



Appellant submitted a statement alleging that on several occasions she was harassed, discriminated against and verbally berated by her supervisor, Sharon Milton, about her job performance. She noted that on May 24, 2002 Ms. Milton called her a “f ... liar” and that on November 1, 2001, Ms. Milton would not permit her to use a forklift to perform her duties and stated: “the guys can do it and do n[o]t have a problem with it.” Appellant alleged that she was denied leave usage on several occasions. She also alleged that on March 22, 2002 she was denied a job transfer based on a negative evaluation from Ms. Milton. Appellant alleged that she was overworked and that Ms. Milton assigned her extra duties and would not allow others to assist her. Finally, appellant alleged that she was improperly given an unsatisfactory job performance evaluation with regard to attendance/punctuality and safety.

The employing establishment submitted a statement from Ms. Milton dated September 25, 2002, who indicated that she did not berate, verbally abuse or holler obscenities at appellant. She advised that she spoke with appellant several times regarding her poor job performance. Ms. Milton indicated that she required no more of appellant than of other employees. With regard to appellant’s request for leave, she noted that incidental leave was granted at the discretion of the supervisor and there were times when mail volume or other situations dictated whether or not leave would be granted. Ms. Milton noted that, while as appellant’s supervisor she was required to prepare an evaluation form for appellants job transfer, the final decision for the transfer was made by the hiring agency. Ms. Milton stated that appellant informed her of her concerns over using her family leave because of her back condition and Ms. Milton suggested placing appellant in another position which would be less aggravating to her back; however, appellant declined this transfer.

By letter dated November 7, 2002, the Office asked appellant to submit additional information including a detailed description of the employment factors or incidents which she believed had contributed to her claimed illness and a comprehensive medical report from her treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to her claimed emotional condition.

In a letter dated December 18, 2002, appellant indicated that her family leave usage was a factor used against her when she was attempting to transfer to another division. Appellant noted that she had good job performance and maintained 100 percent completion of all dispatches. Appellant reiterated that she was berated and verbally abused by Ms. Milton and that she was assigned additional duties without assistance. Appellant again noted that she was improperly denied leave and was given an unsatisfactory evaluation by Ms. Milton, although she was never officially reprimanded. She noted that Ms. Milton personally discussed her poor performance with her. Appellant submitted several statements from former supervisors, Joyce A. Lane, Marianne McVeigh Schofield, Nicholas R. Angelastro, Anthony J. Meraviglia and Mike Boules, who attested that appellant was an excellent worker and was successful in all her mail operations. She also submitted copies of Equal Employment Opportunity (EEO) complaints filed on November 12, 2001 and May 14, 2002. Appellant also submitted a letter from the employing establishment human resource specialist dated April, 29, 2002, who advised that appellant would not be offered reassignment due to her unreliable work attendance and work performance.

The employing establishment submitted a letter from Ms. Milton dated April 18, 2002, in which she noted that she had not recommended appellant for reassignment due to her constant need for assistance in making her dispatches on time, her tardiness in the last two years and because she used leave one to two days per week. In a letter dated November 15, 2002, Ms. Milton again denied berating, verbally abusing or embarrassing appellant. She noted it was her responsibility as a supervisor to ensure that the job was being performed correctly and in a timely manner and that she had spoken to appellant several times regarding her job performance. Ms. Milton noted that incidental leave was granted at the discretion of the supervisor and there were times when mail volume or other situations dictated whether or not leave would be permitted. She advised that she had denied leave for appellant as well as other employees. Ms. Milton confirmed that there were no staffing shortages among the dispatchers and, although appellant had complained about the amount of work required, other employees completed the same job without problem. She indicated that appellant was able to bid on another position with less responsibility if she could not perform her duties. Ms. Milton stated that she did not take any administrative action against appellant regarding her work performance, rather had discussed her unacceptable work performance with her on a number of occasions. Ms. Milton advised that as appellant's supervisor she was required to prepare an evaluation form for appellant's transfer and the decision not to hire appellant was made by the hiring office. She noted that the dispatcher duties did not change from day to day or switched from person to person and that she did not assign appellant more tasks than she could perform. Ms. Milton advised that as appellant's supervisor she was responsible for dispatching the mail and problems with employees performance was her responsibility. She noted that she had advised appellant that assistance with her workload was available but should be used infrequently.

