

FACTUAL HISTORY

On September 6, 2001 appellant, then a 60-year-old clerk, filed a traumatic injury claim alleging that on June 16, 2001 she sustained post-traumatic stress after she was harassed and physically threatened by management. Appellant stopped work on that date and did not return.¹

Appellant submitted a June 17, 2001 statement alleging that, on June 16, 2001, Rick Sjolie, supervisor of distribution operations, harassed and physically threatened her when he reached around her to retrieve an overtime list from her desk. She also alleged that, on June 16, 2001, Janelle Wright, manager of distribution operations, used threatening hand gestures toward her during a meeting. Appellant alleged that she was denied the opportunity to meet with her union representative that day during a discussion immediately following the June 16, 2001 incident with Mr. Sjolie. She contended that she was wrongfully denied a union steward during an investigative interview on June 16, 2001, and that she was wrongfully disciplined and placed on off-duty status immediately after the incident with Mr. Sjolie.

Appellant submitted an attending physician's report dated August 14, 2001, prepared by Dr. Louis F. Mortillaro, a clinical psychologist, who diagnosed post-traumatic stress disorder developing after an altercation at the workplace.

The employing establishment submitted a June 16, 2001 statement and a notification of incident from Mr. Sjolie. On that date, he instructed appellant to make telephone calls from an overtime list and she refused to comply with his instructions, advising that she was on break. Mr. Sjolie subsequently instructed Alice Azzano, a clerk, to assist in making the telephone calls, and attempted to retrieve the overtime list from appellant's desk but appellant would not relinquish the list. She slammed down the papers and spoke in a raised voice stating that Mr. Sjolie should leave her stuff alone. Mr. Sjolie asked appellant if he could photocopy the list in order that Ms. Azzano could assist in making the telephone calls, as there was only 14 minutes left to notify those on the list of the overtime. Appellant refused to release the document and physically pushed his arms away with her hands. He informed Ms. Wright of the incident with appellant and she also instructed appellant to assist with the telephone calls. Mr. Sjolie indicated that appellant then requested a steward and Ms. Wright advised that a steward would be present. He scheduled an investigative interview which appellant refused to attend unless a specific union steward came to represent her. Mr. Sjolie advised that at the investigative interview appellant was represented by Ray Smith, a union steward. During the interview, appellant became hostile and argumentative and denied that the incident occurred. Mr. Sjolie determined that she posed a threat to herself and others and placed her in an emergency off-duty status without pay.

In a statement, Ms. Wright noted that, on June 16, 2001, she witnessed appellant yelling loudly and pointing her finger at Mr. Sjolie. She attempted to calm appellant down and to explain the urgency of contacting employees on the telephone list in compliance with the policy of providing employees at least one-hour notice for overtime. Ms. Wright indicated that appellant continued to yell and behave in a hostile manner, and she instructed appellant to assist another clerk in calling the overtime employees designated by Mr. Sjolie. She advised that, if

¹ Mary Ann Roach, one of appellant's supervisors, noted on the CA-1 form that appellant was discharged from employment after pushing a supervisor on June 16, 2001.

appellant did not comply, her behavior would be considered a failure to follow instructions and could be subject to discipline. Ms. Wright arranged for a union steward, Mr. Smith to be present on appellant's behalf; however, appellant insisted on a steward of her choice. During the interview, appellant continued to display a hostile and loud demeanor and denied assaulting Mr. Sjolie. Ms. Wright indicated that appellant failed to follow Mr. Sjolie's instructions and was angry and hostile throughout the interview. She concurred in the determination to place appellant on emergency off-duty without pay status.

Also submitted was an interview with Ms. Azzano dated June 16, 2001. She advised that Mr. Sjolie requested she call 12 people for overtime status. Mr. Sjolie asked appellant to make the calls and she responded that she had the list and would take care of the matter. Ms. Azzano noted that, when Mr. Sjolie attempted to remove the list from appellant's desk, appellant placed her hands on the desk and pushed Mr. Sjolie's arms away. Mr. Sjolie gave appellant a direct order to relinquish the overtime list and, after repeated requests, appellant complied. Ms. Azzano indicated that appellant became very upset and loud and used hand gestures toward Mr. Sjolie. She noted that Mr. Sjolie's demeanor was stern but calm.

An investigative interview was conducted on June 16, 2001 with appellant, Mr. Smith, Mr. Sjolie and Ms. Wright. Appellant indicated that she was instructed to make telephone calls but was unable to do so because maintenance was working on a coworkers desk and had items spread on her desk. She advised that, when Mr. Sjolie instructed her to go to the tour II office to make telephone calls, she was taking a break. Appellant acknowledged that mail processors had to be called by 5:30 p.m. and that she routinely made those telephone calls. She denied slamming her hands on the overtime list or pushing Mr. Sjolie and contended that Mr. Sjolie approached her in a threatening manner. Appellant indicated that she did not want Mr. Sjolie touching her personal items and union papers which were on her desk. She stated that she did not remember if she pushed Mr. Sjolie.

