

**United States Department of Labor
Employees' Compensation Appeals Board**

BARBARA JONAH, Appellant

and

**U.S. POSTAL SERVICE, GENERAL MAIL
FACILITY, Boston, MA, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 04-1555
Issued: February 8, 2005**

Appearances:
Craig D. Robinson, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On February 8, 2000 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated November 10, 1999 which denied her claim. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.¹

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained fibromyalgia or a right upper extremity condition causally related to her federal employment; and (2) whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of employment. On appeal appellant contends that the Office did not develop the emotional condition claim thoroughly as ordered by an Office hearing representative and that the Office erred in determining that assigning appellant to more strenuous work was not in the performance of duty.

¹ It is noted that the February 8, 2000 letter of appeal was sent to an incorrect zip code, received by the Office, but not forwarded to the Board. By letter dated March 22, 2004, appellant's attorney resent the February 8, 2000 appeal, which was assigned docket number 04-1555.

Counsel further contended that the opinion of the second opinion examiner, Dr. Egan, is not rationalized.

FACTUAL HISTORY

On June 28, 1996 appellant, then a 51-year-old distribution clerk, filed a Form CA-2, occupational disease claim, alleging that her musculoskeletal pain, fibromyalgia, insomnia, fatigue, intermittent blurred vision, headaches, cognitive problems, dizziness, depression, muscle spasms, tendinitis of the right rotator cuff and wrist and right lateral epicondylitis were made worse by repetitive employment-related activity. In an attached statement, she advised that she had not worked since October 2, 1995 due to chronic fibromyalgia which caused pain throughout her entire body and depression.

Appellant submitted medical evidence including a treatment note dated May 8, 1996 in which Dr. Martin Iser, Board-certified in family practice, diagnosed depression without dementia. In an unsigned treatment note dated May 22, 1996, Dr. Hal Dinerman, Board-certified in rheumatology, noted physical findings of full motion of all joints with exquisite trigger points about the neck, spine, anserine and trochanteric bursae and advised that appellant “clearly” had fibromyalgia and musculoskeletal pain syndrome made worse by repetitive work and insomnia. Dr. Jonathan M. Richman, Board-certified in neurology, provided a June 11, 1996 report stating that appellant was seen for a memory disturbance. He could not obtain a coherent history and advised that her symptoms were most likely related to an underlying depression exacerbated by “a stressful situation at her workplace.”

Dr. Iser provided additional reports dated July 16, 30 and 31, 1996 which noted that appellant was first seen on April 17, 1996 with a history of multiple complaints. He diagnosed depression, a sleep disorder, irritable bowel syndrome, fibromyalgia, chronic fatigue and a mild cognitive dysfunction and advised that she should not work. In an August 8, 1996 report, Dr. Eric R. Cohen, Board-certified in gastroenterology, diagnosed irritable bowel syndrome with an overlay of anxiety, stress and depression.

By letters dated September 6, 1996, the Office informed appellant of the type of evidence needed to support her claim and requested that the employing establishment furnish additional information.

In a report dated September 17, 1996, Dr. Dinerman advised that appellant continued to complain of pain in her arms, legs, abdomen, right shoulder and right hand and that she had poor memory. He found no evidence of muscle weakness or atrophy but positive trigger points and diagnosed fibromyalgia which, he stated, “is a multifactorial condition causing widespread musculoskeletal pain and related to numerous inciting events which, in her case, are multiple, including trauma suffered approximately ten years ago.” In a duty status report dated September 29, 1996, Dr. Iser advised that appellant could not work due to severe fatigue, chronic pain and pseudodementia. Appellant also submitted an October 2, 1996 report in which Dr. Philip A. Tardanico, a chiropractor, noted her numerous complaints and advised that she had fibromyalgia resulting from repetitive trauma sustained as a postal employee.

The employing establishment submitted a letter of warning dated April 19, 1996, and 7-day and 14-day suspension letters dated June 4 and July 26, 1996 respectively. The letters were based on appellant's lack of regular attendance.

