

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROSEMARY E. DODENHOFF and U.S. POSTAL SERVICE,
POST OFFICE, Hauppauge, NY

*Docket No. 00-2424; Submitted on the Record;
Issued July 29, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On August 27, 1998 appellant, then a 35-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that she sustained a stress-related condition when she was harassed by her supervisors. Appellant stopped work on January 15, 1998 and did not return. Her supervisor noted on the claim form that she was not notified that appellant's condition was job related.

Appellant submitted an employing establishment commendation dated August 31, 1989; medical records from Dr. Raymond Magliulo, an osteopath, dated January 29 to September 2, 1998; a report from Dr. Spiro Theoharakis, a Board-certified psychiatrist, dated May 4, 1998; an undated report from Dr. Anthony Carabe, a psychologist; two witness statements; a statement from an employing establishment customer; and a letter from appellant's supervisor, Rosemary Molinari dated September 5, 1998. The employing establishment commendation dated August 31, 1989 noted that appellant was being cited for her outstanding performance. Dr. Magliulo's treatment notes indicated that appellant was being treated for anxiety and stress secondary to her work environment. He indicated that appellant experienced work-related anxiety, stress and panic disorder as a result of contact with her supervisor. Dr. Magliulo concluded that appellant's stress-related illness was the result of abusive contact with her supervisor, Ms. Molinari. Dr. Theoharakis' report dated May 4, 1998 diagnosed appellant with major depression, single episode with mood congruent psychotic features. He noted that appellant was not fit for any duty at this time and had been unresponsive to clinical agitated depression treatment. Dr. Theoharakis further noted that appellant perseverates on minor issues in the work setting making them major calamities. The report from Dr. Carabe indicated that appellant was suffering from generalized anxiety disorder marked by weight loss, sleep disturbance, inability to concentrate and a pattern of severe anxiety leading to an inability to function in her workplace due to harassment by her supervisor, Ms. Molinari. The two witness statements, one by a coworker indicated that appellant experienced anxiety at work over a

conflict with another coworker, Ms. Moody. Another coworker described the events surrounding an employing establishment audit in January 1998 and the placement of a new supervisor, Ms. Molinari. The coworker noted that Ms. Molinari attempted to undermine appellant's authority and position at this time. The statement from an employing establishment customer indicated that appellant was a valued worker. The letter from appellant's supervisor, Ms. Molinari, dated September 5, 1998, noted that appellant's leave was denied because she was unable to determine from the leave slip submitted by appellant, what type of leave she requested as more than one type was specified. Ms. Molinari attached a new leave slip with a return envelope and requested that appellant submit it so that her pay would not be interrupted.

Thereafter, appellant submitted a statement which raised the following allegations: (1) appellant's supervisor, Ms. Molinari, harassed her on several occasions; (2) her supervisor, Robert Hernandez, harassed her on several occasions; (3) appellant alleged that Ms. Molinari requested she oversee workman sealing floors on January 13, 1998 after her eight-hour shift and refused to pay appellant for overtime; (4) she alleged that Ms. Molinari bragged to the former postmaster, Ms. Larkin, that she knew something appellant did not know about managing the post office; (5) appellant alleged that Ms. Molinari refused to sign her leave slip when she requested to see her physician; (6) she alleged that Ms. Molinari denied her overtime and made her work on her own time because she was going into penalty overtime; (7) appellant alleged that Ms. Molinari monitored her work and the window assignment; (8) appellant alleged that she performed work assigned to Ms. Molinari; (9) she alleged that Ms. Molinari threatened her stating "you do n[o]t know what I did to the last person who went into penalty on me;" (10) appellant alleged that Ms. Molinari degraded her and called her "a nothing, nobody, just a clerk" and publicly humiliated her and uttered a profanity; (11) she alleged that Mr. Hernandez wrongfully investigated her for mistreating customers; (12) appellant alleged that Mr. Hernandez wrongfully investigated her for damaging a customers automobile; (13) she alleged that she was wrongfully investigated for being prejudiced against a coworker, Ms. Moody; and (14) appellant alleged that she was wrongfully investigated for making death threats to a coworker, Ms. Moody.

