

informed Barbara Massey, the postmaster, of the incident. Ms. Massey allegedly stated in an inappropriate tone "I'll deal with you later." Appellant became sick and asked to leave the premises. Ms. Massey yelled loudly at her. Appellant stopped work on April 7, 2005.

The employing establishment submitted a statement from Ms. Massey dated April 11, 2005. Ms. Massey advised that, on April 7, 2005, appellant was working the retail window by herself and a line of customers developed. Appellant rang the bell for assistance; however, her coworkers did not hear the bell. Ms. Massey indicated that appellant subsequently approached her and yelled at her in a loud manner. She advised appellant that she was acting inappropriately and she would deal with her later. Ms. Massey indicated that appellant twice ignored her request to speak with her in her office after the incident.

In an April 7, 2005 treatment note, Dr. Gary Huey, a Board-certified psychiatrist, advised that appellant would be off work through April 15, 2005.

An April 9, 2005 statement from Glenn P. Asty, a coworker, noted that he witnessed appellant being followed by Ms. Ellison and appellant complaining to the postmaster about her behavior. He indicated that he heard appellant speak in a frustrated tone to the postmaster requesting permission to go home.

On May 12, 2005 the Office asked appellant to submit a detailed description of the employment incidents that she believed contributed to her claimed illness. It also requested a comprehensive medical report from her treating physician explaining how specific work incidents contributed to her claimed emotional condition.

In a May 12, 2005 statement, appellant described the April 7, 2005 incident, noting that the employing establishment policy mandated that for every three customers in line you need to ring the bell for a back-up clerk. She requested that Ms. Ellison assist her. After appellant finished serving the customers she went to the workroom floor where Ms. Ellison insulted and harassed her. After informing Ms. Massey of the incident, she responded in an inappropriate tone. Appellant told Ms. Massey she was sick and wanted to go home and Ms. Massey stated "Okay fine but you are AWOL [absent without leave]." She submitted reports from Dr. Huey dated April 7 to June 10, 2005. Dr. Huey treated appellant for hypertension aggravated by acute stress and headaches occurring after a work event. Appellant reported that she was working with a long line of customers and her coworker failed to assist her. She reported that she exchanged remarks with her coworker and her coworker proceeded to nag her. Dr. Huey treated appellant on July 6 and 27, 2005, for stress-related problems and advised that appellant could return to work on August 1, 2005 at another work site.

On May 27, 2005 Ms. Massey noted that, on April 7, 2005, Ms. Ellison and the other clerks did not hear the bell when appellant rang for assistance. Appellant subsequently walked onto the workroom floor and yelled at her. She instructed Ben Vasquez, the supervisor, to ascertain the problem at the window. Appellant informed Mr. Vasquez that she was going home sick. Ms. Massey indicated that, with appellant's absence, her unit would be short staffed. She instructed appellant, in a voice loud enough to be heard over the office noise, to speak with her before she left the office. Appellant ignored her request and proceeded to exit the building. Because her leave slip was not signed, she did not have permission to leave and would be

considered AWOL. Ms. Massey contended that appellant violated employing establishment regulations by yelling at her supervisor, leaving work without prior approval, failing to follow a direct order and presenting an incomplete doctor's note. In a July 19, 2005 statement, Ms. Ellison noted having a good working relationship with appellant since 1997. On April 7, 2005 the employing establishment received a drop shipment of late parcels and at 8:30 a.m. the postmaster requested that appellant distribute the parcels to the carriers so that they would not be delayed in delivering their routes. Ms. Ellison noted that appellant confronted her about not responding to the bell for assistance. She stated that she did not hear the bell and appellant became angry. Ms. Ellison stated "get off your high horse and work faster."

In a decision dated August 15, 2005, the Office denied appellant's claim finding that the claimed emotional condition did not arise in the performance of duty.

