

During the May 2, 2009 meeting, Mr. Chavez allegedly bullied, belittled, verbally harassed and threatened her. Appellant claimed he repeatedly told her she was not a “team player” because she had an eight-hour medical restriction.² She claimed she experienced anxiety and depression. Appellant also claimed physical injuries that included headache, tremors, abdominal pain, irritable bowel and sleeplessness. She stopped working on May 2, 2009 and returned to work on May 15, 2009.

The May 2, 2009 discussion with Mr. Chavez stemmed from a work-related incident the previous day. On the afternoon of May 1, 2009, appellant contacted Mr. Chavez to advise him that she would not likely finish delivering her assigned mail route within eight hours. Because of right leg and groin pain, she was limited to an eight-hour workday. On the afternoon of May 1, 2009, appellant needed approximately 20 minutes of assistance to complete the day’s mail deliveries. She was prepared to return her undelivered mail to the postal facility so as not to exceed her eight-hour work restriction. When first contacted it was unclear whether Mr. Chavez would be able to provide the requested relief. He specifically advised appellant not to bring her mail back to the facility. Appellant then contacted a union representative who reportedly advised her to work only eight hours and to return the mail to the postal facility to ensure that she clocked out within the eight-hour time frame imposed by her physician.

Mr. Chavez and appellant spoke again that afternoon and during this latter conversation he asked if another carrier had contacted her. When appellant replied no, he told her that the other carrier would be looking her up. She responded that the union advised her to return to the facility in a couple minutes so that she could clock out in eight hours. Mr. Chavez again told appellant not to bring back any mail. Appellant replied she would see him in a couple minutes and then hung up.

As appellant was en route to the postal facility, she received a telephone call from another carrier, Kenny Dawkins, who Mr. Chavez had dispatched to retrieve her undelivered mail. She advised Mr. Dawkins of her location, pulled over to the side of the road and awaited his arrival. After giving him her undelivered mail, appellant drove back to the postal facility. When appellant arrived, she encountered Mr. Chavez who asked if she had turned the mail over to Mr. Dawkins. She “jokingly” told him she brought the mail back to the facility with her. Afterwards, appellant told Mr. Chavez she was just kidding. She then clocked out so as not to exceed her eight-hour work restriction and proceeded to telephone the union. Appellant stated that she intentionally placed the call in earshot of Mr. Chavez who overheard her say that she and her coworkers were “treated like shit around here” and that it was the worst office she had ever been in.

On Saturday, May 2, 2009 at approximately 8:30 a.m., Mr. Chavez approached appellant and asked if she could meet with him in the supervisor’s office. He wanted to go over the previous day’s mail delivery and to correct any confusion regarding management’s instructions and her performance. Appellant inquired whether she should have a union steward present. Mr. Chavez told her it was a discussion and she was not entitled to union representation. During the meeting he asked appellant to explain what a team player was. Appellant allegedly replied

² As of April 21, 2009, appellant was restricted to an eight-hour workday due to right groin and right leg pain.

that it was “an individual that went above and beyond duty.” Mr. Chavez indicated that he asked appellant if she believed that her performance, including her notification of bringing back mail, personified her as a team player. Appellant reportedly did not respond. Mr. Chavez showed appellant the employee labor manual and explained that she was to obey her supervisor’s instructions even if she disagreed. He again informed her that she was not authorized to bring back mail as she had attempted to do the previous day, and that the union was not management. Mr. Chavez also stated that he reviewed with appellant the carriers’ handbook and explained how all carriers were accountable for both their performance and their conduct.

Appellant alleged that the repeated statement that she was not a “team player” by Mr. Chavez constituted harassment. She also stated that the discussion turned out to be demeaning and that he bullied and belittled her. Mr. Chavez denied raising his voice, denied making any threats and denied bullying or belittling appellant. He stated that he explained to her his expectations based on her previously demonstrated ability. Mr. Chavez also stated “team” player only once.