The employing establishment submitted a statement from appellant's supervisor, Ms. Molinari; a statement from Mary McGee, a labor relations specialist; a customer complaint against appellant dated September 3, 1996; a grievance brief filed by a coworker against the employing establishment dated October 25, 1996 to June 20, 1997; a statement from appellant's supervisor, Ms. Larkin dated March 25, 1998; statements regarding an investigation of the employing establishment dated April 14, 1998; an investigative memorandum from the employing establishment dated June 11, 1998; a statement from appellant's supervisor, Mr. Hernandez dated December 21, 1998; and an employing establishment letter of contravention dated December 22, 1998. The statement from appellant's supervisor, Ms. Molinari, indicated that in the five days she worked with appellant she never verbally abused her and that their conversations were very limited. She noted that she never stated to the postmaster that she knew something appellant did not know about managing the employing establishment. Ms. Molinari noted that appellant did not perform duties assigned to Ms. Molinari and indicated that the paperwork for the weekly reports prepared by appellant was never completed for computer input and she informed appellant that they would start fresh the following week. She noted that appellant always did the weekly paperwork for the employing establishment and would take over for the previous postmaster while she was on vacation. Ms. Molinari noted that she did not hover over appellant at the window assignment rather she

observed the window operation. She further noted that she never denied appellant overtime or penalty overtime when she worked over 10 hours a day, she merely indicated that at 17:40 appellant would be in penalty overtime. Ms. Molinari indicated that she never told appellant to finish her work on her own time nor did she state "you do n[o]t want to know what I did to the last person who went into penalty on me." She never threatened or intimidated appellant. Ms. Molinari noted that on January 13, 1998 the employing establishment's floors would be sealed and was informed that appellant was going to oversee the operations. She requested that appellant do the station inputs and finances while the floors were being sealed and appellant agreed to perform this task. Ms. Molinari returned on January 14, 1998 and learned the station inputs and finances were not completed. Appellant indicated that she played solitaire on the computer while the floors were being sealed. She told appellant that she was paid to do the employing establishment's work not play solitaire. Ms. Molinari noted that on January 13, 1998 appellant was paid 11.95 hours, eight hours regular pay, two hours overtime and 1.95 hours penalty overtime pay. She noted that regarding appellant's sick leave request on January 15, 1998 appellant requested leave and this request was granted. Ms. Molinari further stated that appellant gave her a leave request noting that she would be out on leave; however, did not indicate a date that she would return to work. She told appellant she would be unable to approve the leave request until she was able to complete the form indicating the amount of leave she would be using. Ms. Molinari noted that appellant was upset and she requested appellant to enter her office to discuss the leave matter. She discussed with appellant that a supervisor was to be in the building on the following Saturday and that Ms. Molinari would be off that day and another supervisor would be on duty. Ms. Molinari indicated that appellant was not a supervisor but a clerk and appellant left the office at this point. She noted that she did not use profanity nor did she berate or belittle appellant and she was not abusive, unprofessional or intolerable.

The statement from Ms. McGee, a labor relation's specialist, noted that she was performing an unbiased climate survey of the employing establishment and interviewed appellant as well as other employees. Ms. McGee noted that there was a disproportionate number of disciplinary and administrative actions generated at this office with regard to management practices. She noted that appellant became upset when questioned regarding the grievances filed and Equal Employment Opportunity (EEO) complaints. Ms. McGee noted appellant felt as though she was being persecuted. Appellant remarked that she was the captain of the employing establishment and noted that she ran the office at all times. Ms. McGee noted that the EEO complaints and grievances revealed that they were related to or involved appellant in some manner, either her conduct towards employees, her position in the employing establishment and her relationship to the postmaster.

The customer complaint against appellant alleged that she damaged her car, treated her with hostility and embarrassed her when she went into the employing establishment and tampered with her mail. The employing establishment arbitration brief noted that appellant's coworker, Ms. Moody, was wrongfully removed from her position and later was restored to her position at another facility.

The statement from appellant's supervisor, Ms. Larkin, dated March 25, 1998, indicated that she was postmaster of the Brightwaters station and noted that the station in January 1998 comprised of 10 employees and no supervisor due to the pending investigation. She noted that the station was managed as a team with appellant as the team captain. Ms. Larkin indicated that

she delegated appellant duties of a supervisor. There were several statements regarding an investigation of the employing establishment dated April 14, 1998, which focused on the disproportionate number of disciplinary and administrative actions generated at this employing establishment with regard to management practices. The investigative memorandum from the employing establishment dated June 11, 1998 details the alleged irregularities at the Brightwaters, NY, station.

The statement from appellant's supervisor, Mr. Hernandez, dated December 21, 1998, indicated that he never falsely accused appellant of mistreating a customer. He noted that he approached appellant regarding a customer complaint filed at the station in September 1996. Mr. Hernandez further indicated that he never accused appellant of damaging the same customer's automobile, rather he was investigating a customer complaint that her car was scratched while parked in the employing establishment's parking lot. He noted his investigation was routine and done in a professional manner. Mr. Hernandez further noted that his conversation with appellant was based upon the allegations made by the customer and he recommended that appellant avoid contact with this customer.