Appellant requested an oral hearing that was held on December 14, 2005. She submitted January 9 and 13, 2006 statements reiterating her allegations. In reports dated August 4 to December 3, 2005, Dr. Robert A. Kaplan, a clinical psychologist, advised that appellant was totally disabled from April 7 to August 8, 2005. Appellant could return to work with the restriction that she not work under Ms. Massey. On December 3, 2005 Dr. Kaplan noted that appellant had worked at the employing establishment since 1997 and had a good relationship with Ms. Massey until 2004 when Ms. Massey began assigning Ms. Ellison's job duties to appellant. Appellant reported that she discussed this problem with Ms. Massey; however, she did not change the situation. Dr. Kaplan diagnosed major depression and adjustment disorder with anxiety and depression and opined that appellant's emotional condition was caused by the manner in which she was treated by Ms. Massey.

In a January 4, 2006 statement, Ms. Massey advised that Ms. Ellison usually relieved appellant at the retail window for 30 minutes on Wednesday and Thursday between 8:30 a.m. and 9:00 a.m. and another full-time window clerk reported for duty at 9:00 a.m. During this 30-minute period, the window traffic was generally minimal. Ms. Massey noted that there were four window clerks at the employing establishment and two clerks were on the window at all times.

In a March 2, 2006 decision, the hearing representative vacated the August 15, 2005 decision and remanded the case for further medical development. The hearing representative found that appellant established the following compensable employment factors: on April 7, 2005 appellant assisted 10 customers who were waiting in line at the retail window from 8:30 a.m. to 8:42 a.m. and Ms. Ellison failed to provide assistance after appellant rang the bell; once appellant finished serving the customers she entered the workroom floor and became involved in an argument with Ms. Ellison, who stated to appellant "get off your high horse and work faster;" and that Ms. Ellison was occasionally nonresponsive or late in providing appellant with assistance at the window and appellant had to deal with a long line of customers without assistance. The hearing representative directed the Office to refer appellant for a second opinion to determine if the accepted work factors caused or contributed to her psychiatric condition.

On March 23, 2006 the Office referred appellant to Dr. Robert A. Kimmich, a Board-certified psychiatrist. In an April 10, 2006 report, Dr. Kimmich reviewed the records and noted appellant's history. He reported findings on psychiatric evaluation. Dr. Kimmich diagnosed adjustment disorder with depression and anxiety, hypertension and an occupational problem

involving discord with coworkers and the postmaster. He noted that the events of April 7, 2005 caused confusion, fear and humiliation and appellant felt deserted by the action of her coworkers. Dr. Kimmich noted the diagnoses were medically connected to the accepted work factors listed in the statement of accepted facts. He opined that appellant had no further residuals of her work injury and no work limitations.

In an undated letter, Dr. Kaplan wrote to Dr. Kimmich, prior to the second opinion examination, and described the procedural history of appellant's compensation claim before the Office. He provided a copy of his December 3, 2005 report and the Office's March 2, 2006 decision. Dr. Kaplan also provided his observations of appellant's condition from December 5, 2005 to the present.

On March 30, 2006 appellant underwent the Minnesota Multiphasic Personality Inventory, which was determined to be invalid due to the extremely exaggerated manner with which appellant responded to the questionnaire.

In an April 24, 2006 letter, the Office requested that Dr. Kimmich provide a supplemental report providing a medical explanation as to how appellant's emotional condition was related to the accepted work factors. In a May 11, 2006 response, Dr. Kimmich advised that the episode at work on April 7, 2005 struck a sensitive chord for appellant resulting in fear, anger, depression and anxiety. He indicated that appellant's reaction was maladaptive.

In a letter dated June 5, 2006, the Office advised Dr. Kaplan that he had inappropriately contacted Dr. Kimmich, the second opinion physician, prior to appellant's examination. The Office advised Dr. Kaplan that his contact with Dr. Kimmich tainted the second opinion physician's report and conclusions. The Office noted that a new second opinion evaluation would be obtained.