In a memorandum dated September 17, 1996, Bernice Markland, appellant's supervisor, stated that appellant did not respond to the above letters and "at no time up to August 5, 1996 did she inform me of a claimed medical condition which prevented her from reporting to work, nor did she claim that she had an occupational illness/injury." Ms. Markland stated that the employing establishment made every reasonable attempt to contact appellant and noted that, although appellant's claim form was dated June 28, 1996, she did not submit it to Ms. Markland until August 5, 1996.

On October 2, 1996 appellant indicated to the Office that her current condition was related to a 1986 employment injury. The Office indicated that the record for the 1986 injury was destroyed in 1991.

In an October 28, 1996 report, Dr. Dinerman reiterated his diagnosis of fibromyalgia, stating that "current medical research has never defined a cause of this syndrome," continuing that "employment and stress, both physical and emotional, can worsen this condition."

By letters dated April 21 and 23 and May 9, 1997, the Office informed appellant that it had scheduled a second opinion examination with Dr. Robert W. Egan, a Board-certified neurologist. In a report dated May 20, 1997, Dr. Egan noted findings of normal reflexes and sensory examination. He advised that appellant was able to untie her double-knotted sneakers and remove shoes and socks without complaints of pain on bending and exertion of her fingers. Dr. Egan found no limitation in range of motion of the neck, shoulders, elbows, hip or knees and elicited no tenderness throughout his examination. He advised that appellant had no organic neurologic dysfunction and stated that he could not substantiate a clinical diagnosis of fibromyalgia. Dr. Egan concluded that she was not disabled.

In a decision dated June 4, 1997, the Office denied appellant's claim on the grounds that the medical evidence did not support that her fibromyalgia condition was causally related to factors of employment.

On July 1, 1997 she requested a hearing, and submitted treatment notes dated June 12, July 19 and August 1, 1996 in which Dr. Robert A. McGuirk, Board-certified in orthopedics, reported a history of bilateral hand pain increased with lifting, associated with activities at work. He noted physical findings of full shoulder range of motion with pain at the extremes, full elbow range of motion with pain at maximum extension, and full but stiff hand range of motion with negative Tinel's and Phalen's tests. Sensation, strength and reflexes were intact on neurological examination. Dr. McGuirk diagnosed tendinitis of the right rotator cuff and right wrist and right lateral epicondylitis which he advised were probably related to overuse and noted that her x-rays were "pretty normal." He advised that appellant had loss of function of the right arm.

Appellant also submitted an unsigned treatment note dated July 8, 1996 and a September 11, 1996 report in which Drs. Dinerman and Tardanico, respectively, diagnosed fibromyalgia.

Dr. Egan provided a work capacity evaluation dated June 17, 1997 in which he advised that appellant had no limitations to her physical activity.

In an order dated June 4, 1998, an Office hearing representative remanded the case to the Office to furnish information regarding appellant's prior injury and to obtain a statement from appellant regarding the employment factors she thought contributed to her condition. The hearing representative noted that the case record did not contain a statement of accepted facts and Dr. Egan made no reference to reviewing any supporting materials. The Office was to provide an updated statement of accepted facts and again refer appellant to Dr. Egan for reexamination and a supplementary report, to include an opinion regarding the diagnoses made by Dr. McGuirk. The hearing representative noted that, if it were determined that appellant established compensable factors of employment within the performance of duty as causally related to an emotional condition, a psychiatric evaluation would be needed.

By letter dated June 30, 1998, the Office sought information from the employing establishment regarding the 1986 employment injury and appellant's employment status. On June 30, 1998 the Office also requested that appellant submit a statement regarding the employment factors that she claimed contributed to both her stress and her physical condition. An Office memorandum indicated that appellant's October 26, 1986 claim was a "no time lost" claim for a contusion to the second right metacarpal.

In an undated statement received by the Office on July 22, 1998, appellant advised that she injured her right hand on October 20, 1986 which caused pain that had been present continuously since. She was thereafter assigned to light-duty positions until 1995 when her workload became heavier due to an increase in the quantity of mail and that this exacerbated her pain. Appellant alleged that noise at the employing establishment caused headaches, and that her work duties required that she constantly look up and down which caused neck pain, eye strain and dizziness, and that her stool caused leg pains. She stated that bundling, dispatching and lifting heavy mail trays above her shoulders caused hand, arm, shoulder and neck pain, and that the lifting, bending, stretching, sorting, opening, distributing, sweeping, dispatching, typing and reaching at work aggravated her fibromyalgia, pain and fatigue. Appellant, however, did not describe any other factors as causing her emotional condition.

