

accused of “expanding her street time” for the month of February 2003 and of being off her route for two or more hours. Appellant indicated that her supervisor also presented her with a letter of complaint from a customer on her route. The interview was conducted in the presence of the union steward, Bill Pattison. Appellant indicated that the parties present “all had comments back and forth.” Appellant claimed that she told her supervisor that the accusation that she left her route for periods of two hours or more was “ridiculous;” her expanded street time for the month of February was due to the fact that she “had marriage mail;” that she felt Ms. Belville personally disliked her; and that she believed the supervisor was “trying to get [her] because she did n[o]t like [her] and wanted to fire [her].” Appellant stated that the union steward raised several issues, including that winter weather conditions had been severe; that appellant’s expansion of street time was justified by the marriage mail; and that the letter of complaint was from an individual who was not present in the building when mail delivery occurred. Appellant alleged that at the conclusion of the interview, the supervisor informed her that discipline would follow the meeting. Appellant alleged that following the interview, she experienced shortness of breath and uncontrollable burping; that she felt nauseated, became light-headed and developed diarrhea; that she felt physically and emotionally destroyed. Appellant stated that she felt that she could no longer work, requested leave and went home and that the thought of returning to work brings on feelings of anxiety and depression.

In an undated letter, the union steward alleged that appellant’s supervisor was “contentious and aggressive” during the interview.

In a statement dated March 24, 2003, appellant’s supervisor stated that on March 12, 2003 she had requested an interview with appellant and the union steward to discuss expansion of appellant’s street time and a customer complaint. She indicated that the union steward became very loud during the interview. Ms. Belville further stated that after having received a telephone call informing her that appellant was at the Hobby Club soliciting statements of support from tenants, she went to the Hobby Club and asked appellant for documentation of her sick leave.

In a March 18, 2003 duty status report, Dr. C. Richard Seiller, a treating physician,¹ indicated that appellant was unable to work due to stress and anxiety. In an April 8, 2003 disability slip, Dr. Seiler stated that appellant was being treated for stress and anxiety due to her work environment and was unable to perform job-related duties until further notice.

Appellant submitted an undated letter signed by Barbara Chapdelaine, appellant’s coworker, alleging that appellant had been upset, pale and short of breath “this past Wednesday morning.” She stated that appellant was visibly upset by meeting with her supervisor and that she had indicated that she did not feel well.

By letter dated April 10, 2003, the employing establishment challenged appellant’s claim, alleging that appellant had been taking overtime without prior authorization and that the employing establishment had received a letter of complaint about appellant.

¹ Dr. Robert L. Wing referred to Dr. Seiler as an internist; however, Dr. Seiler’s credentials cannot be verified.

By letter dated April 16, 2003, the Office notified appellant that the evidence submitted was insufficient to establish her claim. The Office requested additional information regarding employment-related incidents or conditions alleged to have contributed to a diagnosed condition; specific examples of harassment; and a medical report establishing a causal relationship between the incidents and the condition.

In an undated response, appellant's supervisor disputed the allegations contained in her CA-1 form. Ms. Belville stated that she had been required to engage in discussions with appellant on numerous occasions regarding work-related deficiencies, including appellant's working unauthorized overtime on February 10 and 26, 2003 her excessive talking and time-wasting practices. She indicated that she felt no personal animosity toward appellant and that appellant had not been singled out for disciplinary measures, but rather appellant had "performance issues" and did not perform required duties in accordance with expectations. Ms. Belville stated that on March 12, 2003 following the PDI, appellant requested sick leave and "clocked out," but that she did not provide evidence of her illness as requested.

The record reflects a letter dated February 26, 2003, from the site manager of the Seniority House complaining that mail delivery was extremely late in the day; that the regular carrier discussed all of the mail with the tenants in the lobby; and that she was often at the location for two or three hours on postal time.

In a letter dated April 2, 2003, Dr. Seiler stated that he examined appellant on an emergency basis on March 14, 2003 due to an incident at work. He indicated that appellant felt an acute anxiety reaction due to a meeting with her supervisor on March 12, 2003 and that she was disabled from any type of work until further notice.

In a report dated May 2, 2003, Dr. Wing, a clinical psychologist, opined that appellant suffered from depression, anxiety, a sense of dread, fear regarding her job status and agitation, all precipitated by work-related stress and conflict with her immediate supervisor. Dr. Wing provided a diagnosis of adjustment disorder with mixed anxiety and depression.