The employing establishment submitted a letter from Daniel J. Wozniak, a relief dock supervisor, dated December 28, 2002, who supervised appellant for a two-week period while Ms. Milton was on leave. He stated that appellant made mistakes on dispatches, often needed assistance and was late on occasion. He also noted that extra assignments were routinely given out to all employees, but they were simple and menial in nature. Also submitted was a letter from Brett A. Mewbuorn, a supervisor, dated December 29, 2002, who noted supervising appellant occasionally during the period of June 2001 to April 2002. Mr. Mewbuorn observed appellant missed dispatches and noted that appellant required assistance to complete her assignments.

Appellant submitted a statement dated December 30, 2002, in which she further alleged that she was overworked and indicated that there were extra duties assigned to her and not assigned to her coworkers. Appellant also advised that she was wrongfully turned down for a transfer on April 18, 2002 due to a negative evaluation by Ms. Milton. She noted that there were coworkers who had difficulties with Ms. Milton; however, the witnesses declined to write about the incidences. Appellant advised that she was improperly denied leave on May 18, 2002 as punishment from Ms. Milton while other employees were granted leave. She noted that she filed EEO complaints on November 13, 2001 and May 14, 2002.

In a decision dated March 27, 2003, the Office denied appellant's claim on the grounds that the evidence of record failed to demonstrate that the claimed employment factors occurred as alleged.

In a letter dated April 26, 2003, appellant requested an oral hearing before an Office hearing representative. The hearing was held on December 30, 2003. Appellant submitted medical reports.

In a decision dated March 26, 2004, the hearing representative affirmed the decision of the Office dated March 27, 2003.

### **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 his employment duties and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his 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 his 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 his frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>6</sup>

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<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); *id.*

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 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>

To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of his 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> General allegations of harassment are not sufficient.<sup>11</sup> 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>12</sup>

### ANALYSIS

In the present case, appellant alleged that she was harassed, discriminated against and verbally berated about her job performance on several occasions by her supervisor, Ms. Milton. Appellant specifically alleged that on May 24, 2002 Ms. Milton called her a "f ... liar" and that she was discriminated against. Ms. Milton noted in statements dated September 25 and November 15, 2002, that she did not berate, verbally abuse or holler obscenities at appellant. She noted that, as appellant's supervisor, it was her responsibility to ensure that the job was being performed correctly and in a timely manner and that she spoke to appellant several times off the work floor regarding her poor job performance. Ms. Milton further advised that she did not single appellant out and required no more of appellant than other employees who performed the job of dispatcher. The employing establishment contended that at no time did management harass appellant.

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

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

<sup>9</sup> *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 *Paul Trotman-Hall*, 45 ECAB 229 (1993).

<sup>12</sup> See *Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991).

General allegations of harassment are not sufficient<sup>13</sup> and in this case appellant has not submitted sufficient evidence to establish that she was harassed by her supervisor.<sup>14</sup> Although appellant alleged that her supervisors made statements and engaged in actions which she believed constituted harassment, she provided no corroborating evidence or witness statements to establish that the statements actually were made or that the actions actually occurred.<sup>15</sup> Additionally, the employing establishment has refuted such allegations. Although appellant submitted statements from former supervisors praising her work performance, these statements did not make reference to the alleged harassment. Appellant's vague allegations that her manager and supervisor berated her and yelled obscenities are insufficient to establish appellants claim that she was harassed. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

Appellant's other allegations of employment factors that caused or contributed to her condition fall into the category of administrative or personnel actions. In the case of *Thomas D. McEuen*,<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 would 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 Ms. Milton denied her requests for leave on several occasions. While the handling of time and attendance matters is generally related to the employment, they are administrative functions of the employer and not duties of the employee<sup>18</sup> and the Board has held that emotional reactions regarding leave are not compensable work factors where appellant offered no independent evidence that the employing establishment erred or acted abusively in these matters.<sup>19</sup> Ms. Milton advised that incidental leave was granted at the discretion of the supervisor and there were times when mail volume or other situations dictated whether leave would be permitted and that she had denied leave for other employees as well. In this case,

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<sup>13</sup> See *Paul Trotman-Hall*, *supra* note 11.