By letter dated August 20, 1998, the Office furnished Dr. Egan with an updated statement of accepted facts which included a history of the 1986 finger injury and a description of the job duties of a distribution clerk. The work history provided by appellant in her statement was also provided. The Office provided Dr. Egan with a set of questions regarding appellant's claimed physical conditions.

In a report dated September 1, 1998, Dr. Egan stated that appellant was accompanied to the examination by a companion who was present at both the consultation and examination. Dr. Egan noted his review of the medical record. Regarding his physical examination, the physician noted weak effort in bilateral grip strength and found no definite point tenderness in the paracervical muscles or the supraclavicular fossa, right or left, and no tenderness at either elbow medially or laterally in the epicondylar area. Dr. Egan advised that shoulder range of motion did not elicit crepitus or any subjective evidence of discomfort. He stated that appellant could sustain posture, and do finger to nose examination. Romberg testing was negative, and

heel to shin was performed without discomfort. Dr. Egan found no weakness and advised that her reflexes were symmetrical throughout with sensory examination failing to confirm any deficit. He stated that bone and joint assessment showed no reaction of complaints of pain with full motion of the hips, head and neck, cervical region, elbow pressure or percussion at the carpal at either wrist. He noted slight tightness of hamstrings at about 70 degrees of straight leg raising.

Dr. Egan stated that he found the following contradictions: that the October 20, 1986 contusion was given as the onset of appellant's fibromyalgia; that appellant evaded answering his questions regarding why she could not work beginning in October 1995; and that, for someone claiming an intellectual impairment, "her insistent and accurate directions ... in regards to the whereabouts of specific letters in the important file is most impressive." He continued:

"Given the preceding history, negative neurological examination, and the inconsistent performance as described, I would deny, with a certain degree of medical probability, that the simple contusion to the right metacarpal bone in October 1986, with a continued occupation from 1986 through 1995, is or was the essential cause of any syndrome of fibromyalgia.

"Given the claims of change in mental function which is an unknown phenomenon in the fibromyalgia syndrome except as part of a depression and further from witnessing the documented behavior in the presence of Henry and myself, I can only say that I seriously doubt that [she] has clear-cut fibromyalgia.

"I would add that the inability to find trigger points or joint problems associated with muscle tenderness on either exam[ination] when she has '100 percent of body pain' certainly has to raise my suspicions as to the true state of the condition."

Dr. Egan diagnosed a syndrome suggestive of fibromyalgia that was not causally related to the October 1986 employment injury or caused by her job duties. He further found no evidence of rotator cuff, elbow or wrist tendinitis or carpal tunnel syndrome, although he noted that these were documented by Dr. McGuirk in 1996. Dr. Egan concluded, "I therefore do not see any of [appellant's] symptoms as directly causally related to her employment. There is reason to believe that there may have been some aggravation by such activities, yet she worked from 1986 to 1995 without those symptoms and she now claims that this was not so." Dr. Egan added that he later witnessed appellant "both vigorously and effortlessly recording notes and conversing" with no evidence of hand pain noted. In an attached work capacity evaluation, Dr. Egan advised that appellant could work light duty with limitations, advising that appellant could not work eight hours per day, noting that she "displays no loss of ability to achieve her 'disabilities.'" He further noted that appellant's motivation to work would have to be considered in identifying an employment position.

In a September 17, 1998 letter, the employing establishment advised that appellant's 1986 claim form could not be located, further stating that she worked intermittently until April 9, 1996. Attached leave analysis records indicate that appellant was absent without permission from April 5 to May 11, 1996, but contain contradictory information regarding the period May 11, 1996 to January 3, 1997, showing that she was absent without permission for this

period and/or also took sick or annual leave. Appellant was in a leave without pay status from January 4, 1997 until she retired effective February 4, 1997.

By decision dated March 5, 1999, the Office denied the claim on the grounds that the medical evidence did not establish a causal relationship between the claimed fibromyalgia, right rotator cuff tendinitis, right wrist tendinitis and/or right lateral epicondylitis and her federal employment.