Appellant submitted several letters and statements from customers on her route. In a March 24, 2003 letter, the Springfield Hobby Club bookkeeper stated that a lady, later discovered to be appellant's supervisor, came into her office on February 27, 2003 asking if the facility was having trouble with mail delivery. The bookkeeper told her "no." In a March 25, 2003 statement, numerous tenants of the Seniority House expressed gratitude for appellant's congeniality and helpfulness. In an undated letter, the executive director of the Springfield Hobby Club stated that a woman, later discovered to be appellant's supervisor, came into the facility and yelled at appellant in a "very rude, crude and abrupt manner." The director alleged that the supervisor ended by saying, "I thought you were supposed to be sick." She further indicated that appellant smiled and said, "I am."

Appellant submitted an undated statement, received by the Office on May 12, 2003, indicating that on March 12, 2003, after she had left work due to illness, she had gone to the Hobby Club to have lunch with friends. She stated that her supervisor came in, approached her in a direct and confrontational manner and asked her in "a very aggressive and stern voice,

“What are you doing her? I thought you went home sick.” Allegedly, she responded, “I am sick,” whereupon Ms. Belville asked for medical documentation of her illness.

In undated notes, received by the Office on May 12, 2003, appellant stated her belief that her supervisor had been “spying” on her, conducting covert street observations in the dark. She indicated that the level of her supervision had increased daily; that her trips to the bathroom were counted and timed; that her mail was being counted; and that her supervisor disliked her. Appellant identified the incidents and conditions that led to her current condition: the March 12, 2003 interview, in which Ms. Belville took an aggressive posture standing over her; the accusation that on several occasions she spent three hours delivering mail at one location, when the supervisor was able to produce evidence of only one such complaint; the accusation of expanded street time for the month of February 2003; the accusation that she was “off route” for more than two hours; that Ms. Belville’s false accusations were due to her personal dislike of appellant; the supervisor’s stalking behavior and attack on appellant at the Hobby Club, where she “verbally berated” her in public; Ms. Belville’s refusal to provide appellant with CA-16 and 17 forms; the issuance of a “[l]etter of [w]arning” via certified mail to her home; the supervisor’s demand for medical documentation, which allegedly had already been provided to the employing establishment; and the employing establishment’s refusal to provide her continuation of pay.

The record reflects that appellant filed grievances concerning alleged inappropriate actions taken by her supervisor, including issuing an unwarranted letter of warning; violating statement on violence and behavior in the workplace; asking customers for complaints; and changing appellant’s lunch location unilaterally.

The dispute resolution team resolved the issue regarding cancellation of a previously authorized lunch location. The employing establishment agreed to restore appellant’s requested location in spite of a three-mile travel requirement. It was determined that the location of suitable and reasonable lunch must be the subject of discussion between the carrier and the unit manager.

By decision dated June 5, 2003, the Office denied appellant’s claim, finding that her allegations were not factual.

On June 23, 2003 appellant requested a hearing, which was held on January 27, 2004. At the hearing, appellant submitted a statement from Bill Emmons, delivery supervisor, reflecting that, pursuant to his review of a Pivot Sheet dated February 26, 2003, he had authorized one and a half hours of overtime on route No. 404. The hearing representative clarified with appellant’s attorney that the events that occurred on March 12, 2003 were the alleged cause of appellant’s emotional condition and that any other allegations contained in the record were merely background. The union steward testified that at the March 12, 2003 interview, Ms. Belville was standing, bent at the waist and “in [appellant’s] space.” The union steward stated that the supervisor’s voice was “grinding;” that she “leveled half a dozen charges;” and that he and appellant did not have an opportunity to speak. He further noted that the supervisor’s large size was intimidating. The union steward also stated that the letter of warning regarding appellant’s unauthorized overtime had been withdrawn as a result of evidence having been presented that the overtime had been authorized. Appellant testified that Ms. Belville would not allow her to talk and was constantly cutting her off. She stated that that her face was very mean and she was

scary to look at. Appellant contended that all of Ms. Belville's accusations were untrue. Appellant then testified that after 15 to 20 minutes, she became ill, filled out a leave slip and went home; that when she later went to the Hobby Club for lunch, her supervisor appeared and began yelling at her; Ms. Belville asked what she was doing there when she was supposed to be sick; and asked her to produce medical documentation the next day.

In an undated response to the January 27, 2004 hearing, Ms. Belville noted that she did not single out appellant for discipline, but rather she had daily discussions about unsatisfactory performance with appellant and two other letter carriers that failed to meet office standards and failed to maintain their street efficiency. She referred to a discussion with appellant on February 19, 2003 about unauthorized overtime on February 10, 2003 and poor performance on the street. Ms. Belville stated that during the March 12, 2003 interview, all three of the individuals present were seated and that at no time was she close to appellant; that she discussed the expansion of street time and a customer complaint regarding appellant's misdelivery of mail and loitering in the lobby of the Seniority House; that at no time did appellant lose composure or cry during the interview; and that she ended the interview because the union steward became very loud and aggressive towards her. Ms. Belville related that later that day, after appellant left the workplace due to illness, she received a telephone call from the management of the Seniority House indicating that appellant was at the Hobby House next door soliciting statements of support from tenants. She reported that upon the advice of the employing establishment's labor relations department, she went to the Hobby Club and asked her to provide documentation of her illness. Ms. Belville stated that grievances were filed against her for allegedly interviewing postal patrons in order to obtain complaints against appellant and for committing violence in the workplace, both of which were determined to be without merit.

