



By letters dated May 24, 2004, the Office informed appellant of the type evidence needed to support her claim and requested that the employing establishment furnish information regarding her allegations.

In response, appellant submitted a statement dated May 13, 2004 in which she stated that she had been under undue stress at work since March 22, 2004. She specifically related that the postmaster passed gas in her presence without saying "excuse me," that he counted her stock on the workroom floor in the presence of others, that he stated she was trying to start "fussing and fighting," that he and a coworker were laughing that she could live off her tax refund, that coworkers were laughing about her standing in a welfare line, that coworkers and management made comments that she was crazy and that the postmaster told the newest clerk that appellant was "outa here." Appellant also submitted medical evidence including records of hospitalizations between September 27 and October 5, 2000 and July 5 and 13, 2001 in which Dr. Laurel A. Weston, a Board-certified psychiatrist, diagnosed, *inter alia*, bipolar disorder, depressed phase.

The employing establishment submitted a statement dated March 31, 2004 in which Dana D. McKnight, a sales and service associate, advised that he did not hear the postmaster say that appellant would have to live off her tax refund and did not hear his name or reference appellant in any way. In several statements dated May 19, 2004, Edgar Shelton, the postmaster, challenged appellant's claim and advised that he had done nothing to cause her stress. He specifically stated that on March 31, 2004 a meeting was held with appellant and a union steward regarding appellant's allegation that Mr. Shelton said he hoped appellant could live off her income tax check. He stated that he and his manager of postal operations were having a private conversation about family illnesses and sports and also discussed retirement checks in the mail but did not discuss appellant.

Appellant submitted an undated statement in which she related that the stress at work caused her to cry, vomit and have severe headaches and that she became distraught and fearful. She stated that her doctor placed her off work on April 12, 2004 and that after appellant stopped work she felt that the mail carrier at her home was spying on her because she questioned appellant about her health and that another carrier left a note in appellant's mother's mailbox expressing concern about appellant. She indicated that she felt these were attempts to obtain information for gossip and noted that she had received no flowers or a card from anyone at the employing establishment. In a separate undated statement, appellant provided a chronology of the events at work that she thought had caused her condition. She stated that on March 6, 2004 she became aware that the other clerks, Tyrone Stripling and Mr. McKnight, had changed their behavior toward her and noted that on March 6, 8, 9, 11, 13, 17 and 29 and April 1 or 2, 7 and 8, 2004, the clerks and Mr. Shelton treated her differently and made disparaging remarks about her. She stated that on March 12 and April 5, 2004, Mr. Shelton came up behind her and passed gas and quickly walked away without saying excuse me and that Mr. Stripling had done this in the past. Appellant noted that on March 16, 2004 Mr. Stripling alluded to the fact that his back was hurting which made him "want to hurt somebody real bad," and that on March 17, 2004 the date on her money order machine was changed from 2004 to 2005. Appellant stated that she had filed an Equal Employment Opportunity (EEO) Commission complaint in February 2003, for similar

problems and that on March 22, 2004 Wayne Lamb, a union representative, came to the employing establishment to mail a parcel. She stated that after lunch she noted that Mr. Lamb's envelope had been moved to the top of the parcel bin, which led her to believe someone was looking to see what he had mailed. Appellant stated that on March 24, 2004 someone left a drawing of a lady with a big rear end and chest on a note she had written and that Mr. Shelton acted very angry toward her. Appellant further noted that on April 5, 2004 Mr. Shelton counted her stock on the workroom floor and that the remainder of that week "was unbearable," stating that a young lady came to apply for a clerk position when there was no job opening and was shown into Mr. Shelton's office. She stated that on April 8, 2004 cake was brought for Mr. Stripling's birthday but she was not offered a piece until everyone else had eaten. Appellant concluded by stating that the mistreatment she was receiving by Mr. Shelton and her coworkers caused her to be tearful, wakeful and that she felt ostracized because she had a mental handicap.