The employing establishment's letter of contravention dated December 22, 1998 indicated that as a result of a grievance arbitration ruling on October 24, 1997, the arbitrator determined that appellant and the postmaster, Ms. Larkin, were creating a hostile work environment. As a result of the investigation Ms. Larkin was reassigned to another position in another station.

The employing establishment noted that an allegation of harassment and threatening behavior was made against appellant by Ms. Moody, a coworker. This matter was investigated and it was determined to be inconclusive and no discipline or administrative actions were taken against appellant. The employing establishment noted that a customer complaint was made on September 3, 1996 whereby, the customer indicated that she was being treated with hostility and her automobile was damaged by appellant. An investigation ensued, which was inconclusive and no discipline or administrative actions were taken against appellant. The employing establishment noted that they did not err or act abusively in the administration of these matters. The employing establishment indicated that appellant's pay was interrupted for three weeks when she stopped working because she did not provide documentation in support of her absence. As soon as appellant provided the documentation a pay adjustment was issued. The employing establishment indicated that appellant's stress reaction was self-generated and was not in the performance of duty.

The employing establishment further noted that appellant worked with Ms. Molinari only five days and during this period district personnel were present as well as the people performing the climate assessment.

The employing establishment also noted that appellant's allegations that she was working without getting paid were without merit, as mentioned earlier in the statement of Ms. Molinari, on January 13, 1998 appellant was paid for 11.95 hours. The employing establishment further noted that they believed that the reassignment of Ms. Larkin as postmaster was appellant's motivation for filing this claim as she and Ms. Larkin were friends and appellant enjoyed privileges while working under Ms. Larkin that she no longer enjoyed.

Thereafter, appellant submitted medical records from Dr. Magliulo, dated January 15, to December 30, 1998; a medical report from Mr. Carabe; hospital discharge summaries from October 15 and November 13, 1998; a medical report from Dr. Gary E. Veith, a Board-certified internist, dated November 25, 1998; and a report from Dr. Douglas Marcus, a Board-certified psychiatrist, dated December 21, 1998. Dr. Magliulo's treatment notes from January 15, to December 30, 1998 indicated that appellant was being treated for anxiety and stress secondary to her work environment as a result of contact with her supervisor Ms. Molinari. The treatment note from Mr. Carabe dated February 1998 indicated that appellant was undergoing treatment for extreme anxiety and he recommended any communication between appellant and her supervisors be suspended at this time. The hospital discharge summaries from October 15 and November 13, 1998 indicated that appellant was treated for major depression, severe with out psychotic features; mixed personality disorder with borderline features; amenorrhea; and major loss of work and social isolation. The medical report from Dr. Veith dated November 25, 1998 noted that appellant was treated for recurrent episodes of chest pain. He indicated that her discomfort was most likely noncardiac in origin. The report from Dr. Marcus dated December 21, 1998 noted that appellant was currently being treated for major depression and was unable to return to work at the present time.

Appellant submitted commendations dated October 8, 1991 and January 1997 and customer's statements dated June 21, 1996 and August 26, 1997. The commendations from Ms. Larkin indicated that appellant had perfect attendance and was a valued employee. The customer's statements dated June 21, 1996 and August 26, 1997 noted that appellant was pleasant and performed her work diligently.

The employing establishment submitted the complaint filed by Ms. Moody against appellant and a statement from her. The complaint filed by Ms. Moody indicated that she was threatened by appellant on October 13, 1994. She indicated that she felt intimidated by appellant's incessant antagonistic behavior. The statement from Ms. Moody indicated that appellant used ethnic slurs against her and verbally harassed her. She indicated that appellant used profanity to describe her and humiliated her in front of other employees and customers.

Appellant submitted a rebuttal to Ms. Moody's statements and also a statement from appellant's former supervisor, Ms. Larkin, regarding Ms. Moody's allegations. Appellant indicated she believed Ms. Moody to be jealous of her because the postmaster relied on her to perform major duties in her absence. She noted that Ms. Moody was playing mind games with her. Ms. Larkin indicated that there was no truth in Ms. Moody's allegations against appellant and that these allegations were borne out of Ms. Moody's personal resentment of appellant who is empowered to make decisions in her absence. She noted that Ms. Moody was difficult to manage and took away from the station's cohesion.

In a decision dated March 16, 1999, the Office denied appellant's claim for compensation on the basis that she failed to establish that the claimed injury occurred in the performance of duty.