On March 8, 1999 appellant, through counsel, requested a hearing that was held on August 26, 1999. At the hearing, it was contended that the Office had failed to pursue the psychological claim as directed by the hearing representative on June 4, 1998. Counsel contended that a conflict in medical evidence existed between the opinions of Dr. Egan and appellant's physicians regarding her physical condition. Appellant testified that when she injured her right hand at work in 1986, her regular job was a position with "light" physical requirements. She stated that she had no restrictions from the 1986 injury but continued to work in positions that were considered "light" until a new supervisor, Bernice Markland, was assigned in November 1994. At that time appellant was placed on regular distribution clerk duties that were much more strenuous. She stated that she stopped work in October 1995 and worked approximately 20 days from January until April 9, 1996 when she last worked. Appellant stated that she saw a doctor only once a year until 1995 but that she has been under a doctor's care since that time. She reported that her hand and arm were continually painful from 1986 forward and that the increased work beginning in November 1994 made her pain increase. Appellant testified that she complained regarding the change in her job duties and involved the union but did not file a grievance. She generally alleged that Ms. Markland erred in disciplining her and committed at least 20 errors regarding appellant's pay.

Appellant submitted additional medical evidence including a January 14, 1997 report in which Allen J. Rooney, Psy.D., a clinical psychologist, provided testing results, which indicated that appellant was moderately depressed. He advised that appellant needed a psychiatric evaluation for consideration of antidepressant medication. In a February 26, 1999 report, Dr. Raphael I. Kieval, a Board-certified internist, reported appellant's history of the 1986 employment injury and increased symptoms in 1995 when her work became more physically demanding. He described her symptoms and noted that "she does not really have a lot in the way of tender points on her exam[ination] today except for a few in the trapezius muscle." Dr. Kieval advised that the cervical area and shoulders were stiff but with full range of motion, and that elbows, hips, knees and ankles demonstrated full range of motion. Tinel's was negative. He advised that appellant had a history compatible with fibromyalgia. Dr. Kieval found no evidence of chronic arthritis or reflex dystrophy in the right upper extremity, no vasomotor changes with reasonably good strength.

In a decision dated November 10, 1999, an Office hearing representative affirmed the March 5, 1999 decision. The hearing representative noted that, following the June 4, 1998 order, the Office specifically requested that appellant furnish information regarding implicated employment factors, and while she submitted a five-page statement, she merely identified physical activities that she believed caused or aggravated her claimed physical conditions. The hearing representative found that the Office was not required to refer appellant for a psychiatric evaluation and that the actions of her supervisor were not compensable factors of employment.

Therefore appellant failed to establish that she sustained an emotional condition in the performance of duty. The hearing representative credited the weight of medical opinion to Dr. Egan and found that the medical evidence of record did not establish that appellant's claimed physical conditions were employment related.

LEGAL PRECEDENT -- ISSUE 1

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.²

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.³ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴ Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁵

ANALYSIS -- ISSUE 1

In this case, appellant filed a claim for multiple physical complaints including musculoskeletal pain, fibromyalgia, insomnia, fatigue, intermittent blurred vision, headaches, cognitive problems, dizziness, muscle spasms, tendinitis of the right rotator cuff and wrist and right lateral epicondylitis and submitted medical reports.

The Board finds that the reports of Dr. Tardanico, a chiropractor, are of no probative value, as the case record does not contain a diagnosis of subluxation as demonstrated by x-ray. Under section 8101(2) of the Act, chiropractors are only considered physicians and their reports

² *Solomon Polen*, 51 ECAB 341 (2000).

³ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁴ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁵ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

considered medical evidence only to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.⁶

Dr. Dinerman, an attending Board-certified rheumatologist, provided a May 22, 1996 treatment note in which he noted “exquisite” trigger points and advised that appellant had fibromyalgia and musculoskeletal pain syndrome made worse by repetitive work and insomnia. In a September 17, 1996 report, he stated that appellant’s condition was related to numerous inciting events which included a 1986 traumatic injury, and in an October 28, 1996 report, reiterated his diagnosis of fibromyalgia, advising that, while medical research had not defined a cause for the condition, “employment and stress, both physical and emotional, can worsen this condition.” Medical conclusions unsupported by rationale are of diminished probative value and are insufficient to establish causal relationship.⁷ The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, based upon a complete and accurate medical and factual background of the claimant.⁸ The physician must support that opinion with medical reasoning to demonstrate that the conclusion reached is sound, logical and rational.⁹ The Board finds that Dr. Dinerman’s general conclusion that work caused appellant’s conditions is insufficient to meet her burden of proof as he did not provide a rationalized explanation of how her work activities caused or aggravated the diagnosed condition.¹⁰

