

Appellant alleged that on October 12, 2006 there was a liquid spill at the worksite and several employees, including herself, became nauseated. She had to wait outside for 45 minutes until Cathy Rutledge, a supervisor, showed up with the hazardous materials team. After 10 minutes in the building, Ms. Rutledge informed the employees that the liquid was apple juice and then laughed about the matter. Appellant claimed that Ms. Rutledge told her that she needed to be a stronger leader and that, if she was sick from the smell, she should have acted like it did not bother her. Ms. Rutledge allegedly questioned her about what kind of supervisor she was and continued to belittle her. Appellant claimed that on December 4, 2006 she was attending to Jun Tuazon, the shop steward, while he was in medical distress and Ms. Rutledge stated in a loud voice that she was not checking his pulse properly.

On October 26, 2006 appellant called in sick following an anxiety attack during an end-of-the-year ceremony the night before. She claimed that Ms. Rutledge pressured her to attend the ceremony and that she became upset that she was one of the few employees who did not receive an award. Appellant's physician recommended that she reduce her work hours to six hours a day until December 31, 2006. She claimed that, on November 28, 2006, William Hubacker, a supervisor at a lower level, told her that Mateo Quintanilla, a coworker, had "flipped him off." Appellant met with Mr. Hubacker, Mr. Quintanilla and Mr. Tuazon and claimed that when she asked Mr. Hubacker why they were meeting he shouted "shut up" at her. Mr. Hubacker then turned toward Mr. Quintanilla and asked him if he had flipped him off and Mr. Quintanilla responded that he had just swatted at a fly.

Appellant claimed that the employing establishment mishandled her leave requests on numerous occasions. On October 26 and 27, 2006 she was incorrectly placed on leave without pay (LWOP). On December 25, 2006 appellant was scheduled to work her second Christmas despite the fact that she had seniority. On January 22, 2007 she received a letter concerning her use of leave under the Family and Medical Leave Act (FMLA). Appellant was informed that her supervisor had input wrong information and mischaracterized her claim. On March 15, 2007 Wesley Tokushige, the acting plant manager, told her that he was not honoring a leave form signed by Ms. Rutledge.

Appellant alleged that she was paid for six hours on January 8, 2007 rather than eight hours even though she had worked six hours that day. She asserted that Pat Spencer, the manager of distribution operations, told her that a coworker was paid for eight hours per day even though he only worked four hours per day. On February 23, 2007 appellant was informed by her supervisor that she was not getting paid for two days because she did not use the time clock. She asserted that she should not have been required to use the time clock. Appellant noted that Shirley Rankin, an acting plant manager, advised her on November 3, 2006 that she was not going to pay her a cash advance.

On October 31, 2006 appellant was told by Ms. Rutledge that there would be a change in her assignment. She contended that improper changes were made to her schedule on December 29, 2006 and January 18 and March 8, 2007. Appellant asserted that management failed to respond to her requests to remove her from working Tour 3. She had received a call from the postal inspectors who wanted to talk to her about an allegation that her supervisor was asking for Vicodin on the workroom floor from the employees. On November 17, 2006 appellant's supervisor evaluated her for "pay for performance" purposes and incorrectly

indicated that everyone got the same scores when appellant later found out that her scores were lower.

Appellant submitted several statements in which coworkers noted a strong odor in the workplace on October 12, 2006. In a November 28, 2006 statement, Mr. Quintanilla stated that during a meeting on that date appellant asked Mr. Hubacker why they were meeting and Mr. Hubacker “told her to shut up.” In another November 28, 2006 statement, Mr. Tuazon asserted that during the same meeting appellant asked Mr. Hubacker what the meeting was about and he responded “shut up.”

