

appellant informed her supervisor that she was having trouble seeing and felt as though she would pass out, her supervisor told her to finish with her customers and then “go sit down.” Upon request, the supervisor summoned emergency assistance and appellant was transported to the hospital. Appellant alleged that she experienced a severe migraine, loss of vision and associated stress as a result of her supervisor’s actions. The employing establishment controverted her claim on the grounds that she had not established the fact of injury or a causal relationship between a diagnosed condition and a work incident.

A June 18, 2009 duty status report, bearing an illegible signature, reflected that appellant was working at her window following an argument with her supervisor on June 15, 2009, when she “felt odd,” her vision blurred and she developed a migraine. Clinical findings included severe migraine, loss of vision bilaterally and stress due to work.

On June 29, 2009 appellant alleged that management did not accompany her to the hospital emergency room or provide her with appropriate paperwork on the day of her claimed injury. On June 18, 2009 supervisor Lee Walsh provided a CA-1 form but refused to help her fill it out, although he was aware that she was visually impaired.

Appellant submitted a June 23, 2009 statement from Lamont Powell, a coworker, who indicated that on June 15, 2009 she asked him to inform her supervisor that she needed to see her.

In a June 15, 2009 statement, Phyllis Joiner, a supervisor, indicated that, at 11:30 a.m., on June 15, 2009, appellant informed her she needed eye surgery and that she had only been able to sleep three hours the previous night. At 12:30 p.m., appellant asked for permission to take a long lunch hour on that day, so that she could take her car to the shop. At approximately 5:30 p.m., Ms. Joiner responded to a coworker’s request on behalf of appellant to go to her window. When appellant informed Ms. Joiner she was not feeling well, Ms. Joiner told her to finish with her customers and then sit down. She asked Ms. Joiner to call “911” because she was having trouble seeing. When the emergency vehicle arrived, appellant informed the driver that she has experienced problems with her eyes 30 years before when she was in the marines. She was transported to the hospital. A coworker, Alice, offered to take appellant’s keys to the hospital and to give her a ride home.

On June 18, 2009 Ms. Joiner stated that appellant approached the counter where she was working on that day and handed her a duty status report (Form CA-17) reflecting her allegation that she had engaged in an argument with appellant’s supervisor on June 15, 2009. In a conversation held in her office, Ms. Joiner asked appellant who she had an argument with and asked her why she told her physician that she had an argument with your supervisor, since she had not had any argument with appellant since she came to the station. Appellant reportedly stated that she was referring to not having enough time to do her paperwork during regular work hours and Ms. Joiner’s denial of overtime requests in order for her to complete the work. Ms. Joiner informed appellant that she had almost four hours of administrative time per day and that she was not guaranteed overtime.

In an undated statement, F. Love, a coworker, indicated that on June 15, 2009 appellant collapsed in a chair in Ms. Joiner’s office, stating that her vision was gone. Appellant asked the

coworker to call "911." Ms. Joiner asked the coworker to stay with appellant until the paramedics arrived. Mr. Love stated that at no time during the day on June 15, 2009 did he see or hear an altercation between appellant and her supervisor.

In an undated supplement to her CA-1 form, appellant alleged that she had an "earlier unpleasant verbal altercation" with her immediate supervisor, Ms. Joiner, before going to the retail window to work on June 15, 2009. She alleged that Ms. Joiner harassed and threatened her and ordered her to complete work that had not been done by her relief clerk while she was on vacation. Appellant reportedly worked through her lunch to comply with her supervisor's command and became severely dehydrated as a result. She stated that she had experienced extreme physical and emotional stress as a result of her supervisor's actions. Appellant claimed that Ms. Joiner pressured her by setting unrealistic expectations for the required financial paperwork which must be verified daily; wanted her to "sign without validating," which constituted a violation of the employing establishment's financial procedures and federal law; made no allowances for machine malfunctions or clerk errors that she had to correct or late customers which gave her even less time to close out; and denied overtime but refused to allow appellant to adjust her schedule or starting time to finish paperwork. Management did not assist her in the filing of her claim and failed to provide her with a receipt.