On July 12, 2006 the Office referred appellant to Dr. Charles Seaman, a Board-certified psychiatrist. In a July 14, 2006 report, Dr. Seaman reviewed appellant's history of injury and treatment. He evaluated appellant with Dr. Kaplan present. Dr. Seaman diagnosed adjustment disorder with mixed anxiety and depressed mood, resolved; hypertension; and occupational problem, having to work at the employing establishment under Ms. Massey. He opined that appellant's interpersonal conflict with Ms. Massey was the predominant cause of an adjustment disorder with mixed anxiety and depressed mood with an onset of April 7, 2005. Dr. Seaman advised that she was temporarily disabled from April 7 to August 2005. He opined that the predominant stressor and cause of appellant's psychiatric condition was her ongoing problems with Ms. Massey. Although appellant was emotionally upset by her interaction with Ms. Ellison, the cause of her condition was how Ms. Massey responded to her and ignored her complaints about Ms. Ellison. Dr. Seaman noted that appellant stated that the primary problem she had while working at the employing establishment was how she was treated by Ms. Massey and cited specific instances and actions by Ms. Massey to illustrate their conflict. He concluded that appellant's primary stressor was her interpersonal conflicts with Ms. Massey instead of Ms. Ellison. Dr. Seaman indicated that appellant's conflict with Ms. Massey was not listed in the amended statement of accepted facts as an accepted work factor. He found that appellant did not have any residual psychiatric impairment, that her adjustment disorder with mixed anxiety and depressed mood had resolved and that she would return to her job without any restrictions.

In a decision dated August 29, 2006, the Office denied appellant's claim, finding that her emotional condition did not arise in the performance of duty.

On September 11, 2006 appellant requested an oral hearing which was held on January 23, 2007. Appellant submitted a January 20, 2007 statement from Jose Cisneros, a coworker, who noted that, on April 7, 2005, he witnessed a discussion between appellant and Ms. Massey in which appellant inquired as to why she was not provided with assistance at the retail window when she rang the bell for help. Mr. Cisneros stated that appellant asked to go home and proceeded to leave and Ms. Massey yelled that she would be "AWOL."

In a decision dated April 4, 2007, the hearing representative affirmed the August 29, 2006 decision.

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.¹

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*,² the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.³ 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 under the Act.⁴ When an employee experiences emotional stress in carrying out her employment 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 results from her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of her work.⁵ 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 under the Act. 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 Act. On the other hand, the disability is not covered where it results from such factors as an

¹ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² 28 ECAB 125 (1976).

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

⁵ *Lillian Cutler*, *supra* note 2.

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.⁶

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.⁷ 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.⁸

ANALYSIS

Appellant alleged that she was harassed by her postmaster, Ms. Massey, and a coworker, Ms. Ellison. She outlined several specific instances of alleged harassment, noted above. To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.⁹ However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.¹⁰

The factual evidence fails to support appellant's claim of harassment. In a statement from Ms. Massey dated April 11, 2005, she advised that, on April 7, 2005, appellant was working the retail window by herself and a line of customers developed. She indicated that appellant rang the bell for relief; however, her coworkers did not hear the bell. Ms. Massey indicated that appellant walked onto the workroom floor and yelled at her, acted inappropriately and ignored two requests to speak with her in her office to discuss the incident. Likewise, a statement from Ms. Ellison dated July 19, 2005, noted that, on April 7, 2005, she did not hear appellant's request for assistance at the retail window and appellant subsequently confronted her and initiated an angry exchange of words. The factual evidence fails to support appellant's claim that she was harassed by Ms. Massey and Ms. Ellison.¹¹ Appellant did not submit evidence or witness statements in support of her allegation and her supervisor and coworker denied harassing appellant. Although she alleged that her supervisor and coworker engaged in actions which she

⁶ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, *supra* note 2.

