



October 2, 2007 the Office asked appellant to submit evidence, including a detailed description of the employment factors or incidents that she believed contributed to her claimed illness. It also requested that the employing establishment address appellant's allegations.

Appellant submitted a July 26, 2007 statement and alleged that Mr. Viselli, lead technician, had harassed and verbally abused her and other coworkers over a six-year period. She stated that he would often yell and demean others on a daily basis and was difficult to work alongside. On September 14, 2006 Mr. Viselli attacked her. Appellant stated that Mr. Viselli became enraged and invaded her personal space such that she became terrorized that he was planning to physically harm her. She alleged that after the claimed incidents she was forced to continue working with Mr. Viselli. Appellant noted that Mr. Viselli was not disciplined by her supervisors, despite numerous requests.

Appellant submitted a July 17, 2007 report from Dr. Ayanna Swinton-Jamison, a Board-certified psychiatrist, who treated appellant for stress associated with ongoing conflicts at work and diagnosed post-traumatic stress disorder and anxiety.

On July 6, 2007 Ruth Mustard, associate director for patient care, noted that effective July 16, 2007 appellant's detail would end and she would resume her regular duties in the sterilization, processing and decontamination ("SPD") area. In an October 26, 2007 statement, Ms. Mustard noted that on September 14, 2006 appellant was questioned by Jon Skelton, her supervisor, regarding the manner in which she collected a variety of medical devices and put them together in a plastic trash bin. Mr. Skelton advised appellant that she was not following the proper procedures when she dumped the instruments together in the trash container. Ms. Mustard stated that appellant became upset and alleged that Mr. Viselli was hostile and yelled at her about the manner in which she handled the dirty medical items. After this incident, appellant and Mr. Viselli were not assigned to work together. Appellant was rotated to the second shift and, after her tour finished, Mr. Viselli was assigned to the second floor scope room outside of the operating room. Ms. Mustard further noted that appellant was detailed out of this department in January 2007 to the gastrointestinal (GI) clinic pursuant to her request because she was afraid that she would make a mistake. She noted that appellant had previously ruined a \$10,000.00 camera by processing it incorrectly. In May 2007, appellant was again detailed to the GI clinic. Her schedule prior to January 2007 was as a medical supply technician in the SPD department and rotated weekends, worked evenings and covered various assignments similarly to all employees assigned to that area. Ms. Mustard stated that an investigation was conducted regarding the September 14, 2006 incident, which found that Mr. Viselli and other employees did not create a hostile work environment. She submitted a copy of appellant's job application, a job description, a leave record for 2006 to 2007 and employing establishment medical records from 2001 to 2007.

On an October 26, 2007 Evelyn Jones, a human resource specialist, noted that appellant's statement failed to clarify that on September 14, 2006 she was questioned by Mr. Skelton regarding her failure to follow proper procedures in loading bins of equipment and instruments for decontamination. Appellant's failure to follow proper procedures could cause an adverse impact on other employees including the risk of a work injury due to an instrument stick. Ms. Jones indicated that the agency properly addressed the incidents of September 14, 2006 by conducting an investigation to determine if appellant followed the proper procedures in loading

equipment for decontamination and also if a hostile work environment existed at SPD. The investigation concluded that appellant did not follow the proper procedures in processing used equipment and there was not a hostile environment in SPD. Ms. Jones indicated that appellant did not continue to work with Mr. Viselli after the September 14, 2006 incident, due to shift rotations and assignments to other locations. Additionally, appellant was detailed to the GU clinic until May 2007 and again detailed to the "GU" clinic in May 2007.

In a November 28, 2007 decision, the Office denied appellant's claim finding that the claimed emotional condition did not occur in the performance of duty.

