

and elevated blood pressure. In support of her claim, appellant submitted several documents, including a report of a magnetic resonance imaging (MRI) scan dated July 12, 2003; medical notes from April 11 through July 27, 2003 signed by Dr. Lucy Chang, a Board-certified internist, reflecting appellant's complaints of neck and shoulder pain, hypertension, headache and muscle strain, "probably related to stress;" a letter dated July 31, 2003 from Dr. John W. Barrett, a Board-certified neurosurgeon, stating that appellant had been evaluated with a sprained neck and left shoulder pain and should not lift more than 10 pounds; a letter dated February 21, 2003 from appellant to her supervisor requesting copies of her leave slips; a letter from appellant's supervisor dated April 9, 2003 in which he apologized for his delay in responding to her leave request; a letter dated June 2, 2003 to appellant from her supervisor informing appellant that she would be responsible to do "caller service" as well as her regular clerk duties, as time permitted; and a statement from appellant providing a history of her condition. Appellant stated that the more pressure she received at work, the more pronounced were her symptoms of anxiety and high blood pressure. She complained that she was subjected to added job duties; that she was permanently assigned to the customer caller service, which involved lifting, pulling, twisting, reaching and bending; that she was deprived of a private workstation and her own computer to perform her clerical duties; that the employing establishment improperly assigned a light-duty letter carrier to assist her when she was unable to complete her regular clerk duties; that she was wrongfully denied leave; that her manager conducted a conference with her in the presence of a witness; that she was required to work a full eight hours while other employees were conducting personal business while on duty; and that she was blamed for inadvertently posting confidential information.

By letter dated August 11, 2003, the Office advised appellant that the information submitted was insufficient to establish her claim and requested details regarding incidents, disputes, practices and confrontations she believed contributed to her condition. By letter dated August 29, 2003, appellant requested a 30-day extension for submission of evidence.

By decision dated September 11, 2003, the Office contested appellant's claim, finding that she had failed to establish that the alleged events occurred at the time, place and in the manner alleged and therefore failed to establish that she sustained an injury as defined by the Act.

By letter dated July 30, 2003, the employing establishment denied appellant's allegations. The customer service representative stated that appellant's leave requests for February 14, 2003 were denied due to operational needs. He indicated that appellant had not been required to handle any items over the 70-pound weight restriction for her position and that she had not been assigned any unreasonable demands outside of her job description. The customer service representative further stated that appellant's job description was restructured in accordance with a recommendation pursuant to an audit for the purpose of "keep[ing] these employees gainfully employed for eight hours;" that she had not been disciplined for not using her private vehicle; that although appellant had been asked to remove a personal pass code from her computer in accordance with the policy of the employing establishment, she had access to the six computers at the employing establishment; that appellant's office was relocated for efficient access to her administrative duties; that her supervisor stated that he treats all employees with dignity and respect; that appellant had never notified her supervisor that she was unable to perform her

clerical duties; and that, although another supervisor (Ms. Ruffin) stated that a document was inadvertently posted and appellant admitted to posting it, no blame was placed on appellant.

Subsequent to the Office's September 11, 2003 decision, appellant submitted numerous memoranda to the file alleging conditions of employment which caused her emotional and physical harm. Appellant alleged that, on January 3, 2003, she was threatened by Dee Dee Ruffin, a supervisor, for her refusal to use her personal vehicle to make a delivery and deceived by her immediate supervisor, who initially agreed with appellant but later disciplined her for her action and issued a letter of warning. She stated that the events surrounding the January 3, 2003 incident caused her to feel as though she was "walking on egg shells and everyday [was] a battleground at Arlington Road Station because [she didn't] know what [was] going to happen to [her] next." Appellant claimed that her leave requests were routinely denied and that, as a result of mismanagement of the schedule and workload, she was the "catch-all/fill in" for employees' failing to complete their work assignments. She alleged that she was assigned extra duties outside of her job description, "such as follow[ing] up on customer complaints while continuing to answer the telephones and cater[ing] to the management's/supervisor's daily routine/needs;" acting as a parking lot attendant; and preparing the supervisor's drivers license check off list and after 5 report. Appellant stated that, on a daily basis, she was left in charge with directions that she was to field telephone calls from carriers, making certain that they completed their routes or "[she] would not be able to go home." She stated that she felt "a sinking feeling like [she] was a Yo-Yo" and that management was playing games with her by changing and adding duties late in the day and expecting her to do two jobs at once. Appellant alleged that she was given an extra four hours of work each day, in addition to her eight-hour bid assignment, to be completed in an eight-hour shift. She further contended that handling the extra duties of the caller service window exacerbated her headaches, shoulder, back and neck pain and feelings of anxiety. In a statement dated April 23, 2003, appellant complained that she was required to answer to two different managers, one in her capacity as attendant at the caller service window and the other in her capacity as general clerk and that she was unable to complete her assignments due to conflicting instructions.