⁷ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁸ *Id.*

⁹ See *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁰ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹¹ See *Michael A. Deas*, 53 ECAB 208 (2001).

believed constituted harassment, she provided no corroborating evidence, or witness statements to establish her allegations.¹² Additionally, Ms. Massey and Ms. Ellison have refuted such allegations. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

To the extent that appellant alleged a verbal or physical threat by Ms. Massey, the Board has recognized the compensability of physical threats or verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.¹³ Appellant specifically alleged that, on April 7, 2005, Ms. Massey stated in an inappropriate tone “I’ll deal with you later.” She also alleged that she requested to leave the premises and Ms. Massey yelled at her in a threatening manner “Okay fine but you are AWOL.” Appellant submitted an April 9, 2005 statement from Mr. Asty, a coworker, who noted that appellant, in a frustrated tone, asked permission from the postmaster to go home. However, this statement does not support that appellant was threatened or verbally abused. Appellant also submitted a statement from Mr. Cisneros, a coworker, dated January 20, 2007, who noted that, on April 7, 2005, he witnessed a discussion between appellant and Ms. Massey in which appellant requested permission to leave and then proceeded to walk away and Ms. Massey responded by screaming that appellant would be “AWOL.” The Board notes that, in a statement dated May 27, 2005, Ms. Massey indicated that, on April 7, 2005, appellant informed her that she was leaving the premises and Ms. Massey instructed appellant, in a voice loud enough to be heard over the office noise, to meet her in her office prior to leaving the building because her leave slip was not signed and she did not have permission to leave and would be considered AWOL. The Board finds that the facts of the case, noted above in the analysis of the allegation of harassment, does not reveal that appellant’s superior made any threats to her or otherwise acted unreasonably in view of appellant’s conduct. Ms. Massey also denied acting improperly. Appellant has not otherwise shown how Ms. Massey’s actions rose to the level of verbal abuse or otherwise fell within coverage of the Act.

Other allegations by appellant relate to administrative or personnel actions. In *Thomas D. McEuen*,¹⁴ the Board held that an employee’s emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁵

¹² See *William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

¹³ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁴ See *Thomas D. McEuen*, *supra* note 6.

¹⁵ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

Regarding appellant's allegation that Ms. Massey improperly placed her on AWOL status on April 7, 2005, the Board notes that 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.¹⁶ The Board finds that the employing establishment acted reasonably in this administrative matter. Ms. Massey explained that she followed employing establishment procedures in the matter and noted that appellant did not have a signed leave slip, did not have permission to leave and, as such, was considered to be AWOL. Appellant has presented no corroborating evidence to support that the employing establishment erred or acted abusively with regard to this matter. Instead, the evidence indicates that the employing establishment acted reasonably in its administrative capacity.

In the instant case, the Office accepted that appellant established compensable factors of employment under *Cutler*. On April 7, 2005 appellant assisted 10 customers who were waiting in line at the retail window from 8:30 a.m. to 8:42 a.m. She did not receive a response from Ms. Ellison, the relief clerk, after ringing a bell for assistance. After appellant finished serving the customers she entered the workroom floor and became involved in an argument with Ms. Ellison, who stated to appellant "get off your high horse and work faster." The Office also accepted that Ms. Ellison was occasionally nonresponsive or late in providing appellant with assistance at the window and she had to work with customers without any assistance.

The record supports this finding, specifically, in letters dated April 11 and May 27, 2005, Ms. Massey advised that, on April 7, 2005, appellant was working the retail window by herself and a line of customers developed. Ms. Massey indicated that appellant rang the bell for relief; however, her coworkers did not provide assistance. Additionally, in a letter dated July 19, 2005, Ms. Ellison indicated that, on April 7, 2005, she failed to respond to appellant's call for assistance and after an angry exchange Ms. Ellison told her to "get off your high horse and work faster."

However, appellant's burden of proof is not discharged by the fact that she has established employment factors which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the identified compensable employment factor.¹⁷

The Board finds that the weight of the medical evidence rests with the well-rationalized opinion of Dr. Seaman, a Board-certified psychiatrist to whom appellant was referred for a second opinion examination and who reviewed the statement of accepted facts prepared by the

¹⁶ See *Judy Kahn*, 53 ECAB 321 (2002).

¹⁷ See *William P. George*, *supra* note 12.

