



her nauseous. When she got up to get more mail to process, Ms. London asked her to perform a different task. Ms. London subsequently walked by appellant's workstation six times in an intimidating way. Walking by a seventh time, she requested angrily that appellant stand up instead of sitting down to work. Appellant advised that she had completed her work and there was no reason for her to stand. Ms. London told her that, unless she had a written medical restriction against standing, she should stand. Appellant requested a union steward. Ms. London told her that she would provide a union steward when she was ready and screamed at appellant. Another supervisor approached and appellant requested a union steward but one was not provided. An investigative interview was held later in the work shift and she was "yelled at" for 30 minutes. Appellant went to the break room for her break. Ms. London kept walking into the break room and staring at appellant. After requesting a claim form, appellant left work at 4:00 am. She contended that she was unable to complete her entire shift due to physical restrictions related to her accepted lumbar and right shoulder injuries sustained on August 18, 2000.<sup>1</sup>

Supervisor David Morgan noted that on June 11, 2007 appellant submitted medical documentation to Ms. London stating that she could work only six hours a day. He conducted an investigative interview with appellant later that work shift based on insubordination towards Ms. London earlier in the work shift. In a June 13, 2007 Form CA-16 authorizing medical treatment, supervisor James Naples wrote "Employee felt stress after investigative interview with supervisor." He checked the section on the form indicating that there was doubt as to whether the employee's condition was sustained in the performance of duty.

Appellant subsequently alleged that harassment by Ms. London began prior to the June 11, 2007 incident. On several occasions, Ms. London had followed her into the restroom and waited for her outside the stall, tapping on a clipboard with a pen. On May 30, 2007 she asked a coworker where appellant was and was told she was in the restroom. Ms. London went into the restroom and shouted appellant's name so loudly that it frightened her. Appellant rushed out of the stall and Ms. London stated that she was waiting to tell her where she was assigned to work that night. Ms. London also told appellant that she needed to know where she was at all times. On June 7, 2007 she again followed appellant into the restroom. When appellant exited the stall, she saw Ms. London impatiently tapping a pen on a clipboard and tapping her shoes on the floor.

In a report dated June 11, 2007, Dr. John E. Vinsant, Jr., an attending orthopedic surgeon, advised that appellant was scheduled for a change in work hours beginning that date. Appellant previously worked 8:00 a.m. to 4:30 p.m. and her new schedule was 10:00 p.m. to 6:30 a.m. She indicated that the new schedule was difficult for her. Dr. Vinsant provided a note for appellant's supervisor requesting that she be allowed to return to her previous work schedule.

The employing establishment controverted appellant's claim. In a June 15, 2007 statement, Sherry Lundy-Stephen, a health and resource management specialist, advised that on June 11, 2007 appellant began a modified-duty assignment as a mail processing clerk working

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<sup>1</sup> Appellant sustained a work-related lumbar and right shoulder injury on August 18, 2000. On September 19, 2005 she sustained a work-related sprain and strain of her neck and thoracic spine and a chest wall contusion when she was involved in a motor vehicle accident.

from 10:15 p.m. to 6:45 a.m. at the employing establishment. Carlene Golphine provided a statement that she heard appellant and Ms. London talking on June 11, 2007. Ms. London's tone of voice was "soft" and appellant's voice was "louder than [Ms. London's]." During the work shift, at approximately 12:05 a.m. on June 12, 2007, Mr. Morgan held an investigative interview with appellant for insubordination and conduct unbecoming a postal employee. Appellant was accused of creating a disturbance on the workroom floor by raising her voice to Ms. London. At 4:00 a.m. she asked Mr. Morgan for a Form CA-1 traumatic injury claim form claiming that the incident with Ms. London caused stress.

By letter dated June 21, 2007, the Office asked appellant to submit additional information. It requested a detailed description of the incidents contributing to her emotional condition with dates and times, the individuals involved and what occurred, and medical evidence establishing that her condition was causally related to the factors she identified. Appellant submitted medical reports from a psychiatrist who diagnosed adjustment disorder with depressed mood. She attributed her condition to harassment by her supervisor.