Appellant requested a hearing, which was held on April 27, 2004. Appellant restated the allegations outlined in previously filed documents and testified that she attended a lobby greeting class in conjunction with her reassignment as a lobby greeter. She stated that on January 3, 2003 she was asked by the manager of another station to use her personal vehicle to deliver a package during rush hour but that, when she was advised that she would not be allowed to go home after the delivery, she refused to deliver it. Appellant alleged that she was later disciplined for her refusal to deliver the package and that she believed her leave request for February 14, 2003 was denied in retaliation for her action.

After the hearing, appellant submitted numerous documents, including letters from appellant to her supervisor, wherein she complained of disparate treatment; a letter from appellant to the union president dated February 26, 2004; copies of leave requests; a letter of warning dated January 13, 2004 citing appellant for failure to be in regular attendance; a statement by appellant dated October 21, 2003 alleging that she experienced an increase in blood pressure as a result of a conversation with her supervisor regarding an "AWOL" charge; a memorandum dated December 10, 2003 from appellant's supervisor registering appellant for lobby greeter training; a memorandum to the Office from appellant dated February 9, 2004

alleging that Ms. Taylor locked the door of appellant's office during a confrontation about appellant's duties at the caller service window; a letter of warning dated January 7, 2003 citing appellant for failure to follow instructions; memoranda from appellant to management dated June 20, 2003 and to EEO compliance dated July 9, 2003 alleging management's failure to provide her with assistance and to address issues of job assignments; a letter dated August 6, 2003 to a supervisor complaining of discrimination and harassment; a statement dated August 19, 2003 wherein appellant complains that her computer access code and password were removed from her computer; a statement dated August 22, 2003 regarding appellant's lack of access to her office; a memorandum dated September 16, 2003 from appellant to her supervisor asking him to address her complaints regarding caller service duties and being monitored; a memorandum of understanding between the union and the employing establishment regarding the use of privately-owned vehicles; employee time sheets and pay slips; an undated and unsigned letter from Vincent Baylor stating that the service at the caller window was poor; a memorandum to the file dated January 7, 2003 wherein appellant complains of differential treatment for coworkers; a statement dated January 17, 2003 and signed by a coworker, Frances Stith, who stated that she was not "written up" for refusing to deliver a package in her personal vehicle; and a statement dated March 3, 2003 and signed by custodian Sharon Cotton alleging that she was not disciplined for refusing to deliver a package in her personal vehicle on January 3, 2003.

Appellant also submitted a statement of incident dated January 3, 2003 in which she alleged that Ms. Ruffin, manager of another location, asked her to deliver a package in her personal vehicle but would not allow her to go home after the delivery. According to appellant, the supervisor said "I am giving you instructions to bring the package to me or I am going to take further actions."

Appellant submitted medical reports signed by Dr. Bruce L.M. Tanenbaum, a Board-certified psychiatrist. In a report dated December 8, 2003, Dr. Tanenbaum provided a diagnosis of post-traumatic stress disorder, high blood pressure, and psychological stressors, which included "increased problems at work." He opined that all of appellant's problems were related to stress at work and that there was no indication of any previous psychiatric problem or treatment whatsoever. In his report dated March 12, 2004, Dr. Tanenbaum related statements made by appellant regarding problems at work. He stated that she had an increased depressed mood and more prominent social isolation stemming from her confrontation with Ms. Taylor on February 9, 2004. In a letter dated May 26, 2004, accompanying his December 8, 2003 and March 12, 2004 reports, Dr. Tanenbaum stated that he had been treating appellant since October 10, 2003 for post-traumatic stress disorder related to her work environment and activities and that the work situation had caused and aggravated her psychiatric problems. By letter dated May 28, 2004, Dr. Tanenbaum outlined appellant's allegations that she is required to work two positions and to perform special assignments "on a moment[']s notice" and concluded that the disruption and uncertainty at the employing establishment, hostile work environment and numerous confrontations had caused physical and emotional injuries to appellant.