<sup>14</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).

<sup>15</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>16</sup> See *Thomas D. McEuen*, *supra* note 6.

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

<sup>18</sup> See *Judy Kahn*, 53 ECAB \_\_ (Docket No. 00-457, issued February 1, 2002).

<sup>19</sup> *Michael Thomas Plante*, 44 ECAB 510 (1993).

appellant has not offered sufficient evidence to establish error or abuse regarding the denied leave. Thus, she has not established administrative error or abuse in regard to this matter.

With regard to appellant's allegation that she was denied a request for a job transfer on March 22, 2002 based on an evaluation prepared by her supervisor Ms. Milton, the Board has previously held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform her regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.<sup>20</sup> In the case at hand, the employing establishment has either denied these allegations or contended that it acted reasonably in these administrative matters. Ms. Milton advised that she prepared an evaluation form and noted that she did not recommend appellant for reassignment due to her constant need for assistance in making her dispatches on time, her tardiness several times in the last two years and because she used leave one to two days per week. Ms. Milton further advised that she had no authority to make the final decision for the transfer, rather the hiring agency made that determination. Appellant has presented no corroborating evidence to support that the employing establishment erred or acted abusively with regard to her request for a job transfer. Thus she has not established administrative error or abuse on the part of the employing establishment regarding this matter and therefore failed to establish a compensable factor of employment in this regard.

The Board notes that appellant made a very general allegation that overwork caused her stress.<sup>21</sup> The Board has held that overwork may be a compensable factor of employment.<sup>22</sup> However, as with all allegations, overwork must be established on a factual basis.<sup>23</sup> In the instant case, appellant has submitted no evidence to support her contention that she was overworked. Appellant stated that Ms. Milton assigned her extra duties above that which her coworkers were assigned and denied her requests for assistance. The employing establishment advised that there were no staffing shortages among the dispatchers and although appellant had complained about the amount of work required, other employees completed the same job without problem. Ms. Milton indicated that she required no more of appellant than other employees who performed the job of dispatcher. Appellant has not provided sufficient evidence to document the alleged overwork and, consequently, this allegation is not sufficiently established by the evidence of record.<sup>24</sup>

Lastly, regarding appellant's allegation that the employing establishment issued an unfair performance evaluation with regard to attendance/punctuality and safety, the Board notes that the handling of disciplinary actions, evaluations and leave requests, are generally related to the employment and they are administrative functions of the employer and not duties of the

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<sup>20</sup> *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

<sup>21</sup> *See Bonnie Goodman*, 50 ECAB 139 (1998).

<sup>22</sup> *See Sherry L. McFall*, 51 ECAB 436 (2000); *Georgia F. Kennedy*, 34 ECAB 608 (1983).

<sup>23</sup> *See William P. George*, *supra* note 15.

<sup>24</sup> *Frank A. McDowell*, 44 ECAB 522 (1993).

employee.<sup>25</sup> The Board finds that this allegation also does not fall within the coverage of the Act.<sup>26</sup> Ms. Milton acknowledged that she did not take administrative action against appellant for her poor work performance, rather she chose to speak with her off the floor in an effort to improve her performance. She noted that as appellant's supervisor she was responsible for dispatching the mail in a timely manner and had discussed appellant's unacceptable work performance with her on several occasions in hopes of improving her performance. The employing establishment also submitted statements from Mr. Wozniak and Mr. Mewbuorn, employing establishment supervisors, who noted that appellant had made mistakes on her dispatches, that she needed assistance in performing her duties and that she was tardy in reporting for work. In this case, appellant has not offered corroborating evidence to support that the employing establishment erred or acted abusively with regard to this allegation. Thus, she has not established administrative error or abuse in regard to this matter.

### CONCLUSION

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.<sup>27</sup>

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<sup>25</sup> *Id.*

<sup>26</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>27</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 March 26, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 27, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member