By decision dated July 23, 2007, the Office denied appellant's claim on the grounds that she failed to establish that her emotional condition was causally related to a compensable employment factor.<sup>2</sup>

On July 18, 2008 appellant requested reconsideration. She alleged that Ms. London's actions on June 11, 2007 created a hostile work environment. Ms. London refused to allow her to work while sitting down after she explained that her medication was making her feel nauseous. The supervisor also spoke to her in an angry voice, denied her request for union representation and followed her into the break room. By letter dated July 8, 2008, Carolyn Pierce, president of the local union, provided copies of grievance settlements for four employees dated April 17 and 26, 2007 which stated that Ms. London would be counseled regarding her need to treat employees with dignity and respect. Appellant contended that the grievance settlements reflected that Ms. London had a history of abusive behavior toward her employees. She alleged that the statement noted by Mr. Naples in the June 13, 2007 authorization for medical treatment, that she felt stress after the investigative interview with Mr. Morgan, was inaccurate. Appellant requested her claim form several hours after the investigative interview and that the cause of her stress was harassment by Ms. London following the interview. She was never disciplined for insubordination or conduct unbecoming a postal employee involving the incident of June 11, 2007. Appellant alleged that management erred in denying representation by a union representative and in failing to reassign her to a clerk position. A July 20, 2007 prearbitration settlement agreement stated that appellant would be returned to the Aldridge Station at the modified position offered on June 23, 2006, effective July 20, 2007.<sup>3</sup> A September 18, 2007 grievance decision stated that appellant would receive \$1,200.00 because she worked 110 hours at her night shift at the employing establishment which was outside her regular schedule and not at her regular facility. The decision found that appellant's position at

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<sup>2</sup> In its July 23, 2007 decision, the Office inadvertently transposed the last two numbers of appellant's case for her accepted injury on September 19, 2005, citing xxxxxx125 rather than xxxxxx152.

<sup>3</sup> The June 23, 2006 modified job offer specified that appellant would work six hours a day, five days a week, at the Aldridge Station.

the employing establishment was not provided in accordance with the Employee and Labor Relations Manual. The decision stated that the settlement did not constitute a waiver of either party's position in similar cases and was not to be cited as precedent or referenced in future cases that might arise.

By decision dated August 14, 2008, the Office denied modification of the July 23, 2007 decision.

### **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 employment but nevertheless does not come within the coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>4</sup> 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>5</sup>

Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.<sup>6</sup>

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors of employment, which may be considered by a physician when providing an opinion on causal relationship, and which are not deemed compensable factors of employment and may not be considered.<sup>7</sup> When an employee fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If an employee does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.<sup>8</sup> As a rule, allegations alone by an employee are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.<sup>9</sup> Where the employee alleges compensable factors of employment, she must substantiate such allegations with probative and reliable evidence.<sup>10</sup>

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>6</sup> *Michael Thomas Plante*, 44 ECAB 510 (1993).

<sup>7</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>8</sup> *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>9</sup> *See Charles E. McAndrews*, 55 ECAB 711 (2004).

<sup>10</sup> *Joel Parker, Sr.*, 43 ECAB 220 (1991).

When the matter asserted is a compensable factor of employment, and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.<sup>11</sup>

### ANALYSIS

Several of appellant's allegations are not established as factual. She alleged that she was unable to work her entire shift on June 11, 2007 due to physical restrictions from her employment-related September 17, 2005 injury and management improperly refused to allow her to leave work after six hours. However, she provided no evidence establishing this allegation as factual. There are no medical reports stating that she was unable to perform her job on June 11, 2007 due to restrictions related to her September 17, 2005 employment injury. On June 11, 2007 Dr. Vinsant noted appellant's statement that her new night work schedule was difficult for her. He provided a note for her supervisor requesting that she return to her previous daytime work schedule or be allowed to work six hours a day. However, Dr. Vinsant did not explain why appellant was able to work only six hours on June 11, 2007 or why she needed to return to her former daytime work schedule. Based on the evidence, this allegation that management required her to work outside her restrictions on June 11, 2007 is not accepted as factual and is not a compensable employment factor. Appellant alleged that she was denied union representation on June 11, 2007 by Ms. London and another supervisor. However, there is no supporting evidence, such as witness statements, to establish this allegation as factual. Therefore, this allegation is not established as a compensable employment factor.