By decision dated July 27, 2004, the Office hearing representative affirmed the office's September 11, 2003 decision, finding that appellant had failed to establish a factual basis for her claim and, therefore, had not established that she sustained an emotional condition arising out of her employment.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the 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 his 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.¹ The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of his work or his fear and anxiety regarding his ability to carry out his duties.² 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, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.³ Moreover, although administrative and personnel matters are generally related to employment, they are functions of the employer and not duties of the employee. Thus, the Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.⁴

The Board has recognized the compensability of verbal altercations or abuse in certain circumstances; however, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.⁵ For harassment or discrimination to give rise to a compensable disability, there must be evidence that the alleged actions did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable.⁶ When an employee alleges harassment and cites specific incidents, the Office or other appropriate fact finder must determine the truth of the allegations. The issue is not whether the claimant has established harassment or discrimination under EEO standards. Rather, the issue is whether sufficient evidence has been submitted to factually support the claimant's allegations.⁷

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment which may be considered by a physician when providing an opinion on causal relationship, and which are not deemed factors of employment

¹ 5 U.S.C. §§ 8101-8193.

² *Lillian Cutler*, 28 ECAB 125, 129 (1976).

³ *Id.* See also *Peter D. Butt, Jr.*, 56 ECAB ____ (Docket No., issued October 13, 2004).

⁴ See *Charles D. Edwards*, 55 ECAB ____ (Docket No. 02-1956, issued January 15, 2004); see also *Ernest J. Malagrida*, 51 ECAB 287, 288 (2000).

⁵ See *Charles D. Edwards*, *supra* note 4.

⁶ See *Peter D. Butt, Jr.*, *supra* note 3.

⁷ *Id.*

and may not be considered. When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.⁸ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.⁹ As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.¹⁰

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition was caused or adversely affected by her employment.¹¹ Neither the mere 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

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must therefore initially review whether the alleged incidents and conditions of employment are compensable under the terms of the Act.

Appellant attributed her emotional condition and associated physical complaints principally to the actions of her supervisors. As noted, workers' compensation law does not cover an emotional reaction to an administrative or personnel action unless the evidence establishes error or abuse on the part of the supervisor.¹³ The Board finds that appellant's allegations that the employing establishment engaged in improper disciplinary actions by denying her use of a computer pass code, issuing letters of warning for her refusal to use her personal vehicle, reprimanding her in front of a witness, confining appellant to her office during a discussion about duties at the caller service window, and wrongfully blaming her for inadvertently posting confidential information, relate to administrative or personnel matters, unrelated to appellant's regular or specially assigned work duties and do not fall within coverage of the Act, absent a showing of error or abuse. Although the handling of disciplinary actions, leave requests, the assignment of work duties and the monitoring of activities at work are

⁸ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

⁹ See *Charles D. Edwards*, *supra* note 4.

¹⁰ *Charles E. McAndrews*, 55 ECAB ____ (Docket No. 04-1257, issued September 10, 2004); see also *Arthur F. Hougens*, 42 ECAB 455 (1991) and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence corroborated such allegations).

¹¹ See *Charles D. Edwards*, *supra* note 4.

¹² *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

¹³ See *Charles D. Edwards*, *supra* note 4.

generally related to the employment, they are administrative functions of the employer, and not duties of the employee, absent a showing of error or abuse.¹⁴

The Board further finds that appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with regard to these matters. The employing establishment's action with regard to appellant's computer pass code was in keeping with office policy for all employees. A memorandum of understanding between the employing establishment and the union provided for the use of employees' privately-owned vehicles for business-related purposes. Therefore, appellant's supervisor did not act unreasonably in reprimanding appellant for refusing to deliver a package in her vehicle. The Board notes that the evidence reveals that appellant was disturbed not by the request to use her personal vehicle, but rather by her supervisor's decision that she would not be permitted to go directly home after delivering the package. With regard to the conversation between appellant and Ms. Taylor on February 9, 2003, which allegedly occurred in appellant's office, appellant has submitted no evidence to corroborate her claim that the supervisor locked her in her office or otherwise acted in an abusive manner, and appellant's allegations alone are insufficient to establish a factual basis for her claim. Moreover, it was reasonable for the supervisor to hold a private conversation with appellant regarding her employment duties. Although she has asserted that she was being singled out and that her coworkers were not being monitored, appellant has submitted no evidence that her supervisor committed error or abuse in monitoring her. Additionally, while appellant disagreed with the denial of her leave requests, she has not established that such action was administratively erroneous. It was reasonable for the supervisor to deny appellant's request for leave on Valentines' Day due to operational needs, and the record reflects that even though appellant failed to show up for work on that date and was cited as "AWOL," the supervisor later revised her status.

