

environment. She first became aware of her condition on June 19, 2006 and realized its relation to her employment on March 10, 2008. Appellant stopped work on March 10, 2008 and retired as of September 30, 2008. The employing establishment controverted the claim.

In statements of record, appellant described the incidents giving rise to her emotional condition. On multiple occasions, craft employees were reassigned and she had to perform clerical duties. Appellant noted that she was an evening closing supervisor and, on occasion, the morning carrier supervisor did not assign or clear all the mail for delivery and she would have to direct carriers back out to deliver mail. She also alleged that her managers routinely failed to provide adequate staffing levels. Although appellant had been informed that two clerks would be assigned to her, they were often reassigned to work elsewhere when she reported to work. She received a letter of warning on August 20, 2007 regarding a retail stock/craft audit of August 13, 2007. Appellant alleged that she was short two craft employees who were pulled from her unit and reassigned to work at another station. She alleged that Doug Timberlake, a manager, was unconcerned with customer waiting times caused by the absence of the clerical employees. On September 1, 2007 Mr. Timberlake placed a "voice of employee" letter on her desk which was overdue and resulted in its untimely submission. On September 12, 2007 appellant was told to report to the University Station despite advising her managers that she had a medical condition that precluded excessive walking or standing. On September 13, 2007 when she reported to the University Station, she faxed a copy of her medical documents to an unknown fax number. Thereafter, Mr. Timberlake allegedly stated that she was "a mess" during a telephone conversation. Appellant reported this remark to Stephanie Harris, a manager, but Mr. Timberlake never apologized. She noted that she had to work overtime and perform clerical duties through September 15, 2007 and again from October 4 to 6, 2007. Appellant alleged that she was not treated with dignity or respect.

Appellant was approved annual leave for January 2, 2008 but her manager, Linda Branch, changed the leave to a nonscheduled day to avoid paying T-time for the New Years' holiday. On January 7, 2008 Ms. Branch had informed appellant that she was not scheduled to work the next day but on January 9, 2008 called appellant at home inquiring why she had not come to work on January 8, 2008. She allegedly yelled at appellant, telling her that she was absent without leave. When appellant reported to work, she was paged to report to Ms. Branch's office. Ms. Harris was also in the office and asked appellant why she had not come to work the previous day. After appellant explained, Ms. Harris referred to her as not being a "team player." She stated that, from February 6 to 12, 2008, only one clerk was assigned to her and that she did not have sufficient help from the close out clerks.

Appellant was given a letter of warning on February 14, 2008, which she attributed to retaliation for not falsifying express mail failures. Ms. Branch had instructed her to manually correct the express entries so they would not appear as failures. Appellant stated that there were 19 express failures on February 13, 2008. On February 19, 2008 there were no close out clerks and she performed clerical work all day. On February 20, 2008 appellant was instructed by Ms. Branch to deliver mail from 5:30 to 9:00 p.m. and, when she informed Ms. Branch of her chronic illness, she was still instructed to deliver mail. On March 3, 2008 she performed clerical duties when Ms. Harris called the station to find out how many carriers there were. Appellant contended that Ms. Harris was very rude and shouted at her. She stated that the clerks filed grievances against her for crossing crafts.

On March 7, 2008 appellant was with a customer when Ms. Harris rudely interrupted her. Ms. Harris again rudely interrupted her when appellant was with another customer. On March 8, 2008 appellant was left without a clerk due to instructions from supervisor Adell Tarver, who was on leave and had communicated with her.²

Appellant was treated by Jesse C. Ingram, Ph.D., a clinical psychologist, who advised that she was unable to work from May 21 to June 9, 2008 due to her mental state. She also submitted a discharge order from Hickory Trail Hospital listing a diagnosis of major depressive disorder and a March 10, 2008 emergency department discharge instruction that listed anxiety and panic attack.

In a November 3, 2008 decision, the Office denied appellant's claim for compensation finding that she did not establish any compensable factors of employment.

Appellant's attorney requested a telephonic hearing that was held on March 5, 2009. At the hearing, appellant addressed stressful situations at work since 2004 and reiterated her concerns about her workload.

In a May 19, 2009 decision, an Office hearing representative affirmed the November 3, 2008 decision.

LEGAL PRECEDENT

To establish a claim that an emotional condition arose in the performance of duty, a claimant 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 the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.³

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 illness has some connection with employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to her regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of her work or her fear and anxiety regarding her ability to carry out her work duties.⁴ By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers compensation law because they are not found to have arisen out of employment,

² Appellant also submitted a statement concerning the specific events of March 10, 2008. However, these events concern a separate claim which the Board is adjudicating separately in appeal No. 09-1650.

³ *D.L.*, 58 ECAB 217 (2006).