Several of appellant's allegations involved administrative or personnel matters. The Board has held that an administrative or personnel matter will be considered to be an employment factor only where the evidence discloses error or abuse on the part of the employing establishment.<sup>12</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>13</sup> Appellant alleged that on June 11, 2007 Ms. London harassed her all night long. She alleged that Ms. London told her to stand up while processing the mail, rather than sitting down. Appellant explained that she was sitting down because she was taking medication and felt nauseous. Ms. London told her that, unless she had a written medical restriction against standing, she should stand. As noted, there is no medical evidence that appellant could not perform her modified duties on June 11, 2007. Appellant alleged that Ms. London screamed at her. She alleged that she was "yelled at" for 30 minutes later that night during an investigative interview into possible insubordination when Ms. London instructed her to stand up while processing the mail. Although the Board has held that yelling at an employee can be a compensable factor of employment,<sup>14</sup> there is insufficient evidence that Ms. London or anyone else yelled at appellant during the events of June 11, 2007. Ms. Golphine stated that she heard the discussion between

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<sup>11</sup> See *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>12</sup> *Id.*

<sup>13</sup> *Janice I. Moore*, 53 ECAB 777 (2002).

<sup>14</sup> See *Georgia F. Kennedy*, 35 ECAB 1151 (1984).

appellant and Ms. London on June 11, 2007 and she described Ms. London's tone of voice as "soft" and appellant's tone as louder than Ms. London's. Mr. Morgan stated that he held an investigative interview with appellant for insubordination and conduct unbecoming a postal employee because she was accused of creating a disturbance on the workroom floor by raising her voice to Ms. London. Appellant noted that she was not disciplined for the incident with Ms. London. However, the fact that management did not discipline appellant does not establish error or abuse on the part of Ms. London. Appellant's union president provided copies of grievance settlements for four employees stating that Ms. London would be counseled to treat employees with dignity and respect. She alleged that the grievance settlements reflected that Ms. London had a history of abusive behavior toward employees. However, this evidence does not establish that Ms. London yelled or otherwise acted abusively in her discussions with appellant on June 11, 2007. Therefore, this allegation does not constitute a compensable factor of employment.

Appellant alleged that management created a hostile work environment by reassigning her to the employing establishment. The September 18, 2007 grievance decision found that appellant's reassignment to a position at the employing establishment was not carried out in accordance with the employing establishment labor relations manual. However, the decision stated that the settlement did not constitute a waiver of either party's position and was not to be cited as precedent in future cases that might arise. The grievance decision does not otherwise address appellant's allegations of harassment by management on June 11, 2007. It did not find error or abuse by management in its actions on June 11, 2007. Appellant's allegation that management created a hostile work environment by assigning her to the employing establishment is not established as a compensable factor of employment.

Appellant alleged that Ms. London harassed her on June 11, 2007 by following her into the break room. She alleged that on previous occasions Ms. London followed her into the restroom and waited for her outside the stall, tapping on a clipboard with a pen. On May 30, 2007 Ms. London went into the restroom and shouted appellant's name loudly. She advised appellant that she was waiting to tell her where she was assigned to work that night. Ms. London also told appellant that she needed to know where appellant was at all times. On June 7, 2007 she followed appellant into the restroom. When appellant exited the stall she saw Ms. London tapping a pen on a clipboard and tapping her shoes on the floor. Monitoring an employee is an administrative action and is not compensable unless the employee establishes error or abuse.<sup>15</sup> There is insufficient evidence to establish that Ms. London erred or acted abusively in monitoring appellant's location during her work shift. The evidence does not establish that Ms. London erred or acted abusively in performing this supervisory function. This allegation does not constitute a compensable factor of employment.

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<sup>15</sup> See *Brian H. Derrick*, 51 ECAB 417 (2000).

The Board finds that appellant failed to establish that her emotional condition was causally related to a compensable factor of employment. Therefore, the Office properly denied her emotional condition claim.<sup>16</sup>

On appeal, appellant argues that she was subjected to an abusive environment and harassment from Ms. London because management erred in assigning her to the employing establishment facility. She asserts that support for her allegation of harassment on June 11, 2007 is provided by the fact that she did not receive any disciplinary action for the events of June 11, 2007. These allegations are addressed in the Board's analysis above.

### **CONCLUSION**

The Board finds that appellant failed to establish that her emotional condition was causally related to a compensable factor of employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 14, 2008 is affirmed.

Issued: October 2, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>16</sup> Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence. See *Barbara J. Latham*, 53 ECAB 316 (2002); *Garry M. Carlo*, 47 ECAB 299 (1996).