In a March 24 and May 1, 2007 statements, Ms. Rutledge indicated that appellant had been working eight hours per day for five days per week but, following a work stoppage, her physician returned her to work in late 2006 for six hours a day, five days per week.¹ Due to her reduction in hours, appellant was unable to supervise the priority mail operation and was assigned to supervise manual operations at the North Bay work unit. Ms. Rutledge stated that she met with appellant on March 1, 2007 regarding her application for personal absence time leave including time covered by the FMLA. After she reviewed appellant’s request, she discovered that it was “inaccurate and distorted” and explained to appellant that she was not eligible to take personal absence time leave. Ms. Rutledge described how she handled the liquid spill incident on October 12, 2006. When she arrived at the spill site, she noticed that the vast majority of the employees were inside the building working and that appellant was one of only three employees outside of the building. Ms. Rutledge stated that most of the employees never left the building. She told appellant that she should have shown more leadership by not playing the victim and by making sure that her employees were taken care of.² Appellant was paid sick leave for October 26 and 27, 2006 and was not placed on LWOP.³ Ms. Rutledge stated that Mr. Hubacker informed her that he did not tell appellant to “shut up,” but rather told her to “be quiet.” On December 4, 2006 Mr. Tuazon suffered a heart attack and she told appellant that using her thumbs was not the proper way to check for a pulse. Ms. Rutledge denied yelling at appellant.⁴ She indicated that in March 2007 Mr. Tokushige reviewed appellant’s leave request and determined that she was not eligible for personal time.

Appellant submitted October 30, 2006 and May 23, 2007 medical reports of Dr. Emily Keram, an attending Board-certified psychiatrist, who indicated that appellant’s post-traumatic stress disorder was periodically exacerbated by work stressors, particularly since October 2006.

In a January 17, 2008 decision, the Office denied appellant’s emotional condition claim finding that she did not establish any compensable employment factors. It found that appellant

¹ Appellant had previously worked 4:30 p.m. to 1:00 a.m. but that her shift was changed to 6:30 p.m. to 1:50 a.m.

² In a May 1, 2007 statement, Darryl Backman provided a similar count of the events of October 12, 2006. He indicated that the area of the spill was smaller than his hand and that it was discovered to be caused by spoiled apple juice. Mr. Backman stated that he did not observe anyone having an adverse reaction to the liquid.

³ Ms. Rutledge submitted a pay record which supported this assertion.

⁴ In a May 1, 2007 statement, John Wong, a supervisor, stated that Ms. Rutledge told appellant that she was improperly taking Mr. Tuazon’s pulse. He provided no indication that Ms. Rutledge yelled at appellant.

had not shown that the employing establishment harassed her or that it committed error or abuse with respect to any administrative matters.⁵

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. 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 of workers' compensation. 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 Federal Employees' Compensation Act.⁶ 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

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.⁸ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁹

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.¹⁰ 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.¹¹

⁵ On April 24, 2007 the Office advised appellant that she needed to submit more factual and medical evidence in support of her claim and provided her an opportunity to do so.

⁶ 5 U.S.C. §§ 8101-8193.

⁷ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁸ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁹ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹⁰ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹¹ *Id.*

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of several employment incidents and conditions. The Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that harassment on the part of her supervisors contributed to her claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment by supervisors are established as occurring and arising from a claimant's performance of her regular duties, these could constitute employment factors.¹² However, for harassment or discrimination 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.¹³

Appellant alleged that on October 12, 2006 after a liquid spill at the worksite, Ms. Rutledge, a supervisor, told her that she needed to be a stronger leader and that, if she was sick from the smell, she should have acted like it did not bother her. Ms. Rutledge questioned her about what kind of supervisor she was and continued to belittle her. Appellant claimed that on December 4, 2006 she was attending to Mr. Tuazon, the shop steward, while he was in medical distress and Ms. Rutledge stated in a loud voice that she was not checking the pulse properly. She asserted that her superiors pressured her to attend an end-of-the-year ceremony held on October 25, 2006. Appellant claimed that during a meeting on November 28, 2006 she asked Mr. Hubacker, a supervisor at a lower level, why they were having a meeting and he shouted "shut up" at her.

In the present case, the employing establishment denied that appellant was subjected to harassment and appellant has not submitted sufficient evidence to establish that she was harassed by supervisors.¹⁴ Appellant alleged that supervisors made statements and engaged in actions which she believed constituted harassment, but she provided insufficient corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.¹⁵

Although verbal altercations and difficult relationships with supervisors may constitute compensable factors of employment, they must be sufficiently detailed by the claimant and supported by the record.¹⁶ Appellant claimed that Ms. Rutledge belittled and unreasonably

¹² *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹³ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

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).

¹⁵ *See William P. George*, 43 ECAB 1159, 1167 (1992).