⁴ *Ronald J. Jablanski*, 56 ECAB 616 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

such as when disability results from an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.⁵

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.⁶ However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.⁷ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁸

The Board has held that when working conditions are alleged as factors in causing an emotional 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. 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 attributed her emotional condition in part to the reassignment of craft employees. She contended that she did not have sufficient craft and had to perform craft and letter carrier duties on various occasions in addition to her own as a supervisor. Appellant did not specifically attribute her condition to any inability to perform her regular or specially assigned duties under *Cutler*; rather, her statements focus on management's failure to provide adequate staffing levels.¹⁰ She generally related her emotional condition to her dissatisfaction with management's action in moving employees within the workplace and to her staffing concerns. Appellant maintained that she was told by management she would be given two craft employees to help her. The Board has held that the assignment of work or the manner in which a

⁵ *Id.*

⁶ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

⁷ See *William H. Fortner*, 49 ECAB 324 (1998).

⁸ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁹ *A.K.*, 58 ECAB 119 (2006); *D.L.*, *supra* note 3.

¹⁰ Appellant did not specifically attribute her emotional condition to being overworked; rather that certain craft employees were reassigned to work elsewhere by the time she reported to work. In noting that she worked overtime in September and October 2007, she contended that she was not treated with dignity or respect. See *Robert Breeden*, 57 ECAB 622 (2006).

supervisor exercises his or her discretion are administrative matters that generally fall outside the scope of the Act.¹¹ This principle recognizes that a supervisor or manager must be allowed to make decisions or perform duties that employees will, at times, dislike. Mere disagreement or dislike of a supervisor's management decision will not be compensable absent evidence of error or abuse.

Appellant has not established error or abuse by her managers in reassigning craft employees. The fact that she had to occasionally direct letter carriers back out to deliver mail if the morning carrier supervisor did not assign or clear all the dispatches does not establish error or abuse. While appellant asserted that management had promised additional clerks to assist her, she did not submit sufficient evidence to establish error in this administrative matter. There is no evidence to support that her employer was required to provide her with a certain number of craft employees at certain times.

Appellant alleged that she was taken off the "Aweps team" and was treated with disrespect by management when she would be assigned another task in the middle of an assignment. She alleged being rudely interrupted by Ms. Harris while helping customers, and not informed of certain managerial actions, such as not being informed of Ms. Tarver's instructions or Ms. Tarver taking over of two stations. Appellant's reaction to these administrative matters constitutes frustration from not being permitted to work in a particular environment or to hold a particular position. As noted, the assignment of work duties is an administrative matter and absent sufficient evidence of error or abuse is not a compensable factor of employment. Appellant did not submit sufficient evidence to establish that she was treated unreasonably or that her employer acted abusively in carrying out its administrative function in these matters.

To the extent that appellant asserts these actions represented harassment or discrimination, the Board has held that, to give rise to a compensable disability under the Act, there must be some evidence that the harassment or discrimination did in fact occur.¹² Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. A claimant must establish such allegations with probative and reliable evidence.¹³

Appellant contended that she received several improper disciplinary actions pertaining to two letters of warnings and that her leave request was not properly processed. She addressed these actions in terms of harassment and discrimination. The Board finds that appellant's allegations regarding the two letters of warning and the handling of her leave request relate to administrative or personnel matters,¹⁴ unrelated to her regular or specially assigned work duties. Appellant has not submitted evidence establishing error or abuse by her managers in these matters. She contended that she received a February 14, 2008 letter of warning in retaliation for

¹¹ See *Robert Knoke*, 51 ECAB 319 (2000); *Frank B. Gwozdz*, 50 ECAB 434 (1999).

¹² *Anna C. Leanza*, 48 ECAB 115 (1996).

¹³ *M.D.*, 59 ECAB ___ (Docket No. 07-908, issued November 19, 2007).

¹⁴ See *C.T.*, 60 ECAB ___ (Docket No. 08-2160, issued May 7, 2009).

failing to falsify express mail failures. The evidence of record does not establish appellant's contention as factual.

Appellant alleged that Ms. Harris told her she was not a team player and Mr. Timberlake told her she was a mess. She alleged Mr. Timberlake placed an overdue "voice of employee" letter on her desk which resulted in its untimely submission. Appellant also noted that grievances were filed against her for crossing crafts. To the extent that she asserts these matters were forms of harassment or retaliation, she did not substantiate her contentions with the submission of probative evidence on these matters. As noted, mere perceptions are not compensable. Appellant also did not submit any findings resulting from the grievances or Equal Employment Opportunity complaints finding that her employer treated her abusively in such matters.¹⁵ As such, her assertions are not substantiated and do not rise to the level of compensable employment factors.

Appellant has not established a compensable employment factor giving rise to her claimed emotional condition. Therefore, she did not meet her burden of proof.¹⁶

CONCLUSION

The Board finds that appellant did not establish that she sustained an emotional condition arising in the performance of duty.

¹⁵ See *Parley A. Clement*, 48 ECAB 302 (1997) (grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred).

¹⁶ As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record. *Marlon Vera*, 54 ECAB 834 (2003).

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 9, 2010
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