Appellant also provided a statement of resolution, which she said was agreed upon at an EEO Commission meeting in February 2003. In an undated statement she described her medical condition and submitted a number of treatment notes dating from June 20, 2003 to June 18, 2004 in which Dr. Geera Desai, a psychiatrist, noted appellant's complaints of stress and harassment at work and her feeling of job insecurity and alienation. In a June 18, 2004 note, the physician advised that appellant was extremely depressed and extremely paranoid.

In response to an Office letter requesting information about the EEO Commission claim, appellant submitted a copy of the complaint form filed on January 16, 2003<sup>1</sup> and an agreement dated February 4, 2003, which provided that the parties, appellant and the employing establishment represented by Mr. Shelton, agreed to communicate better, that a standard operating procedure would be established for window duty and that private telephone calls would be done with the door closed. She also submitted a November 30, 2001 incident report which noted that her purse had been stolen from the workroom floor after an unauthorized person had been allowed to enter.

In an October 16, 2002 statement, Cameron D. Corbin, appellant's son's caregiver, stated that the employing establishment was rude to him when he telephoned there needing to speak with appellant about her son and a December 23, 2002 statement in which Susan O'Neal, a rural carrier, stated that appellant was a very good clerk and the others were lazy. In statements dated January 23, 2003 and July 27, 2004, Sarah B. Gowan, appellant's mother, described witnessing appellant in distress with headaches and further noted that the postmaster had been rude to her on the telephone. She repeated appellant's complaints regarding her difficulties with the postmaster and Mr. Stripling regarding her stolen purse, harassing telephone calls, missing car keys and the passing gas episodes. In a July 24, 2004 statement, Mr. Lamb advised that Mr. Shelton refused to work with appellant when she had been late on occasion because of child care needs and when she wanted to take Sunday off to take her son to church. He opined that Mr. Shelton was unprofessional and noted that he did not investigate the theft of appellant's purse. In a July 27, 2004 statement, Scott P. Bradley noted that appellant came home in tears, as witnessed by him and their son.

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<sup>1</sup> The complaint was filed on the basis of racial, gender, religious and mental disability discrimination.

By decision dated August 22, 2004 and finalized August 23, 2004, the Office denied the claim on the grounds that appellant had not established that she sustained an emotional condition in the performance of duty.

### **LEGAL PRECEDENT**

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>2</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,<sup>3</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.<sup>4</sup> There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.<sup>5</sup> When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an 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 results from a emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.<sup>6</sup> 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.<sup>7</sup>

In emotional condition claims, 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. 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

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<sup>2</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>3</sup> 28 ECAB 125 (1976).

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> See *Robert W. Johns*, 51 ECAB 137 (1999).

<sup>6</sup> *Lillian Cutler*, *supra* note 3.

<sup>7</sup> *Kim Nguyen*, 53 ECAB 127 (2001).

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.<sup>8</sup>

As a general rule, an employee's emotional reaction to administrative or personnel actions taken by the employing establishment is not covered because such matters pertain to procedures and requirements of the employer and are not directly related to the work required of the employee.<sup>9</sup> An administrative or personnel matter will be considered to be an employment factor, however, where the evidence discloses error or abuse on the part of the employing establishment.<sup>10</sup> An employee's frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable.<sup>11</sup> Likewise, an employee's dissatisfaction with perceived poor management is not compensable under the Act.<sup>12</sup>

With regard to emotional claims arising under the Act, the term "harassment" as applied by the Board is not the equivalent of "harassment" as defined or implemented by other agencies, such as the EEO Commission, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers' compensation under the Act, the term "harassment" is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by coemployees or workers. Mere perceptions and feelings of harassment will not support an award of compensation.<sup>13</sup>

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. Rather, the issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>14</sup>

### ANALYSIS

In this case, appellant has described a number of employment incidents which she believed were harassing and caused stress-related conditions. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.<sup>15</sup> Appellant has submitted no factual evidence to support her allegations that

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<sup>8</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>9</sup> *Felix Flecha*, 52 ECAB 268 (2001).