In a May 20, 1997 report, Dr. Egan, a Board-certified neurologist who provided a second opinion evaluation for the Office, described a normal neurologic examination and found full range of motion of the neck, shoulders, elbows, hips and knees and elicited no tenderness throughout his examination. He advised that he could not substantiate a clinical diagnosis of fibromyalgia and concluded that appellant was not disabled. Dr. Egan also provided a work capacity evaluation dated June 17, 1997 in which he advised that appellant had no limitations to her physical activities.

Upon reexamination on September 1, 1998, Dr. Egan again reported that appellant had a normal neurologic examination, advising that she had no trigger points or joint problems associated with muscle tenderness. He diagnosed a syndrome suggestive of fibromyalgia but opined that it was not caused by the October 1986 employment injury or any of appellant’s job duties.

In a report dated February 26, 1999, Dr. Kieval, Board-certified in internal medicine, reported appellant’s history of the 1986 employment injury and increased symptoms in 1995. He noted that on examination he did not find “a lot” in the way of tender points and advised that,

⁶ *Phyllis F. Cundiff*, 52 ECAB 439 (2001).

⁷ *Albert C. Brown*, 52 ECAB 152 (2000).

⁸ *Bonnie Goodman*, 50 ECAB 139 (1998).

⁹ *John W. Montoya*, 54 ECAB ____ (Docket No. 02-2249, issued January 3, 2003).

¹⁰ *Albert C. Brown*, *supra* note 7.

while the cervical area and shoulders were stiff, full range of motion of all joints was demonstrated with negative Tinel's sign. Dr. Kieval concluded that appellant had a history compatible with fibromyalgia but found no evidence of chronic arthritis or reflex dystrophy in the right upper extremity and no vasomotor changes, with reasonably good strength. Dr. Kieval, however, did not provide an opinion regarding the cause of appellant's condition. It is well established that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹¹ The Board therefore finds Dr. Kieval's report insufficient to meet appellant's burden to establish that she had employment-related fibromyalgia.

Appellant also submitted treatment notes from Dr. McGuirk, Board-certified in orthopedics, who reported a history of bilateral hand pain increased with lifting, associated with activities at work. He noted physical findings of full shoulder range of motion with pain at the extremes, full elbow range of motion with pain at maximum extension, and full but stiff hand range of motion with negative Tinel's and Phalen's tests. Sensation, strength and reflexes were intact on neurological examination. Dr. McGuirk diagnosed tendinitis of the right rotator cuff and right wrist and right lateral epicondylitis which he advised were probably related to overuse and noted that her x-rays were "pretty normal." He advised that appellant had loss of function of the right arm. Medical opinions which are speculative or equivocal in character have little probative value,¹² and Dr. McGuirk merely indicated that his diagnoses were "probably" related to overuse.

Appellant therefore failed to meet her burden of proof to establish that her fibromyalgia condition or tendinitis of the right rotator cuff and right wrist and right lateral epicondylitis were causally related to her federal employment, as she failed to submit a reasoned medical condition supporting causal relationship.¹³

The record also contains a June 11, 1996 report, in which Dr. Jonathan M. Richman, Board-certified in neurology, advised that appellant was seen for memory loss and advised that her symptoms were most likely related to an underlying depression exacerbated by workplace stress. Appellant also submitted medical reports that discussed other medical conditions she attributed to her federal employment. None of these reports contain an opinion regarding the cause of the physical conditions. As noted, medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁴

¹¹ *Michael E. Smith*, 50 ECAB 313 (1999).

¹² *Jennifer L. Sharp*, 48 ECAB 209 (1996).

¹³ *Albert C. Brown*, *supra* note 7.

¹⁴ *Michael E. Smith*, *supra* note 11.