Appellant submitted a July 21, 2009 report from Dr. Andrew Ross, a treating physician, who diagnosed migraine headache. Dr. Ross noted that she had an altercation with her supervisor on June 15, 2009 and that she could return to work on July 22, 2009.

On February 10, 2009 the Office advised appellant of the deficiencies in her claim. Appellant was requested to provide additional documentation to support that the claimed altercation occurred as alleged and medical evidence supporting a causal relationship between the claimed incident and a diagnosed condition.

Appellant submitted a June 15, 2009 hospital admission form noting that she had only peripheral vision and that she had undergone prior eye surgery. In a June 15, 2009 report, Dr. David Morledge, a Board-certified neurologist, diagnosed ophthalmic migraine, who stated that appellant developed a binocular visual disturbance while working at the employing establishment that day. Appellant apparently had a similar experience 30 years earlier while in the military. A June 17, 2009 hospital discharge summary reflected diagnoses of bilateral central scotoma due to migraine and hyperlipidemia. Appellant was reportedly working when she had loss of bilateral central vision. She had a similar episode 30 years before and was diagnosed with ophthalmic migraine.

By decision dated September 15, 2009, the Office denied appellant's claim. It accepted that she was mailing packages for customers on the date in question when she became shaky and her vision blurred; at her request, a coworker informed her supervisor that she was having trouble seeing and felt like passing out; her supervisor told her to finish the customer and then sit down; after she finished with the customer, she had the coworker call "911." The Office denied the claim on the grounds that the medical evidence failed to establish that appellant's claimed medical condition was causally related to the established events.

On September 23, 2009 appellant requested a telephonic hearing, which was subsequently modified to a request for review of the written record. In support of the request, appellant submitted a July 30, 2009 report from Dr. Helo Chen, a treating physician, who first treated appellant on June 18, 2008 for blurry vision and headache reportedly incurred from a work-related accident. She related that, on June 15, 2009, she was mailing packages for a customer when she began to feel shaky and her vision became blurry. Appellant asked another clerk to tell the supervisor that she was not feeling well and felt as if she was going to pass out. The supervisor reportedly told appellant to finish the customer then go sit down. Appellant did as her supervisor requested; however, her vision began to fail and the customer had to help her with mail. Her vision was then so blurry she had to feel her way to the stamp room and asked a coworker to call "911." The "EMS" was dispatched and the paramedic told appellant that she was severely dehydrated. Appellant was then taken to the hospital and admitted. She informed Dr. Chen that, prior to her vision loss, she had a verbal altercation with her immediate supervisor before going to the retail window; her supervisor harassed and threatened her and ordered her to complete work that had not been done by the relief clerk while she had been on vacation. Although she was upset, appellant worked through her lunch to comply with her supervisor's orders. She also reported being unable to take her breaks because the line was backed up. Appellant complained about a delay in receiving a CA-1 form and her supervisor's refusal to help her fill out the form.

Dr. Chen diagnosed stress adjustment disorder with anxiety, ophthalmic migraine and psychogenic visual loss, all of which he opined were secondary to the stress and verbal altercation that occurred on June 15, 2009 at work. He stated that appellant's supervisor forced appellant to perform her job above her normal scope of employment. Because appellant was unable to take a lunch or other break, she became "over-stressed" and dehydrated, resulting in vision loss. Dr. Chen opined that her condition was a direct result of the emotional and physical stress she was under to meet demands of her supervisor. In a letter dated January 22, 2010, Dr. Chen reiterated his opinion that appellant developed stress adjustment disorder with anxiety, ophthalmic migraine and psychogenic visual loss as a result of stress and verbal altercation that occurred on June 15, 2009 at the employing establishment.