By decision dated April 13, 2004, the Office hearing representative affirmed the Office's June 5, 2003 decision denying appellant's emotional condition claim.

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 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 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 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

² 5 U.S.C. §§ 8101-8193.

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

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 factors of employment and may not be considered.⁶ 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.⁷

ANALYSIS

In the present case, appellant alleged that she sustained an emotional condition as a result of two employment incidents and conditions that occurred on March 12, 2003. By decision dated June 5, 2003, the Office denied appellant's emotional condition claim on the grounds that she had not established any compensable employment factors. By decision dated April 13, 2004, the Office hearing representative affirmed the Office's June 5, 2003 decision. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

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.⁸ However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.⁹ In the present case, appellant's supervisor denied that on March 12, 2003 appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or

⁴ *Lori A. Facey*, 55 ECAB ___ (Docket No. 03-2015, issued January 6, 2004). See also *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

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

⁶ See *Lori A. Facey*, *supra* note 4. See also *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁷ *Id.*

⁸ See *Lori A. Facey*, *supra* note 4. See also *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).

discriminated against by her supervisor.¹⁰ Appellant provided no corroborating evidence, such as witness statements, to support her claim that Ms. Belville singled her out for disciplinary action or that she personally disliked appellant and wanted to fire her.¹¹ On the other hand, Ms. Belville stated that she felt no personal animosity towards appellant and that appellant was not singled out for disciplinary measures, as evidenced by the fact that she had daily discussions with two other letter carriers, as well as with appellant, about their unsatisfactory performance. Witness statements provided by appellant were unrelated to allegations of harassment or discrimination. The undated letter from Barbara Chapedelaine addressed appellant's physical and emotional condition following the March 12, 2003 interview; the March 24, 2003 letter from the Hobby Club bookkeeper referred to a specific visit to the facility by Ms. Belville on February 27, 2003 prior to the date of appellant's alleged work-related injury; and the March 25, 2003 letter signed by tenants of the seniority house was in the nature of a character reference. In an undated letter, the executive director of the Hobby Club alleged that appellant's supervisor yelled at appellant in a "very rude, crude and abrupt manner" and stated, "I thought you were supposed to be sick." While Ms. Belville's alleged behavior was claimed to be inappropriate, it was not alleged to constitute harassment. Appellant alleged that the actual occurrence of the PDI constituted harassment in that all allegations made by Ms. Belville were false. The Board finds this contention to be without merit. Appellant's supervisor stated that many issues were discussed in the interview, including appellant's misdelivery of mail, loitering in the lobby of the Hobby Club and improper use of overtime. Moreover, the record contains a letter of complaint on which some of the supervisor's allegations were based. Thus, appellant has not established a compensable employment factor under the Act with respect to these above-described allegations of harassment and discrimination.

The record reflects that appellant filed several grievances concerning the March 12, 2003 incident against her supervisor which were resolved by the dispute resolution team. Grievances and Equal Employment Opportunity complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.¹² Where 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 Equal Employment Opportunity Commission standards. Rather, the issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹³

In the present case, appellant has not attributed her emotional condition to the performance of her regular duties as a mail carrier or to any special work requirement arising from her employment duties under *Cutler*, nor has appellant implicated her workload as a mail

¹⁰ 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).

¹¹ See *William P. George*, 43 ECAB 1159, 1167 (1992).

¹² See *James E. Norris*, 52 ECAB 93 (2000). See also *Parley A. Clement*, 48 ECAB 302 (1997).

¹³ See *James E. Norris*, *supra* note 12. See also *Michael Ewanichak*, 48 ECAB 354 (1997).

carrier as having caused or contributed to her emotional condition. Throughout the case record, appellant has maintained that her job performance was satisfactory and proficient.