<sup>10</sup> *James E. Norris*, 52 ECAB 93 (2000).

<sup>11</sup> *Barbara J. Latham*, 53 ECAB 316 (2002).

<sup>12</sup> *Id.*

<sup>13</sup> *Beverly R. Jones*, 55 ECAB \_\_\_\_ (Docket No. 03-1210, issued March 26, 2004).

<sup>14</sup> *James E. Norris*, *supra* note 10.

<sup>15</sup> *Katherine A. Berg*, 54 ECAB \_\_\_\_ (Docket No. 02-2096, issued December 23, 2002).

Mr. Shelton and Mr. Stripling inappropriately passed gas in her presence, that a drawing was placed on a personal note or that she was not included in Mr. Stripling's birthday celebration. She therefore failed to establish that these were compensable factors of employment. Likewise, other than alleging that the date stamp on her money order machine was changed, she submitted no specific evidence to indicate who did this or to support that it was deliberately done. This too would not be a compensable factor of employment.

The fact that Mr. Shelton counted appellant's stock in the workroom would fall into the realm of administrative or personnel matters and absent error or abuse, would not arise with the performance of duty.<sup>16</sup> Appellant stated that the manner in which this was conducted was demeaning. However, a supervisor's monitoring of activities of work<sup>17</sup> and an employee's complaints concerning the manner in which a supervisor performs his or her duties as a supervisor or the manner in which a supervisor exercises his or her supervisory discretion fall, as a rule, outside the scope of coverage of the Act. This principle recognizes that a supervisor or manager, in general, must be allowed to perform their duties that employees will at times dislike the actions taken.<sup>18</sup> Furthermore, the Board has held that mere disagreement or dislike of a supervisory or management action will not be compensable without a showing through supporting evidence that the incidents or actions complained of were unreasonable.<sup>19</sup>

Where a claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.<sup>20</sup> Appellant provided nothing to substantiate that Mr. Shelton's counting was conducted in a demeaning manner or was an improper supervisory function. Thus, appellant did not establish that the employing establishment erred in regard to this administrative matter and any reaction must be considered self-generated.<sup>21</sup>

The record contains an EEO Commission settlement agreement dated February 4, 2003, between appellant and the employing establishment, represented by Mr. Shelton, which indicates that both parties agreed to communicate better, that a standard operating procedure would be established for window duty and that private telephone calls would be done with the door closed. Appellant also submitted a document entitled "Resolution." This document, however, seems to consist of the points appellant brought for EEO Commission mediation and there is nothing by way of signatures or incorporation into the EEO Commission document to indicate that the points outlined in the document were agreed upon by the parties in the EEO Commission process. Furthermore, the findings of other administrative agencies have no bearing on proceedings under the Act, which is administered by the Office and the Board.<sup>22</sup>

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<sup>16</sup> *James E. Norris, supra* note 10.

<sup>17</sup> *Kim Nguyen, supra* note 7.

<sup>18</sup> *Judy L. Kahn, 53 ECAB 321 (2002).*

<sup>19</sup> *Id.*

<sup>20</sup> *James E. Norris, supra* note 10.

<sup>21</sup> *See Dennis J. Balogh, supra* note 8.

<sup>22</sup> *James E. Norris, supra* note 10.

Appellant also indicated that an EEO Commission complaint had been filed in 2004. In assessing the evidence, the Board has held that grievances and EEO Commission complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.<sup>23</sup> Appellant submitted no evidence regarding a 2004 EEO Commission complaint and there is nothing specific in the record to substantiate that the employing establishment was not in compliance with the February 4, 2003 EEO Commission agreement. She therefore failed to establish a compensable factor of employment in this regard.