A threat assessment team hotline telephone log documents that Ms. Wright called to report that a supervisor was pushed by an employee who was screaming and yelling. The employing establishment submitted a letter, dated June 18, 2001, advising appellant that she was placed in an off-duty status without pay after becoming hostile with Mr. Sjolie and physically pushing him. The employing establishment submitted a notice of proposed removal dated June 25, 2001, for unacceptable conduct and detailed the incident of June 16, 2001. In a letter of decision dated July 30, 2001, the employing establishment reduced the proposal to a 30-day suspension, effective August 18 to September 17, 2001. Appellant refused to sign the 30-day suspension notice.

By letter dated October 16, 2001, the Office asked appellant to submit additional factual and medical information, including a detailed description of the employment factors or incidents that she believed contributed to her claimed illness.

Appellant submitted copies of three grievances filed against the employing establishment for incidents occurring on June 16, 2001. In a statement dated June 18, 2001, a coworker, Juanita Van Domburg, overheard Mr. Sjolie state that he would "fire her ass," referring to appellant. Appellant also alleged on August 16, 2001 that, after the June 16, 2001 incident, Mr. Sjolie stalked her and harassed her by telephone. She submitted police reports dated

August 20 and 31, 2001 documenting her harassment complaints. Appellant also reported that she was been verbally and physically harassed by Mr. Sjolie and Ms. Wright since the June 16, 2001 incident.

On November 11, 2001 appellant alleged that she experienced additional harassment from Mr. Sjolie and Ms. Wright and feared for her safety. Appellant submitted reports from Sandi Barbero, a social worker, who noted counseling her beginning July 31, 2001 for mental distress caused by her work.

In a December 21, 2001 decision, the Office denied appellant's claim, finding that the claimed emotional condition did not arise in the performance of duty.

By letter dated January 14, 2002, appellant requested an oral hearing which was held on December 17, 2002. She submitted reports from Ms. Barbero. In a report dated November 26, 2002, Dr. Mortillaro diagnosed post-traumatic stress disorder after a threat from a coworker. A December 20, 2002 report from Dr. Sam J. La Mancusa, a Board-certified internist, noted that in June 2001 appellant was diagnosed with post-traumatic stress disorder after workplace harassment.

By decision dated June 4, 2003, the hearing representative affirmed the December 21, 2001 decision. The hearing representative noted that appellant made allegations following June 16, 2001 that her supervisor stalked her and that a coworker had threatened her; however, he advised that the decision adjudicated only the incident of June 16, 2001. The hearing representative informed appellant that if she wished to pursue the new allegations she could file a new claim.

In a letter dated July 5, 2003, appellant requested reconsideration and submitted additional evidence. She contended that the incident of June 16, 2001 occurred in the normal course of her regular duties and caused her to develop post-traumatic stress disorder. She submitted notes from Ms. Barbero and from a psychiatrist.

In a decision dated February 25, 2005, the Office denied modification of the June 4, 2003 decision on the grounds that the evidence submitted was insufficient to establish that appellant sustained an emotional condition in the performance of duty.

LEGAL PRECEDENT

To establish 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.²

² *Donna Faye Cardwell*, 41 ECAB 730 (1990).

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*,³ 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.⁴ 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.⁵ 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 an 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.⁶ 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 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.⁷

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.⁸ 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.⁹

ANALYSIS

Appellant alleged that on June 16, 2001 a supervisor, Mr. Sjolie, harassed her when he reached around her right side to retrieve an overtime call list from her desk. To the extent that

³ 28 ECAB 125 (1976).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ See *Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

⁶ *Lillian Cutler*, *supra* note 3.

⁷ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, *supra* note 3.

⁸ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁹ *Id.*

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.¹⁰ 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.¹¹

The factual evidence fails to support appellant's claim that she was harassed by her supervisor. Mr. Sjolie, noted that on June 16, 2001 he instructed appellant to make telephone calls from the overtime list but she refused to comply, advising that she was on break. Mr. Sjolie requested that a coworker assist and attempted to retrieve the overtime call list from appellant's desk. Appellant refused to relinquish the document and slammed down the papers and spoke to Mr. Sjolie in a loud manner. Mr. Sjolie again requested the document but appellant refused to relinquish it and pushed his arms away with her hands. Ms. Wright, a manager, noted that she witnessed appellant yelling loudly and pointing her finger at Mr. Sjolie. She attempted to calm appellant down; however, appellant continued to yell and behave in a hostile manner. Ms. Azzano confirmed that Mr. Sjolie instructed appellant to make telephone calls to overtime staff; however, appellant failed to follow his instructions. She noted that Mr. Sjolie gave appellant a direct order to relinquish the overtime call list and, after repeated requests, he attempted to remove the list from appellant's desk. Appellant placed her hands on the desk and pushed Mr. Sjolie's arms away. Ms. Azzano indicated that appellant's demeanor was very upset and loud and that she used hand gestures toward Mr. Sjolie. The factual evidence fails to support appellant's claim that she was harassed by Mr. Sjolie or Ms. Wright.¹² Rather the evidence shows that appellant refused to comply with the directions of her supervisor.