After the meeting appellant returned to her case and reported what had just happened to a coworker, Pamela Murtha. She asked several coworkers if she was a team player. Appellant stated that her hands were trembling so badly she thought she was having a panic attack. Mr. Chavez stated that appellant started raising her voice once again in the work floor so he approached her and asked if anything was wrong. Appellant advised him she was going home. Mr. Chavez then asked her to step outside. Appellant requested a union steward and Mr. Chavez granted her request. She, Joseph L. Spencer, a steward, and Mr. Chavez stepped outside to the dock area. Mr. Chavez stated that he told her that he found it coincidental that she was now threatening to go home as prior to their discussion she had clocked in and was ready to go to work. He instructed appellant that upon returning to work she should provide proper medical documentation to substantiate her absence.

Appellant characterized this second meeting with Mr. Chavez as bullying and belittling her. She denied having raised her voice upon returning to the workroom floor following their first discussion. Appellant decided to go home because her hands were shaking, she was stressed and it was not safe to continue work that day. She alleged that Mr. Chavez told her again that she was not a team player, and he tried to make her feel guilty for going home and for leaving her mail route for her coworkers to deliver.

Mr. Spencer, appellant’s union steward, signed her Form CA-1 as a witness and also provided a separate statement. He indicated that Mr. Chavez tried to make appellant feel guilty about leaving by noting that her coworkers would have to carry her route. Mr. Spencer stated that Mr. Chavez had no communication skills.

Ms. Murtha, appellant’s coworker, provided a statement. She indicated that, Jeanette Thornton, another coworker, was standing next to the office door on May 2, 2009 and overheard Mr. Chavez chastising appellant harshly and asking her if she was a “team player.” Ms. Murtha and Ms. Thornton walked back to their respective cases and Ms. Thornton reportedly stated that what she overheard was a verbal attack, not an official discussion. Ms. Murtha stated that, when appellant returned to her own case, it was obvious she was upset. Appellant’s case was a few cases over from Ms. Murtha’s and she reportedly raised her voice just enough to ask Ms. Murtha

for a telephone number where she could contact the union. Ms. Murtha went to appellant's case to help her with the numbers as appellant's hands were trembling so bad she could not even dial. She told appellant she was in no condition to drive a postal vehicle. Ms. Murtha stated that at no time did appellant raise her voice or draw attention on the workroom floor "even though she had just been verbally attacked by [Mr.] Chavez." When appellant advised Mr. Chavez she was leaving, he told her he wanted to talk. Appellant asked for a union representative and Mr. Spencer joined appellant and Mr. Chavez on the dock. Approximately 10 minutes later, appellant came into the office and clocked out. Ms. Murtha stated that appellant was visibly upset and shaking from the morning's incident with Mr. Chavez.

Four coworkers signed a typewritten statement attesting that appellant did not raise her voice or yell upon entering the workroom floor following her initial May 2, 2009 meeting with Mr. Chavez. In a supplemental statement dated June 15, 2009, Mr. Chavez reiterated that appellant raised her voice once their discussion was over. She reportedly went over to Ms. Murtha's case and mockingly asked if she was a "team player."

Appellant filed both a grievance and an Equal Employment Opportunity (EEO) complaint. She alleged that on May 1, 2009 her employer attempted to force her to work beyond her medically-documented limitations. Appellant also accused Mr. Chavez of belittling, berating and yelling at her during an official discussion. She described the May 2, 2009 meeting with Mr. Chavez as a malicious personal attack. The record does not include information regarding a final resolution of appellant's EEO complaint. As to her grievance, it was denied. During the grievance process, the employer acknowledged that Mr. Chavez spoke in a militaristic tone. It was prepared to have Mr. Chavez work on his tone and the way he talked to carriers. Appellant also demanded that Mr. Chavez be removed from supervision. With respect to this latter demand, the employer did not accommodate her request. Consequently, her grievance was denied at step 2.