Although appellant indicated that she had filed an EEO complaint against the employing establishment, appellant submitted no finding or final decision from the EEO Commission to substantiate her allegations. The Board has held that grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.¹⁵

Appellant alleged that she suffered stress as a result of being deprived of a private work station and being placed in a room with a xerox machine. Appellant's frustration from not being permitted to work in a particular environment is not a compensable factor under the Act. Further, it was a reasonable decision to relocate her office for efficient access to her administrative duties. Appellant also alleged stress caused by her supervisors' poor management skills. However, the Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment and is therefore not compensable under the Act.¹⁶

¹⁴ See *Cyndia R. Harrill*, 55 ECAB ____ (Docket No. 04-399, issued May 7, 2004).

¹⁵ *James E. Norris*, 52 ECAB 93 (2000).

¹⁶ See *Cyndia R. Harrill*, *supra* note 14. (The Board noted that claimant's reaction to perceived poor management must be considered self-generated in that it resulted from her frustration in not being permitted to work in a particular environment.)

Appellant has submitted no evidence in this case, apart from her own feelings, to support her allegation that her supervisors committed error or abuse in discharging their supervisory or managerial duties. Therefore, the Board finds that she has failed to establish a compensable factor of employment with regard to these allegations.

Appellant has alleged that harassment and discrimination on the part of her supervisors contributed to her claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors. However, mere perceptions are not compensable, and there must be evidence that the harassment did, in fact, occur to give rise to a compensable disability under the Act. In the present case, appellant alleged that supervisors made statements and took actions that she believed constituted harassment and discrimination. For example, she alleged that Ms. Ruffin threatened her and that she was treated unfairly and without dignity or respect by her supervisors. However, the employing establishment denied the allegations, and appellant provided no corroborating evidence, such as witness statements, to establish that the statements were actually made or that the actions actually occurred. The Board finds that appellant has failed to establish a compensable employment factor to the claimed harassment.

Appellant also alleged that she experienced emotional stress in carrying out her employment duties. The record supports appellant's claim that she was assigned to perform the duties of "caller service" as well as her regular clerical duties and that the assignments required her to report to two different managers. Her supervisor stated that appellant's job description was restructured in accordance with an audit recommendation for the purpose of keeping her gainfully employed for eight hours. He further stated that appellant had not been assigned any unreasonable demands outside of her job description and that she had never informed her supervisor that she was unable to perform her duties. However, under the principles of *Cutler*, for a disability to constitute an injury under the Act, there is no requirement that the employing establishment possess the intent to harm the employee or be aware that the employee is experiencing stress in carrying out her employment duties. Where the disability results from a claimant's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within coverage of the Act.¹⁷ Appellant claimed that receiving conflicting instructions from two different managers and handling the extra duties of the caller window exacerbated her feelings of anxiety, as well as her shoulder, back and neck pain. She further alleged that she experienced stress due to additional work requests that were unpredictable and impossible to complete successfully in a timely fashion. She stated that her specially assigned duties included following up on customer complaints, acting as a parking lot attendant and preparing reports. Given that these regular and specially assigned duties were part of her job requirements, the Board finds that appellant has established compensable employment factors.

¹⁷ See *Lillian Cutler*, *supra* note 2. See also *Tina D. Francis*, 56 ECAB ____ (Docket No. 04-965, issued December 16, 2004). (Where claimant alleged that stress related to her regular supervisory duties and to specially assigned duties associated with complaint investigations caused her emotional condition, the Board found that she had established compensable employment factors.)

In the present case, appellant has established employment factors with respect to the above-described work duties, including her responsibilities at the caller service window and her general clerical duties. As such, the Office must base its decision on an analysis of the medical evidence. The case will be remanded to the Office for that purpose.

CONCLUSION

The Board finds that the case is not in posture for a decision regarding whether appellant sustained an emotional condition in the performance of duty. Appellant has established employment factors as described above and the case is remanded to the Office to analyze the medical evidence, as it deems necessary, and to determine whether appellant sustained an emotional condition due to the accepted employment factors.

ORDER

IT IS HEREBY ORDERED THAT the July 27, 2004 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for action consistent with this decision of the Board.

Issued: April 12, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member