

from a work injury and to a hostile work environment.¹ She alleged that chronic pain and constant harassment aggravated her depression, noting a preexisting bipolar disorder and chronic pain from accepted employment injuries. Appellant stated that at 1:30 a.m. on December 6, 2006 she had a confrontation with Jim Odle, her immediate supervisor, regarding her permanent work restrictions. Mr. Odle brought her a CA-17 form but that, since she had submitted both a CA-17 and OWCP-5 form, the prior July, she was not required to submit another. Appellant became angry, ripped up the CA-17 and threw it away but Mr. Odle took it from the trash and left the work area. As Mr. Odle was leaving, she asked to see a union steward and experienced an anxiety attack. Appellant left the work floor and went to the union office. Mr. Odle was there and began yelling at her to leave because she did not have permission to be there. Appellant yelled back at him to leave her alone and Chuck Bader, the union steward, came between the two of them. Mr. Odle left and Mr. Bader received a telephone call to bring appellant to the medical director's office (MDO). Appellant then went to her work area to get her inhaler. When she arrived at the MDO's office, she asked Janet Williams, the MDO, to take her to the hospital but was told that, if she felt she needed to leave, she could fill out a leave slip. Appellant left the MDO's office, returned to the union office, and finished her shift, leaving at 6:30 a.m. However, as she was driving home, she realized she could not drive and called someone to pick her up and take her home. Appellant did not go to the hospital. She filed a grievance regarding the December 8, 2006 incident. In a form report dated August 14, 2001, Dr. Jeff Harazin, a psychiatrist, advised that appellant had a service-connected chronic condition and required medication daily with psychotherapy during flare-ups. On September 19, 2001 Dr. Robert T. Pero, Board-certified in occupational and preventive medicine, diagnosed work-related cervical strain, myofascial pain and headaches, and primarily nonwork-related depression. He provided permanent work restrictions. In Office form reports dated July 14, 2006, Dr. Jack L. Rook, a Board-certified physiatrist, advised that appellant could work eight hours a day, five days a week with "indefinite" work restrictions. On December 18, 2006 he advised that appellant continued to complain of severe neck and low back pain and had a severe panic disorder which was aggravated by chronic pain and stressors in the workplace. In a January 11, 2007 report, Roxann L. Crouse, a licensed social worker, advised that appellant could not work from January 9 to 15, 2007.

By letters dated February 16, 2007, the Office informed appellant of the evidence needed to support her claim and asked that the employing establishment respond to her allegations. The employing establishment controverted the claim and submitted a December 28, 2006 statement from Odessa Lazard. Appellant accompanied Mr. Odle on December 8, 2006 when he gave appellant the CA-17 form, noting that appellant told him she did not need to submit the form. She snatched it from him, tore it up and threw it in the trash. Mr. Odle retrieved the form and told appellant he would show it to the MDO. Appellant replied, using profanity, stating that she did not care. Ms. Lazard stated that Mr. Odle did not raise his voice when talking with appellant. In a February 8, 2007 letter, Kenneth A. DeHate, western area manager of human resources, informed appellant that employees were required to keep their CA-17 on them while at work and

¹ Under Office file number 120194010, the Office accepted a work-related cervical strain, myalgia, headaches and lumbago, and under file number 122014754, work-related lumbar degenerative arthritis, herniated disc at L2-3, and spinal stenosis at L4-5. These claims were doubled on November 28, 2006, with the former becoming the master. The instant claim was adjudicated by the Office under file number 122042936.

that requiring medical updates every 30 days was standard practice until maximum medical improvement had been reached.

In a May 23, 2007 report, Carol Shelby-Hackels, a nurse practitioner, advised that appellant could not work secondary to a military-connected disability.

In a statement dated June 15, 2007, Mr. Bader noted that, on December 6, 2006, appellant asked to see a union steward before she came to the union office but her request was not authorized. He noted that Mr. Odle was already there when appellant arrived. Mr. Bader noted that appellant reported that she came to the union office because she felt threatened by a hostile environment Mr. Odle had created. At the union office, Mr. Odle became angry and began yelling. Appellant also became upset and began yelling. Mr. Bader stepped between them to avoid further escalation. He stated no one yelled during the later meeting but that Ms. Williams had a cold demeanor and would not take appellant to the hospital, even though she was visibly upset and had trouble breathing.

In e-mails dated June 11 to 13, 2007, Ms. Williams advised that during the meeting on December 6, 2006 she informed appellant that she should stop crying and act appropriately because no one was being rude or yelling at her. Appellant did not inform her that she was having trouble breathing but only stated that she felt stressed and wanted to go to the hospital. Ms. Williams informed appellant that she could complete a leave slip and go to the hospital. She concluded that appellant was no longer crying or acting out at that point. Mr. Odle advised that as he was talking with Mr. Bader because appellant had torn up the CA-17 and was using profanity. After appellant's unauthorized entry to the union office, he told her to leave. Mr. Odle stated that she refused to leave, would not listen to him, and began unpleasant shouting. He acknowledged that he raised his voice. Mr. Odle then called Ms. Williams who asked that they report to her office. In a June 18, 2007 statement, Jim Damm, health and resource management specialist, responded to appellant's allegations. He noted that she had two claims for physical injuries, and was at maximum medical improvement as to only one claim. Mr. Damm advised that although Ms. Williams authorized leave on December 6, 2006 appellant completed her tour.

By decision dated June 22, 2007, the Office denied the claim on the grounds that appellant did not establish that she sustained an emotional condition in the performance of duty. On July 2, 2007 appellant requested a hearing and submitted a July 19, 2007 report in which Ms. Crouse advised that appellant could not work.