Appellant sought medical treatment at a local emergency room on May 2, 2009. She had a follow-up appointment on May 7, 2009 with Dr. Eva Rachocka-Kaszuba, a Board-certified internist, who diagnosed mood disorder with anxiety. Dr. Rachocka-Kaszuba excused appellant from work for the period May 2 to 14, 2009. On May 19, 2009 appellant saw Dr. Mitchell B. Cannell, a Board-certified psychiatrist, who diagnosed adjustment disorder with depressed mood, chronic. Appellant also had a June 11, 2009 counseling session through the employee assistance program (EAP).

In a June 22, 2009 decision, OWCP denied the claim finding appellant had not established a compensable employment factor. It noted that Mr. Chavez denied that he had threatened, bullied or belittled appellant. OWCP further found that the May 2, 2009 performance counseling discussion was an administrative matter and appellant had not established that Mr. Chavez either erred or acted in an abusive manner. By decision dated April 23, 2010, the Branch of Hearings and Review affirmed the June 22, 2009 decision.

LEGAL PRECEDENT

To establish that she sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting

employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.³

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.⁴ Disability is not compensable, however, when it results from factors such as 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.⁵

An employee's emotional reaction to administrative or personnel matters generally falls outside the scope of FECA.⁶ Although related to the employment, administrative and personnel matters are functions of the employer rather than the regular or specially assigned duties of the employee.⁷ However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.⁸

Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.⁹ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter, the Office must base its decision on an analysis of the medical evidence.¹⁰

ANALYSIS

Appellant filed a traumatic injury claim (Form CA-1) alleging that her interactions with Mr. Chavez on May 2, 2009, caused or contributed to her anxiety/depression, tremors and irritable bowel. She did not implicate the previous day's events as a contributing cause or factor

³ See *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁴ *Pamela D. Casey*, 57 ECAB 260, 263 (2005).

⁵ *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁶ *Andrew J. Sheppard*, 53 ECAB 170, 171 (2001); *Matilda R. Wyatt*, 52 ECAB 421, 423 (2001).

⁷ *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005).

⁸ *Id.*

⁹ *Kathleen D. Walker*, *supra* note 3.

¹⁰ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

in her claimed psychological and physical conditions. Appellant did not attribute her emotional condition to her regular or specially assigned duties. Appellant did not allege, nor is there evidence to suggest that she was either required to or did in fact work beyond her eight-hour medical restriction on May 2, 2009.¹¹ The record indicates that she reported to work on the morning of May 2, 2009, and briefly performed some of her duties at her workstation prior to meeting with Mr. Chavez. After meeting with Mr. Chavez, appellant did not resume her letter carrier duties, but instead took sick leave and ultimately left the employing establishment premises. She did not allege that the claimed emotional and/or physical conditions were a consequence of performing her regularly or specially assigned duties on May 2, 2009. Appellant has not established a compensable employment factor under *Cutler*.¹²

The meeting between appellant and Mr. Chavez at approximately 8:30 a.m. on Saturday, May 2, 2009 was an administrative matter. The purpose of the meeting was to review appellant's performance the previous day. Assigning work and monitoring performance are administrative functions of a supervisor.¹³ The manner in which a supervisor exercises his discretion generally falls outside FECA's coverage. This principle recognizes that supervisors must be allowed to perform their duties, and at times employees will disagree with their supervisor's actions. Mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor.¹⁴

Appellant did not challenge Mr. Chavez's authority to evaluate her job performance. She attributed her condition to his demeanor or comportment during the course of the May 2, 2009 meeting, not the subject matter of their discussion. Appellant alleged that Mr. Chavez verbally harassed, threatened, bullied and belittled her. Verbal altercations and difficult relationships with supervisors, when sufficiently detailed and supported by the record, may constitute compensable factors of employment.¹⁵ This does not imply that every ostensibly abusive or threatening statement uttered in the workplace will give rise to coverage under FECA.¹⁶ For appellant to prevail on her claim, she must support her allegations with probative and reliable evidence.¹⁷

Other than claiming that Mr. Chavez repeatedly asked her if she was a "team player," appellant has not provided sufficient evidence to support her allegation that he verbally harassed, threatened, bullied and belittled her on May 2, 2009. Mr. Chavez acknowledged asking

¹¹ The Board has held that being required to work beyond one's physical limitations may constitute a compensable employment factor if such activity is substantiated by the record. *See D.L.*, 58 ECAB 217, 220 (2006).

