued: April 25, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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