Appellant alleged that on June 16, 2001 Mr. Sjolie made a physical threat against her and that Ms. Wright used threatening hand gestures toward her. In this case, appellant did not submit any evidence or witness statements in support of her allegations. The evidence, as noted, does not support her allegations. The witness to the incident Ms. Azzano, indicated that appellant did not comply with her supervisor's directions and pushed, yelled and made hand gestures toward Ms. Sjolie. General allegations of harassment are not sufficient.¹³ In this case, appellant has not submitted sufficient evidence to establish a threat or harassment by her supervisors.¹⁴ The evidence indicates that appellant was not responsive to the request of her supervisor and then became abusive towards him. Although appellant alleged that her supervisors engaged in actions which she believed constituted harassment, she provided no evidence to establish her

¹⁰ See *David W. Shirey*, 42 ECAB 783 (1991).

¹¹ *Jack Hopkins, Jr.*, 42 ECAB 818 (1991).

¹² See *Michael A. Deas*, 53 ECAB 208 (2001).

¹³ See *Paul Trotman-Hall*, 45 ECAB 229 (1993).

¹⁴ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

allegations.¹⁵ The evidence of record refutes such allegations. 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 the employing establishment on June 16, 2001, 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.¹⁶ 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 superiors made any threats or acted unreasonably in view of appellant's conduct. Appellant has not otherwise shown how supervisory comments or actions rose to the level of verbal abuse or otherwise fell within coverage of the Act.

Appellant alleged that the employing establishment denied her an opportunity to meet with her union representative on June 16, 2001 during a discussion immediately following the incident with Mr. Sjolie. The Board has generally held that matters pertaining to union activities are not deemed to be employment factors.¹⁷ Appellant also indicated that she was wrongfully denied a union steward of her choice during an investigative interview on June 16, 2001. However, the record does not substantiate these allegations. The record reflects that Ms. Wright held an informal meeting with appellant and Mr. Sjolie immediately following the incident. At the meeting, Ms. Wright instructed appellant to assist with the telephone calls and she would arrange for a steward to be present at the investigative interview. The record reflects that appellant was represented by Mr. Smith, a union steward, at the interview. There is no evidence supporting that appellant was denied a union steward or that the employing establishment acted unreasonably in this regard.

Other allegations by appellant relate to administrative or personnel actions. In *Thomas D. McEuen*,¹⁸ 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.¹⁹

¹⁵ 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).

¹⁶ *Charles D. Edwards*, 55 ECAB ___ (Docket No. 02-1956, issued January 15, 2004).

¹⁷ See *George A. Ross*, 43 ECAB 346 (1991).

¹⁸ See *Thomas D. McEuen*, *supra* note 7.

¹⁹ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.²⁰ Although the handling of disciplinary actions and evaluations are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.²¹ On June 16, 2001 Mr. Sjolie requested an overtime call list which appellant refused to relinquish.²² As a result, the employing establishment disciplined appellant for her misconduct. The record reflects that the proposal to remove appellant was reduced to a 30-day suspension.²³ The evidence indicates that the employing establishment acted reasonably in response to appellant's misconduct. Appellant has presented no evidence to support that the employing establishment erred or acted abusively with regard to disciplining her conduct. Thus, she has not established administrative error or abuse in the performance of these actions and therefore they are not compensable under the Act.²⁴

CONCLUSION

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.²⁵

²⁰ See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

²¹ *Id.*

²² The supervisor's instruction that that appellant relinquish the overtime list would also be considered an administrative matter. See *Kim Nguyen*, 53 ECAB 127, 129 (2001).

²³ See *Linda K. Mitchell*, 54 ECAB ____ (Docket No. 03-1281, issued August 12, 2003) (the mere fact that the employing establishment lessened a disciplinary action did not establish that the employing establishment erred or acted in an abusive manner).

²⁴ The Office decision addressed only the alleged incidents which occurred on June 16, 2001. The record reflects that appellant alleged several incidents of stalking and harassment which occurred after the June 16, 2001 incidents; however, the Office advised appellant to file a separate claim for these alleged incidents. Therefore, as the Office has not issued a final decision with regard to the incidents alleged to have occurred after June 16, 2001, the Board does not have jurisdiction over the matter. See 20 C.F.R. § 501.2(c).

²⁵ As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the February 25, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 11, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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