The majority of appellant's claim pertains to allegations of harassment by Mr. Shelton and her coworkers, particularly Mr. Stripling. The Board has recognized the compensability of verbal abuse in certain circumstances. This, however, does not imply that every statement uttered in the workplace will give rise to compensability.<sup>24</sup> A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.<sup>25</sup> While appellant submitted a number of statements, the Board finds that the December 23, 2002 statement from Ms. O'Neal of limited relevance as it predates the period of alleged discrimination in this case and proves no specifics pertaining to the alleged incidents described by appellant.<sup>26</sup> Likewise, Mr. Lamb's July 24, 2004 statement that appellant was treated in an unfair way by Mr. Shelton is of limited probative value as Mr. Lamb did not provide any specific incidents or dates upon which these alleged incidents occurred. Thus, his statement is not probative in establishing any instances alleged by appellant and is insufficient to establish that the employing establishment harassed or discriminated against appellant.<sup>27</sup> The statements of Mr. Corbin, Mr. Bradley and appellant's mother are of no relevance because they did not personally witness any of the incidents that appellant alleges caused her condition.<sup>28</sup>

Mere perceptions of harassment or discrimination are not compensable under the Act,<sup>29</sup> and unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.<sup>30</sup> In the case at hand, the Board finds that

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<sup>23</sup> *Michael L. Deas*, 53 ECAB 208 (2001).

<sup>24</sup> *Denise Y. McCollum*, 53 ECAB 647 (2002).

<sup>25</sup> *Penelope C. Owens*, 54 ECAB \_\_\_\_ (Docket No. 03-1078, issued July 7, 2003).

<sup>26</sup> *See James E. Norris*, *supra* note 10.

<sup>27</sup> *See Charles D. Edwards*, 55 ECAB \_\_\_\_ (Docket No. 02-1956, issued January 15, 2004). The Board notes that Mr. Lamb also referred to incidents not raised by appellant, *i.e.*, that she was unfairly disciplined about tardiness and was not allowed leave to attend church. Disciplinary matters, absent a showing of error or abuse, generally fall outside the scope of coverage. *Bobbie D. Daly*, 53 ECAB 691 (2002). Likewise, although the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee and absent error or abuse are not compensable employment factors. *Judy L. Kahn*, *supra* note 18. In this case, there is nothing of record to indicate that the employing establishment erred in either of these matters.

<sup>28</sup> *See James E. Norris*, *supra* note 10.

<sup>29</sup> *Beverly R. Jones*, *supra* note 13.

<sup>30</sup> *James E. Norris*, *supra* note 10.

these allegations do not rise to a level to establish harassment, rather they constitute appellant's perception and are therefore insufficient to establish her claim for an employment-related emotional condition.<sup>31</sup> The employing establishment denied that appellant was subjected to harassment or discrimination. The Board finds that appellant has not established as factual a basis for her perceptions of discrimination or harassment by the employing establishment beginning on March 4, 2003 as she provided insufficient evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.<sup>32</sup> The Board therefore concludes that appellant did not establish a compensable employment factor with respect to harassment and discrimination.<sup>33</sup> There must be some evidence that the harassment did occur as appellant's own perceptions of harassment are not compensable.<sup>34</sup> The evidence instead suggests an overly sensitive employee who was, perhaps fearful of losing her job. Disabling conditions resulting from an employee's feeling of job insecurity do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act. Rather, the feelings are considered to be self-generated and are not compensable.<sup>35</sup>

Inasmuch as appellant failed to implicate a compensable employment factor, the Office properly denied her claim without addressing the medical evidence of record.<sup>36</sup>

### **CONCLUSION**

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of employment.

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<sup>31</sup> See *Barbara J. Latham*, *supra* note 11.

<sup>32</sup> *James E. Norris*, *supra* note 10.

<sup>33</sup> See *Jamel A. White*, 54 ECAB \_\_\_\_ (Docket No. 02-1559, issued December 10, 2002).

<sup>34</sup> *Penelope C. Owens*, *supra* note 25.

<sup>35</sup> See *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>36</sup> *Garry M. Carlo*, 47 ECAB 299 (1996).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 22, 2004 and finalized August 23, 2004 be affirmed.

Issued: April 4, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member