Office.¹⁸ The Board has noted that in assessing medical evidence the weight of such evidence is determined by its reliability, its probative value and its convincing quality and the factors which enter in such an evaluation include the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.¹⁹ The Board has carefully reviewed Dr. Seaman's July 14, 2006 report and notes that it has such reliability, probative value and convincing quality. Prior to reaching his conclusions, he extensively detailed appellant's factual and medical history and reported the findings of his examination of appellant. Dr. Seaman had the benefit of a statement of accepted facts which delineated those employment-related incidents and conditions accepted as compensable employment factors. Moreover, he provided a proper analysis of the factual and medical history and the findings on examination and reached conclusions regarding appellant's condition which comported with this analysis.

In his report, Dr. Seaman diagnosed adjustment disorder with mixed anxiety and depressed mood, resolved, hypertension and occupation problem, having to work at the employing establishment under the supervisor of the postmaster, Ms. Massey. He opined that appellant's interpersonal conflict with the postmaster, Ms. Massey, was the predominant cause of an adjustment disorder with mixed anxiety and depressed mood with an onset of April 7, 2005. Dr. Seaman further opined that the stressor for each episode of disability was appellant's perceived problems with Ms. Massey not Ms. Ellison. He indicated that, although appellant was emotionally upset by her interaction with her coworker, Ms. Ellison, the cause of her condition was how Ms. Massey responded to her and ignored her complaints about Ms. Ellison. Dr. Seaman advised that appellant was very clear that her primary problem while working at the employing establishment was how she was treated by Ms. Massey. He indicated that appellant did not have any psychiatric residuals, as her condition had resolved and that she could return work without restrictions.

Appellant submitted reports from Drs. Huey and Dr. Kaplan which noted that appellant had an employment-related emotional condition but these reports are of limited probative value as they do not contain adequate medical rationale in support of their conclusions.²⁰ In reports dated April 7 to June 10, 2005, Dr. Huey treated appellant for certain symptoms and conditions after a work event in which a coworker failed to assist her and nagged her and her postmaster was not supportive of her. However, Dr. Huey did not provide a rationalized medical opinion explaining why appellant has an emotional or physical condition causally related to the accepted compensable employment factor.²¹ Specifically, the treatment notes fail to reference the

¹⁸ The Board notes that the Office initially referred appellant for a second opinion examination with Dr. Kimmich, who issued April 10 and May 11, 2006 reports. The Office determined that another opinion was necessary as Dr. Kimmich did not properly resolve the issue before him, specifically whether the specific accepted compensable factors of employment were causally related to the diagnosed condition. *See Ayanle A. Hashi*, 56 ECAB 234 (2004) (when the Office refers a claimant for a second opinion evaluation and the report does not adequately address the relevant issues, the Office should secure an appropriate report on the relevant issues).

¹⁹ *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1959).

²⁰ *Id.*; *see also Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

²¹ *Id.*

accepted employment factors or explain how such factors caused or contributed to appellant's claimed condition.

Dr. Kaplan's reports of August 4 to December 3, 2005, who noted that appellant had a good working relationship with Ms. Massey until 2004 when she began assigning a coworkers' job duties to her. He diagnosed major depression and adjustment disorder with anxiety and depression. However, Dr. Kaplan did not attribute appellant's emotional exacerbation to the established compensable factors of employment.²² Instead, in his report dated December 3, 2005, Dr. Kaplan opined that appellant's emotional condition was caused by the manner in which she was treated by Ms. Massey.

Dr. Kimmich's reports provided some general support for causal relationship but his reports are deficient as he did not specifically explain how any of the accepted employment factors caused or aggravated a diagnosed condition. He noted that the April 7, 2005 "episode" at work "struck a particularly sensitive chord" causing fear, anger depression and anxiety but he did not explain how this was caused by any of the specific factors accepted by the Office.

The Board finds that appellant has not submitted rationalized medical evidence establishing that her claimed conditions are causally related to the accepted compensable employment factors.

CONCLUSION

The Board finds that appellant has not established that she sustained an emotional condition causally related to factors of her federal employment.

²² See *Jimmie H. Duckett*, *supra* note 20.

ORDER

IT IS HEREBY ORDERED THAT the April 4, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 21, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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