At the November 5, 2007 hearing, Mr. Bader again described the events of December 6, 2006. Appellant testified that she experienced chronic pain and headaches from her accepted lumbar and cervical conditions. She described the December 6, 2006 incident, contending that she was unfairly treated by Mr. Odle because she had permanent restrictions and being asked to complete the work restriction form caused an anxiety attack. Appellant felt physically threatened by Mr. Odle while in Mr. Bader's office. She completed her shift at 6:30 a.m. but could not drive all the way home and was picked up by her boyfriend. Appellant worked intermittently after the incident and had not worked at all since April 10, 2007. Her attorney noted that all of appellant's claims were related.

Subsequent to the hearing, the employing establishment submitted Mr. Odle's responses to the hearing testimony. Mr. Odle stated that both appellant and Mr. Bader did not listen to him the night of December 6, 2006 and the atmosphere became heated, noting that everybody in the room was equally loud. Mr. Damm advised that appellant was not told that she had to have a CA-17 with her at all times but merely that she needed to update it. He noted that, in nonemergency situations, a supervisor was not authorized to accompany an employee to a medical facility. Mr. Damm stated that all limited-duty employees were required to update their medicals every 30 days, or if at maximum medical improvement, then annually. Moreover employees were not to leave the workroom floor to go to the union without permission. Mr. Damm advised that appellant's grievances were denied. By decision dated January 11, 2008, an Office hearing representative affirmed the June 22, 2007 decision.

LEGAL PRECEDENT

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

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 as 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 illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁵ When an employee experiences emotional stress in carrying out his employment duties, and the medical evidence establishes that the disability resulted from his 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 his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.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

² *Ronald K. Jablanski*, 56 ECAB 616 (2005).

³ 28 ECAB 125 (1976).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *See Robert W. Johns*, 51 ECAB 137 (1999).

⁶ *Lillian Cutler*, *supra* note 3.

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

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.⁹ Where 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.¹⁰

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. Mere perceptions of harassment or discrimination are not compensable under the Act. 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.¹¹

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition causally related to factors of her federal employment. Initially, the Board notes that appellant did not attribute her emotional condition to the performance of her regular or specially assigned duties. Rather, she contended that she had been harassed and subjected to a hostile work environment by her supervisors. An employee's complaints about the manner in which supervisors perform supervisory duties or the manner in which supervisors exercise supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor must be allowed to perform his duties and that employees will at times dislike actions taken.¹²

As to the incident of December 6, 2008, that began at approximately 1:30 a.m., verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the

⁷ See *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁸ *Id.*

⁹ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁰ *Kim Nguyen*, 53 ECAB 127 (2001).

¹¹ *James E. Norris*, 52 ECAB 93 (2000); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹² *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

claimant and supported by the record, may constitute compensable factors of employment.¹³ The mere fact that a supervisor or employee may raise his voice during the course of a conversation, however, does not warrant a finding of verbal abuse.¹⁴ The Board finds that it was a reasonable exercise of supervisory discretion for Mr. Odle to ask appellant to submit a CA-17 form updating her medical restrictions. The record supports that appellant was at maximum medical improvement for only one of her claims and that the employing establishment could ask for updated medicals every 30 days.

Thereafter, appellant tore up the CA-17, threw it in the trash and cursed at Mr. Odle. While the evidence shows that all parties raised their voices while in the union office, it was again reasonable for Mr. Odle to discuss appellant's behavior with the union. Moreover, appellant had not been given permission to leave her workstation to go to the union office. She has not presented evidence to establish administrative error or abuse in the request that she update her medical restrictions or in the meeting at the union office.¹⁵

The Board also finds that it was reasonable for Ms. Williams to hold a meeting in her office and that her denial of appellant's request to be taken to the hospital was not abusive. Mr. Damm noted that, for nonemergency conditions, a supervisor was not to leave the employing establishment. By her testimony, appellant returned to work and finished her tour and did not leave until 6:30 a.m. There is no affirmative evidence of record to establish that the events of December 6, 2008 rose to the level of verbal abuse or otherwise came within the coverage of the Act. Appellant's reaction is considered self-generated and not a compensable factor of employment.¹⁶

As to appellant's contention that she was harassed and worked in a hostile environment, 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.¹⁷ To the extent that appellant is alleging harassment or retaliation by her supervisor or other employing establishment personnel, for harassment or discrimination to give rise to a compensable disability, there must be evidence that establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable.¹⁸ Other than the December 6, 2006 incident, appellant simply made general allegations regarding harassment but did not submit any evidence to substantiate her claim. As the record lacks probative evidence supporting that she was harassed by the employing establishment, the Board finds that appellant has not established a

¹³ *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

¹⁴ *Joe M. Hagewood*, 56 ECAB 479 (2005).

¹⁵ *See Linda J. Edwards-Delgado*, *supra* note 12.

¹⁶ *Id.*

¹⁷ *Ronald K. Jablanski*, *supra* note 2.

¹⁸ *James E. Norris*, *supra* note 11.

compensable employment factor with respect to the claimed harassment.¹⁹ She therefore did not establish that she sustained an emotional condition in the performance of duty as alleged.²⁰

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.²¹

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 11, 2008 be affirmed.

Issued: August 26, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

¹⁹ *Id.*

²⁰ As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Katherine A. Berg*, 54 ECAB 262 (2002).

²¹ The Board notes that appellant's claim that her emotional condition is caused by her accepted physical injuries, the claim should be developed as a consequential injury under Office file number 120194010. The Board also notes that appellant submitted evidence to the Office subsequent to the January 11, 2008 Office decision. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).