On December 5, 2007 appellant requested an oral hearing which was held by telephone on February 25, 2008. She submitted a September 14, 2006 union contact report, which reiterated her allegations of stress due to a hostile work environment. Appellant submitted e-mail to Ms. Mustard on September 23, 2006 requesting to be transferred to another location due to work stress. She indicated that Mr. Viselli was the backbone of the department and should not be relocated. In a November 26, 2007 report, Dr. Swinton-Johnson recommended that appellant return to work part time but not in SPD. Appellant submitted a January 30, 2008 report from Lisa Williams, a counselor, who treated her for stress due to work- and home-related conflicts.

The employing establishment submitted excerpts from an administration board investigation hearing held on January 31, 2007. In a February 26, 2007 memorandum, the administrative board of investigation determined that appellant failed to follow proper procedures on September 14, 2006 by collecting the contaminated supplies and equipment and placing them in a trash can. The investigation board noted that this collection method posed a potential risk of injury to other employees and subjected medical equipment and instruments to potential damage. Additionally, the investigation board determined that the supervisor or other SPD employees did not create a hostile work environment. The investigation board noted that Mr. Viselli was loud and aggressive but not exclusively to appellant and the evidence found that there was routine yelling among the SPD employees. There was no evidence that the routine yelling among the SPD employees was discriminatory, physically threatening or unreasonably interfered with employee work performance and did not constitute sexual harassment or a hostile work environment as set forth in employing establishment policy. The investigation further determined that proper technical procedures were not followed in finding that Mr. Viselli had engaged in disorderly conduct, such that the violation was found in error.

The employing establishment submitted a statement from Ms. Jones who noted comments to the hearing transcript. In a December 5, 2006 statement, Mr. Viselli noted that appellant approached him and requested the files documenting sterilization for the steam sterilizer on October 19, 2006. He indicated that he complied with appellant's request and she expressed her belief that management was trying to fire her for failing to sterilize an arthroscopic scope.

By decision dated April 24, 2008, the hearing representative affirmed the November 28, 2007 decision, finding that appellant had not established any compensable employment factors.

## 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.<sup>1</sup>

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*,<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> If a claimant does implicate a factor of

---

<sup>1</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>2</sup> 28 ECAB 125 (1976).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

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

<sup>5</sup> *Lillian Cutler*, *supra* note 2.

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

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

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.<sup>8</sup>

### ANALYSIS

Appellant alleged that she was harassed by Mr. Viselli and that he verbally abused her and other coworkers over a six-year period. She indicated that, on September 14, 2006, Mr. Viselli made a fist with his hand and yelled “bad words” loudly. 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.<sup>9</sup> 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.<sup>10</sup>

The factual evidence fails to support appellant’s claim of harassment. In a statement dated October 26, 2007, Ms. Mustard noted that an investigation had determined that appellant was not harassed or verbally abused by either Mr. Skelton or Mr. Viselli. Rather, on September 14, 2006 appellant was questioned by her supervisor about the manner in which she collected a variety of medical devices and put them in a plastic trash bin. She was advised by her supervisor that she was not following protocol when she dumped the medical items together in a trash container. Ms. Mustard indicated that appellant became upset and alleged that Mr. Viselli was hostile toward her and yelled at her about procedures in handling dirty medical items. On October 26, 2007 Ms. Jones, a human resource specialist, also stated that appellant was not harassed or verbally abused on September 14, 2006 but had been questioned by Mr. Skelton about her failure to follow proper procedures in loading bins regarding decontamination of equipment. A February 26, 2007 memorandum of the administrative board of investigation confirmed that appellant failed to follow proper procedures on September 14, 2006 in collecting the contaminated supplies and that her actions posed a potential health risk to other employees and subjected medical equipment and instruments to potential damage. The investigation board determined that there was no hostile work environment. Although the Board noted that Mr. Viselli was loud and aggressive, there was no finding to substantiate appellant’s allegations concerning Mr. Viselli. There was no finding that routine yelling was discriminatory, physically threatening or unreasonably interfered with work performance.