Regarding appellant's allegations that on March 12, 2003, her supervisor engaged in improper disciplinary actions; wrongly changed her lunch location; improperly demanded medical documentation for sick leave; solicited customers for complaints; made false accusations of work-related deficiencies; and unreasonably monitored her work activities, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.¹⁴ Although the 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.¹⁵ 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.¹⁶ However, appellant has not submitted sufficient evidence to show that the employing establishment committed error or abuse with respect to these matters. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Inconsistencies in the evidence cast serious doubt on the credibility of appellant's allegations of error or abuse. On March 12, 2003 Ms. Belville conducted a predisciplinary interview, which was attended by appellant and the union steward. When she filed her traumatic injury claim, appellant stated that during the interview, all parties present "had comments back and forth." Although she claimed that her supervisor accused her of expanding her street time and being "off-route" for more than two hours and presented her with a letter of complaint from a route customer, appellant did not allege that her supervisor shouted or acted in an aggressive manner. In a later statement, received by the Office on May 12, 2003, appellant modified her description of the events, stating that Ms. Belville stood over her in an aggressive posture. Finally, at the January 27, 2004 hearing, appellant alleged that her supervisor would not allow her to talk and was constantly cutting her off, that her face was mean and she was "scary to look at." The union steward testified that Ms. Belville was standing and that her voice was "grinding." Appellant's supervisor responded by stating that all three individuals had been seated during the interview, at no time was she close to appellant and that she was required to end the interview because the union steward became loud and aggressive towards her. The

¹⁴ See *Lori A. Facey*, *supra* note 4. 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).

The Board notes that appellant's attorney stated at the January 24, 2004 hearing that the events that occurred on March 12, 2003 were the alleged cause of appellant's condition and that any other allegations in the record were merely background. Therefore, the Board has addressed only those incidents alleged to have occurred on March 12, 2003.

¹⁵ *Id.*

¹⁶ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

Board finds that appellant has failed to establish that her supervisor's behavior during the interview constituted abuse or harassment.

Appellant's second encounter with her supervisor came later on March 12, 2003 at the Hobby Club, following appellant's departure from work due to illness. Ms. Belville reported that having received a telephone call from the management of the Seniority House indicating that appellant was at the Hobby Club next door soliciting statements of support from tenants, she went to the Hobby Club and asked appellant to provide documentation of her illness. In a statement received by the Office on May 12, 2003, appellant reported that, on that date, her supervisor entered the Hobby Club, where she was having lunch, approached her in a direct and confrontational manner and asked her in a very aggressive and stern voice, "What are you doing here? I thought you were sick." Appellant then indicated that Ms. Belville asked her for medical documentation. At her hearing, eight months later, appellant described the incident differently, stating that when her supervisor appeared at the Hobby Club, she began yelling at her. The record contains an undated letter from the executive director of the Hobby Club indicating that Ms. Belville yelled at appellant and said, "I thought you were supposed to be sick." However, the director also reported that appellant smiled and said, "I am," a response that would be inconsistent with the supervisor's alleged yelling. Due to the inconsistencies in the reported facts, the Board finds that appellant has failed to establish that the supervisor acted abusively. Moreover, the Board finds that Ms. Belville's alleged response would have been appropriate under the circumstances. While the Board has recognized the compensability of verbal abuse in certain situations, this does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.¹⁷ While Ms. Belville's manner and tone of voice may have made appellant uncomfortable, the record establishes that having requested leave due to illness, appellant was reported to be socializing and recruiting signatures at the Hobby Club. By appellant's own admission, her supervisor approached her in a direct and confrontational manner and asked her in a very aggressive and stern voice, "What are you doing here? I thought you were sick." Under the circumstances of the case, the Board finds that Ms. Belville's behavior did not constitute verbal abuse or harassment.¹⁸

Appellant contends that the supervisor's actions at the Hobby Club on March 12, 2003 were not administrative, in that she was not "on the clock." The Board finds that the actions of the supervisor were administrative in nature. Although appellant was technically on sick leave, Ms. Belville's reason for visiting appellant at the Hobby Club was to determine the validity of the report from the Seniority House management that appellant was soliciting statements of support from tenants when she was on sick leave. The Hobby Club was part of appellant's mail route. The monitoring of appellant's mail route is an administrative function of the employer and is not a compensable factor unless there is affirmative evidence that the employer erred or acted abusively in the administration of the matter.¹⁹ There is no evidence of such error or abuse in the present case.

¹⁷ See *Leroy Thomas, III*, 46 ECAB 946, 954 (1995).

¹⁸ See *Denis M. Dupor*, 51 ECAB 482, 486 (2000).

¹⁹ *Michael Ewanichak*, 48 ECAB 364 (1997).

Appellant claimed that her supervisor's request for medical documentation on March 12, 2003 constituted error and abuse because the employing establishment already had medical documentation on file and because the request was made in public. Appellant's argument does not pass muster. First, the medical documentation in the possession of the employing establishment related to appellant's general condition. The documentation requested pertained to appellant's specific condition on March 12, 2003 which allegedly required her to leave her regular duties. Next, the request for documentation in a public place was necessitated by appellant's own actions. Therefore, the Board finds that Ms. Belville's actions regarding the request for medical documentation did not constitute abuse or error.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.²⁰

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.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 31 and 16, 2003 are affirmed.

Issued: August 2, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

²⁰ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).