¹² *Supra* note 5.

¹³ *Donney T. Drennon-Gala*, 56 ECAB 469, 475 (2005); *Beverly R. Jones*, 55 ECAB 411, 416 (2004); *Charles D. Edwards*, 55 ECAB 258, 270 (2004).

¹⁴ *Linda J. Edwards-Delgado*, 55 ECAB 401, 405 (2004).

¹⁵ *Marguerite J. Toland*, 52 ECAB 294, 298 (2001).

¹⁶ *Fred Faber*, 52 ECAB 107, 109 (2000).

¹⁷ *See Kathleen D. Walker*, *supra* note 3.

appellant about being a team player, but he denied doing it repeatedly. He also denied raising his voice or making any threats. Moreover, Mr. Chavez denied bullying or belittling appellant.

In her statement, Ms. Murtha indicated that appellant had “been verbally attacked by [Mr.] Chavez.” However, she did not personally witness any incidents of verbal abuse. A coworker, Ms. Thornton, was reportedly standing next to the office door and overheard Mr. Chavez chastising appellant harshly and asking her if she was a “team player.” There is, however, no statement from Ms. Thornton. Ms. Murtha’s second-hand account of what transpired that morning does not establish verbal abuse. Under the circumstance, inquiring whether someone is a “team player” does not by itself establish verbal abuse. The Board finds that appellant has not demonstrated that Mr. Chavez was verbally abusive during their initial meeting on the morning of May 2, 2009.

The second meeting with Mr. Chavez regarding appellant’s anticipated early departure also pertained to an administrative matter. Although time and attendance issues are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.¹⁸ Again, appellant alleged that Mr. Chavez was belittling and tried to make her feel bad for leaving by noting that her coworkers would have to carry her route. She also noted that Mr. Chavez asked that she provide medical documentation upon returning to work. Mr. Spencer, who was present during this latter conversation, did not corroborate appellant’s allegation of verbal abuse. He did not provide a statement describing any specific abusive language or behavior. Mr. Spencer confirmed that Mr. Chavez requested medical documentation to support appellant’s unscheduled leave request and that he also mentioned that appellant’s coworkers would have to carry her route that day. Other than expressing his opinion that Mr. Chavez was trying to make appellant feel guilty for leaving work early, Mr. Spencer did not provide evidence of verbal abuse. He commented generally that Mr. Chavez had no communication skills when it came to talking to employees, but did not elaborate.

Appellant has not demonstrated that Mr. Chavez was verbally abusive during either of their two meetings on May 2, 2009. Her allegations that he harassed, threatened, bullied and belittled her are both vague and unsubstantiated. The record does not support a finding of verbal abuse, and the mere fact that appellant filed an EEO complaint and a grievance does not establish error or abuse on the part of her employer.¹⁹ Because appellant failed to establish a compensable factor of employment, OWCP properly denied her claim without addressing the medical evidence of record.²⁰

¹⁸ *T.G.*, 58 ECAB 189, 197 (2006); *Joe M. Hagewood*, 56 ECAB 479, 488 (2005).

¹⁹ Grievances and EEO complaints do not establish that workplace harassment or unfair treatment occurred. *Charles D. Edwards*, 55 ECAB 258, 266 (2004). Furthermore, absent an admission of fault, a settlement agreement does not establish error or abuse on the part of the employing establishment. *Kim Nguyen*, 53 ECAB 127, 128 (2001).

²⁰ *Garry M. Carlo*, *supra* note 10.

CONCLUSION

Appellant failed to establish that she sustained an emotional condition in the performance of duty on May 2, 2009.

ORDER

IT IS HEREBY ORDERED THAT the April 23, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 26, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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