By letter dated May 18, 1999, appellant requested reconsideration and submitted a brief in support of her claim.¹ She submitted a statement from her coworker, Ms. Tomanelli, which described the events surrounding the period of January 8 to January 15, 1998, when a new postmaster started and a financial audit occurred. She noted that she believed appellant was treated unfairly by Ms. Molinari and the management staff of the employing establishment.

By decision dated May 18, 2000, the Office affirmed the Office's decision dated March 16, 1999 on the basis that appellant failed to establish that the claimed injury occurred in the performance of duty.

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

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 his or 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.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 his or her frustration from not being permitted to work in a particular environment or to hold a particular position.³

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.⁴ 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.⁵

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 compensable factors of employment and may not be considered.⁶ If a claimant does implicate a

¹ The record reflects that appellant originally requested an oral hearing and later withdrew that request and pursued a request for reconsideration.

² 5 U.S.C. §§ 8101-8193.

³ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁵ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁶ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

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.⁷

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated May 18, 2000, 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 harassment on the part of her supervisors. 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.⁸ 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.⁹ In the present case, appellant's supervisor, Ms. Molinari, indicated that she approached appellant regarding penalty overtime on January 13, 1998, however, she indicated that she did not deny appellant overtime pay, she merely indicated that appellant would be in penalty overtime at 17:40. In this particular instance, appellant was paid for 11.95 hours, eight hours regular pay, two hours overtime and 1.95 hour penalty overtime pay. Appellant also alleged that Ms. Molinari threatened her, stating "you do n[o]t know what I did to the last person who went into penalty on me"¹⁰ and degraded her indicating she was "a nothing, nobody, just a clerk" and publicly humiliated her by uttering a profanity.¹¹ Appellant also indicated that this supervisor berated her in a conversation with her previous supervisor indicating that Ms. Molinari knew something about managing the employing establishment that appellant did not know. Ms. Molinari indicated that she never threatened appellant regarding penalty overtime, rather she paid her for the time she worked including overtime and penalty overtime. Additionally, Ms. Molinari noted that she never berated appellant, she never uttered a profanity against appellant nor did she remark to appellant's previous supervisor that she knew something about managing the employing establishment that appellant did not know. Appellant also

⁷ *Id.*

⁸ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁰ *See Michael A. Deas*, 53 ECAB ____ (Docket No. 00-1090, issued November 14, 2001) (while the Board has recognized the compensability of threats in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to compensability). In this case, appellant did not submit evidence or witness statements in support of her allegation and her supervisor denied that she threatened appellant.

¹¹ *See Kim Nguyen*, 53 ECAB ____ (Docket No. 01-505, issued October 1, 2001) (where appellant alleged that her supervisor verbally abused her by stating she was not her babysitter, appellant's supervisor denied that she made this remark and, even if it were proven, appellant did not show how such an isolated remark would rise to the level of verbal abuse). In this case, appellant did not provide evidence or witness statements in support of her allegation that her supervisor degraded her and her supervisor denied that she berated her or uttered a profanity against her.

alleged that she was harassed by her supervisor, Mr. Hernandez, who initiated investigations after receiving complaints from an employing establishment's customer. Mr. Hernandez indicated that he approached appellant regarding a customer complaint filed at the station in October 1996, which alleged that appellant treated the customer with hostility and another allegation that appellant damaged the customer's automobile. He noted that his investigation was routine and done in a professional manner. General allegations of harassment are not sufficient¹² and appellant has not submitted sufficient evidence to establish that she was harassed by her supervisor.¹³ Appellant alleged that her supervisor made statements and engaged in actions which she believed constituted harassment, but she provided no corroborating evidence or witness statements to establish that the statements actually were made or that the actions actually occurred.¹⁴ The Board notes that vague allegations of a supervisor berating and taunting appellant are insufficient to establish appellant's claim that she was harassed. A claimant's own feeling or perception that a form of criticism by, or disagreement with a supervisor is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under the Act, absent evidence that the interaction was, in fact, erroneous or abusive. This principle 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.¹⁵ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

Many of appellant's allegations of employment factors that caused or contributed to her condition fall into the category of administrative or personnel actions. In *Thomas D. McEuen*,¹⁶ 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's superiors in dealing with appellant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. The incidents and allegations made by appellant which fall into this category of administrative or personnel actions include: (1) she was

¹² See *Paul Trotman-Hall*, 45 ECAB 229 (1993).

¹³ 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).

¹⁴ 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).

¹⁵ See *Michael A. Deas*, *supra* note 10.