In a June 1, 2010 decision, an Office hearing representative affirmed the denial of appellant's emotional condition claim, amending the September 15, 2009 decision to reflect that the claim was denied on the grounds that appellant failed to establish that she sustained an injury in the performance of duty. The Office found that the evidence did not establish that an altercation had occurred as appellant maintained. Therefore, appellant had failed to establish a compensable factor of employment.

LEGAL PRECEDENT

Workers' compensation 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 Act.² 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.³

It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer and not duties of the employee.⁴ Investigations are considered to be an administrative function of the employer unrelated to the employee's day-to-day duties or specially assigned job requirements.⁵

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that the incidents alleged or implicated by the employee did, in fact, occur.⁶ Grievances or Equal Employment Opportunity complaints by themselves are not determinative of whether harassment or discrimination took place.⁷ Where a claimant alleges harassment, the issue is whether he or she has submitted sufficient evidence to establish a factual basis for the claim by the submission of probative and reliable evidence to support such allegations.⁸

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.⁹ 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.¹⁰

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that an emotional condition was caused or adversely affected by her

² 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁴ See *Pamela D. Casey*, 57 ECAB 260 (2005); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁵ See *Jeral R. Gray*, 57 ECAB 611 (2006).

⁶ *T.G.*, 58 ECAB 189 (2006).

⁷ *C.S.*, 58 ECAB 137 (2006).

⁸ *Id.* See *Robert Breeden*, 57 ECAB 622 (2006).

⁹ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁰ *Id.*

employment.¹¹ Neither the fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.¹²

ANALYSIS

The Board finds that appellant has not established a compensable factor of employment. Therefore, appellant failed to meet her burden of proof to establish that she sustained an emotional condition.

To the extent that appellant alleged that she developed stress as a result of her regular or special assignment duties, the evidence of record is not sufficient to establish a compensable employment factor under *Cutler*. She did not provide a factual basis for her allegations. Appellant's allegations do not provide any detail as to the time, place or manner of the regular or specially assigned duties she was required to perform or of her inability to perform the work as assigned. She has therefore not established that any regular or specially assigned duties were compensable factors of employment.

Appellant alleged that her supervisor acted in an abusive manner because she ordered her to complete work that had not been done by her relief clerk while she was on vacation; pressured her by setting unrealistic expectations for the required financial paperwork which had to be verified daily; wanted her to "sign without validating," which constituted a violation of the employing establishment's financial procedures and federal law; made no allowances for machine malfunctions or clerk errors that she had to correct or late customers which gave her even less time to close out. She did not provide any evidence to corroborate these allegations nor did she provide sufficient details from which the Board could determine the validity of her statements. Therefore, appellant has not provided a factual basis for her allegations. Further, complaints about the manner in which a supervisor performs her duties or the manner in which she exercises discretion generally fall outside the scope of coverage provided by the Act. This principle recognizes that a supervisor or manager in general must be allowed to perform her duties and employees will, at times, dislike the actions taken.¹³ Mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent evidence of error or abuse.¹⁴

Appellant also alleged that her supervisor denied her requests for overtime but refused to allow her to adjust her schedule or starting time to finish paperwork. The Board finds that these allegations relate to administrative or personnel matters, unrelated to her regular or specially assigned work duties and therefore do not fall within the coverage of the Act.¹⁵ Although the

¹¹ See *Charles D. Edwards*, 55 ECAB 258 (2004).

¹² See *Ronald K. Jablanski*, 56 ECAB 616 (2005); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

¹³ *T.G.*, *supra* note 6.

¹⁴ *Id.*

¹⁵ See *Lori A. Facey*, 55 ECAB 217 (2004). See also *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). See also *Jimmy B. Copeland*, 43 ECAB 339 (1991) (an investigation by the employing establishment is an administrative matter).

handling of disciplinary actions and leave requests, the assignment of work duties and the monitoring of work activities are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹⁶ 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.¹⁷ In this case, appellant has not submitted sufficient evidence to show that the employing establishment committed error or abuse with respect to administrative matters.