¹⁶ *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

criticized her on October 12, 2006 regarding her handling of a liquid spill at the worksite. However, she did not explain in detail why she felt Ms. Rutledge belittled her and did not submit witness statements to support her assertions. Ms. Rutledge indicated that she told appellant that she should have shown more leadership by not playing the victim and by making sure that her employees were taken care of. The Board finds that it was a reasonable exercise of supervisory discretion for Ms. Rutledge to counsel appellant for her handling of the matter and her reaction to these comments would be considered self-generated and not be a compensable factor of employment.¹⁷ Moreover, there is no evidence that Ms. Rutledge harassed appellant by yelling at her when she was attending to Mr. Tuazon. She indicated that she told appellant that using her thumbs was not the proper way to check for a pulse but she denied yelling at her.¹⁸ Ms. Rutledge's account of the incident was supported by a statement of Mr. Wong, another supervisor.¹⁹

As noted above, verbal altercations with supervisors may constitute employment factors if adequately documented. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.²⁰ Appellant submitted witness statements which lend some support to her assertion that during a meeting on November 28, 2006 Mr. Hubacker told her to "shut up." However, Mr. Hubacker denied telling appellant to shut up and indicated that he only told her to "be quiet." The atmosphere at the November 28, 2006 meeting was charged as Mr. Hubacker believed that Mr. Quintanilla, a subordinate, had "flipped him off" and the witness statements do not provide a detailed account of the meeting prior to the alleged comment by Mr. Hubacker. Therefore, the case record does not contain adequate evidence describing the context of the alleged comment. Even if it were determined that Mr. Hubacker used the phrase "shut up," such an isolated comment, under the circumstances of the present case, would not rise to the level of harassment.²¹ For these reasons, appellant has not established her claims of harassment by supervisors.

Appellant claimed that the employing establishment mishandled her leave requests on numerous occasions. For example, she claimed that she was improperly placed on LWOP for October 26 and 27, 2006, that supervisors mishandled her application for leave under the FMLA and that Mr. Tokushige, the acting plant manager, told her that he was not honoring a leave form signed by Ms. Rutledge. Appellant also alleged that she received improper pay including an occasion when she was not paid because she did not use the time clock and another occasion when appellant felt that she should have been paid for eight hours per day even though she worked six hours per day. She asserted that Ms. Rutledge improperly changed her work shift

¹⁷ See *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

¹⁸ In a May 1, 2007 statement, Mr. Wong, a supervisor, stated that Ms. Rutledge told appellant that she was improperly taking Mr. Tuazon's pulse. He provided no indication that Ms. Rutledge yelled at appellant.

¹⁹ Appellant also did not submit evidence supporting her assertion that her superiors pressured her to attend an end-of-the-year ceremony held on October 25, 2006.

²⁰ See *Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991).

²¹ See *Joe M. Hagewood*, 56 ECAB 479 (2005) (finding that the mere fact a supervisor or employee may raise his voice during the course of a conversation does not warrant a finding of verbal abuse).

and work assignments on several occasions and management failed to respond to her requests to remove her from working Tour 3. Appellant claimed that a supervisor misinformed her when she was evaluated her for “pay for performance” purposes and suggested that she should have received a performance award in October 2006. She asserted that Ms. Rutledge mishandled the liquid spill incident on October 12, 2006 and that she should not have been questioned in connection with an employing establishment investigation of a superior.

Regarding appellant’s allegations that the employing establishment wrongly handled leave requests and pay matters, improperly changed work duties and work shifts, unfairly denied transfer requests, wrongly denied performance awards and mishandled safety matters and investigations, 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.²² Although such matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.²³ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.²⁴

The Board finds that appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters. For example, she did not submit evidence such as the findings of grievances showing that the employing establishment engaged in wrongdoing regarding the above-described administrative matters. Moreover, the employing establishment disputed appellant’s accounts of various matters. For example, Ms. Rutledge submitted evidence showing that appellant was paid sick leave for October 26 and 27, 2006 and was not placed on LWOP. She also explained that appellant’s work shift and work duties were changed in October 2006 because work restrictions received from her own physicians prevented her from performing her former work. Ms. Rutledge indicated that appellant’s application for personal absence time leave (including time covered by the FMLA) was “inaccurate and distorted” and explained that Mr. Tokushige, the acting plant manager, reviewed her leave request and determined that she was not eligible for personal time. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.²⁵

²² 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).

²³ *Id.*

²⁴ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

²⁵ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

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.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' January 17, 2008 decision is affirmed.

Issued: October 24, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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