¹⁶ See *Thomas D. McEuen*, *supra* note 3.

requested to oversee workman on January 13, 1998 after her eight-hour shift and her supervisor refused to pay her for overtime;¹⁷ (2) her supervisor refused to sign a sick leave slip when appellant requested to see her doctor;¹⁸ (3) she was denied overtime and required to work on her own time because she was going into penalty overtime;¹⁹ (4) her supervisor monitored her work at the window assignment;²⁰ and (5) appellant alleged that she performed work assigned to Ms. Molinari.²¹

Appellant also made several allegations regarding wrongful investigations including: (6) she was wrongfully investigated by Mr. Hernandez for mistreating customers; (7) she was wrongfully investigated by Mr. Hernandez for damaging a customer's automobile; (8) she was wrongfully investigated for being prejudiced against a coworker Ms. Moody; and (9) she was wrongfully investigated for allegedly making death threats to a coworker, Ms. Moody.

The Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regularly or specially assigned employment duties are not considered to be employment factors.²² 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.²³

Although appellant has made allegations that the employing establishment erred and acted abusively in conducting its investigation, appellant has not provided sufficient evidence to

¹⁷ *Id.* (Proper pay is an administrative or personnel matter and an employee's emotional reaction to the actions 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 notes that appellant submitted no evidence to substantiate her claim that she was not paid for overtime and the employing establishment indicated that appellant was properly paid overtime and penalty overtime for the time worked.

¹⁸ *See Judy Kahn*, 53 ECAB ___ (Docket No. 00-457, issued February 1, 2002). (Although the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee).

¹⁹ *Supra* note 17.

²⁰ *See Dennis J. Balogh*, 52 ECAB ___ (Docket No. 99-1512, issued January 25, 2001); *See also John Polito*, 50 ECAB 347 (1999) (Although the monitoring of activities at work is generally related to the employment, it is an administrative function of the employer and not a duty of the employee. Appellant did not submit evidence supporting her claims that the employing establishment committed error or abuse in monitoring work activities such that she did not establish a compensable employment factor).

²¹ *See Barbara J. Latham*, 53 ECAB ___ (Docket No. 99-517, issued January 31, 2002) (the assignment of work is an administrative function and the manner in which a supervisor exercises his or her discretion falls outside the ambit of the FECA. Absent evidence of error or abuse, appellant's mere disagreement or dislike of a managerial action is not compensable).

²² *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

²³ *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

support such a claim. A review of the evidence has not shown that the employing establishment's actions in connection with its investigation of appellant were unreasonable. Appellant alleged that her supervisor wrongfully investigated her for mistreating a customer, damaging a customer's automobile, for being prejudiced against a coworker and for making death threats against a coworker, but she provided no corroborating evidence, such as witness statements to establish that such action was unreasonable.²⁴ Appellant submitted no supporting evidence regarding the investigation. The supervisor's statement contradicts this assertion, noting that he never falsely accused appellant of mistreating a customer nor did he accuse her of damaging a customer's automobile. He noted that he approached appellant regarding a customer complaint filed at the station in October 1996. Mr. Hernandez further indicated that he never accused appellant of damaging the same customer's automobile, rather he was investigating a customer complaint that her car was scratched while parked in the employing establishment's parking lot. He noted that his investigation was routine and done in a professional manner. Mr. Hernandez further noted that his conversation with appellant was based upon the allegations made by the customer and he recommended appellant avoid contact with this customer.

Additionally, the record does not support appellant's contention that she was wrongfully investigated for being prejudiced against a coworker and for making death threats against the same coworker. The evidence suggests that appellant as well as other employees were questioned during a unbiased climate survey of the employing establishment by a labor relations specialist, after it was determined that there were a disproportionate number of disciplinary and administrative actions generated at this station with regard to management practices. Thus, appellant has not established a compensable employment factor under the Act in this respect.²⁵ She did not submit evidence supporting her claims that the employing establishment committed error or abuse in investigating appellant with regard to the customer complaints such that she did not establish a compensable employment factor. The employing establishment has either denied these allegations or contended that it acted reasonably in these administrative matters. Appellant has presented no corroborating evidence to support that the employing establishment erred or acted abusively with regard to these allegations. Thus she has not established administrative error or abuse in the performance of these actions and, therefore, they are not compensable under the Act.

²⁴ See *Larry J. Thomas*, 44 ECAB 291, 300 (1992).

²⁵ See *John Polito*, *supra* note 20.

The decision of the Office of Workers' Compensation Programs dated May 18, 2000 is affirmed.

Dated, Washington, DC
July 29, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member