Appellant also contended that management did not assist her in the filing of her claim. Actions taken by the employer subsequent to the filing of appellant's claim are administrative functions of the employer and not related to the employee's day-to-day or specially assigned duties.¹⁸ The evidence reflects and appellant acknowledged that a CA-1 form was delivered to her while she was in the hospital. While she may have wanted her supervisor to assist her in completing the form, her failure to do so did not constitute error or abuse. The Board finds that the employer acted reasonably and appellant failed to establish a compensable factor of employment with respect to this allegation.

Appellant alleged that she experienced a severe migraine, loss of vision and associated stress as a result of an altercation with her supervisor on June 15, 2009. In her Form CA-1, appellant alleged that she became stressed because her supervisor responded inappropriately when she was informed that appellant was having vision trouble and felt as though she would pass out, telling her to finish with her customers and then "go sit down." Supervisor Joiner acknowledged that on June 15, 2009 at approximately 5:30 p.m., she responded to a coworker's request on behalf of appellant to go to her window. When appellant informed her she was not feeling well, Ms. Joiner told her to finish with her customers and then sit down. She complied with appellant's request to call "911" because she was having trouble seeing and asked a coworker to stay with her until paramedics arrived. These reported actions by the supervisor were corroborated by Mr. Love, who stated that at no time during the day on June 15, 2009 did he see or hear an altercation between appellant and her supervisor. A verbal altercation, when sufficiently detailed by the claimant and supported by the evidence, may constitute a compensable employment factor.¹⁹ This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.²⁰ In this case, appellant has not shown how her supervisor's above-described actions rise to the level of verbal abuse or otherwise fall

¹⁶ *Id.*

¹⁷ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁸ *G.S.*, Docket No. 09-764 (issued December 18, 2009). Administrative or personnel matters are generally unrelated to an employee's regular or specially assigned work duties and do not fall within coverage of the Act absent evidence showing error or abuse on the part of the employing establishment. *C.T.*, Docket No. 08-2160 (issued May 7, 2009).

¹⁹ *C.S.*, *supra* note 7.

²⁰ *J.C.*, 58 ECAB 594 (2007).

within coverage of the Act.²¹ In an undated supplement to her CA-1 form, appellant alleged that she had an “earlier unpleasant verbal altercation” her supervisor before going to the retail window to work on June 15, 2009. She did not, however, provide any details regarding the claimed verbal altercation or any evidence corroborating the incident. Therefore, she failed to establish that the altercation occurred as alleged.²²

Appellant alleged that her supervisor harassed and threatened her. To the extent that incidents alleged as constituting harassment are established as factual, these could constitute employment factors.²³ However, for harassment to give rise to a compensable disability under the Act, there must be evidence that the harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.²⁴ Appellant did not describe any specific instance of alleged harassment or any specific threat allegedly made by her supervisor. Her general allegations are insufficient to establish that she was harassed by her supervisor at any time. Appellant has not established a compensable employment factor with respect to these allegations.

As appellant did not establish a compensable factor of employment, she failed to establish that her emotional condition arose in the performance of duty.²⁵

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 *Harriet J. Landry*, 47 ECAB 543, 547 (1996); *see Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991).

²² *See Denis M. Dupor*, 51 ECAB 482, 486 (2000).

²³ *Kathleen D. Walker*, 42 ECAB 603 (1991).

²⁴ *Jack Hopkins, Jr.*, 42 ECAB 818 (1991).

²⁵ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *Marlon Vera*, 54 ECAB 834 (2003); *Margaret S. Krzycki*, 43 ECAB 496 (1992); *see L.K.*, Docket No. 08-849 (issued June 23, 2009).

ORDER

IT IS HEREBY ORDERED THAT the June 1, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 18, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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