In this case, appellant has not submitted sufficient evidence to establish harassment by her supervisor or Mr. Viselli.<sup>11</sup> Although she alleged that her supervisor discriminated and harassed her, she provided no corroborating evidence or witness statements to establish her

---

<sup>8</sup> *Id.*

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

<sup>10</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>11</sup> 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.<sup>12</sup> Additionally, the employing establishment refuted appellant's allegations. The Board notes that there is no evidence substantiating her charges. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment or discrimination.

To the extent that appellant alleged verbal abuse, physical threats and fear of physical attacks by Mr. Viselli, 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.<sup>13</sup> As noted, the evidence does not establish that Mr. Viselli threatened appellant or acted unreasonably. The evidence suggests that he was loud and aggressive and that there was routine yelling among SPD employees. There is no evidence to establish that the routine yelling between SPD employees was discriminatory or interfered with work performance. Appellant provided no evidence, such as witness statements, to establish her allegations.<sup>14</sup> The employing establishment denied that Mr. Viselli threatened, harassed or spoke to appellant in a hostile manner and there is no corroborating evidence to support her assertion. 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.<sup>15</sup>

Other allegations by appellant relate to administrative or personnel actions. In *Thomas D. McEwen*,<sup>16</sup> 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.<sup>17</sup>

Appellant alleged that after the September 14, 2006 incident she was required to continue working with Mr. Viselli which caused her anxiety. However, the Board finds that this relates to administrative or personnel matters, unrelated to appellant's regular or specially assigned work

---

<sup>12</sup> 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).

<sup>13</sup> *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>14</sup> See *William P. George*, *supra* note 12.

<sup>15</sup> See *Judy L. Kahn*, 53 ECAB 321 (2002) (the fact that a supervisor was angry and raised her voice does not, by itself, support a finding of verbal abuse).

<sup>16</sup> See *Thomas D. McEuen*, *supra* note 5.

<sup>17</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

duties and do not fall within the coverage of the Act.<sup>18</sup> The Board has held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment as they do not involve the employee's ability to perform his or her regular or specially-assigned work duties but rather constitute his or her desire to work in a different position.<sup>19</sup> The employing establishment submitted statements from Ms. Mustard and Ms. Jones who indicated that after the September 2006 incident appellant and Mr. Viselli were not assigned to work together. Appellant was rotated to the second shift and Mr. Viselli was assigned to the following shift on the second floor scope room outside of the operating room. Ms. Mustard further noted that appellant was detailed out of the SPD department pursuant to her request and from January to May 2007 she worked in the GI clinic and from May 2007 to January 2008 she was again detailed to the GI clinic. Appellant indicated that she wanted a transfer because she was afraid she would make a mistake, as she had previously ruined a \$10,000.00 camera by processing it incorrectly. She has presented no evidence to support that the employing establishment erred or acted abusively with regard to her work assignments. Thus, appellant has not established administrative error or abuse in the performance of these actions and therefore they are not compensable under the Act.

Appellant alleged that Mr. Viselli's behavior was never corrected by her supervisors despite numerous requests. The Board recognizes that a supervisor or manager must be allowed to perform his or her duties and that, in performing such duties, employees will at times dislike actions taken.<sup>20</sup> Appellant presented no evidence to support that her supervisors acted unreasonably in investigating the matter. Rather, the evidence suggests that the employing establishment properly addressed the incidents of September 14, 2006 by conducting an investigation to determine if appellant followed the proper procedures in loading equipment for decontamination and also if a hostile work environment existed at SPD. The investigation concluded that appellant did not follow the proper procedures in processing equipment and there was no hostile work environment. Consequently, appellant has not established her claim for an emotional condition.<sup>21</sup>

### CONCLUSION

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

---

<sup>18</sup> 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).

<sup>19</sup> *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

<sup>20</sup> See *Michael A. Deas*, 53 ECAB 208 (2001).

<sup>21</sup> 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 April 24, 2008 and November 28, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 15, 2009  
Washington, DC

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

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

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