The Board finds that the opinion of Dr. Egan, the second opinion examiner, constitutes the weight of the medical opinion evidence and establishes that appellant has no employment-related physical condition.¹⁵

LEGAL PRECEDENT -- ISSUE 2

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.¹⁶

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*,¹⁷ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.¹⁸ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.¹⁹ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from his or her 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 or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.²⁰ As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Act.²¹ However, 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.²²

For harassment or discrimination to give rise to a compensable disability, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of

¹⁵ *Gary L. Fowler*, *supra* note 4.

¹⁶ *Leslie C. Moore*, *supra* note 4.

¹⁷ 28 ECAB 125 (1976).

¹⁸ 5 U.S.C. §§ 8101-8193.

¹⁹ *See Robert W. Johns*, 51 ECAB 137 (1999).

²⁰ *Lillian Cutler*, *supra* note 17.

²¹ *Roger Williams*, 52 ECAB 468 (2001).

²² *Dennis J. Balogh*, 52 ECAB 232 (2001).

whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.²³

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.²⁴ 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.²⁵

ANALYSIS -- ISSUE 2

Appellant alleged that her depression was caused in part by the fact that in late 1994 her job was changed from what was an essentially light-duty position to the regular duties of a distribution clerk. She also alleged that her supervisor, Bernice Markland, improperly instituted discipline and made errors in her pay on approximately 20 occasions. She generally alleged that she was harassed by employing establishment management.

Actions of the employing establishment in administrative or personnel matters unrelated to the employee's regular or specially assigned work duties, generally do not fall within coverage of the Act.²⁶ An administrative or personnel matter will be considered to be an employment factor, however, where the evidence discloses error or abuse on the part of the employing establishment.²⁷ Regarding appellant's duty change, as the assignment of work is an administrative function,²⁸ absent error and abuse this would not be compensable under the Act. The evidence of record does not establish that appellant's work assignment from November 1994 until she stopped work was outside the regular duties contained in her job description. While she sustained an employment-related right finger contusion in 1986, by her own admission, she had no job restrictions from this injury. The Board has long held that an employee's frustration from not being permitted to work in a particular environment is not compensable.²⁹ The Board

²³ *James E. Norris*, 52 ECAB 93 (2000).

²⁴ *See Dennis J. Balogh*, *supra* note 22.

²⁵ *Id.*

²⁶ *James E. Norris*, *supra* note 23.

²⁷ *Id.*

²⁸ *Ernest St. Pierre*, 51 ECAB 623 (2000).

²⁹ *Roy E. Shotwell, Jr.*, 51 ECAB 656 (2000).

therefore finds that the employing establishment did not commit error or abuse in this regard, and the change in job assignment is not a compensable factor of employment.

Appellant's contentions that the employing establishment erred in disciplining her and in making numerous errors regarding her pay are not compensable employment factors. These, too, are considered administrative functions of the employing establishment. The record before the Board contains a letter of warning and two letters of suspension based on appellant's irregular attendance dating from April 11 to July 26, 1996. Appellant testified that she stopped work in October 1995 and only worked 20 days in 1996. She submitted no evidence to establish that the employing establishment erred in issuing the disciplinary letters. Ms. Markland, her supervisor, stated that appellant did not respond to these letters and did not provide any medical documentation whatsoever until August 5, 1996. The record is devoid of evidence that the employing establishment erred regarding appellant's pay. The record contains leave analysis that could indicate that appellant's leave status was changed from absent without permission or leave without pay to sick or annual leave. As stated above, appellant did not provide medical documentation until August 5, 1996. The Board finds that the employing establishment changed appellant's leave status only after the proper medical documentation was submitted. This does not constitute a compensable factor of employment.

Regarding appellant's general allegations that she was harassed by employing establishment management, the Board has held that an employee's complaints concerning the manner in which a supervisor performs supervisory duties or the manner in which a supervisor exercises his or her supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act.³⁰ Appellant submitted no evidence to support that she was harassed by employing establishment management in this case. The Board finds that she has not established a compensable factor of employment in this regard.

Finally, appellant also alleged that her depression was caused by her fibromyalgia. As noted, the Board has found that the fibromyalgia is not employment related. Appellant has failed to establish that she sustained an emotional condition in the performance of duty.³¹

CONCLUSION

The Board finds that appellant failed to establish that she sustained either a physical or an emotional condition in the performance of duty.

³⁰ *Marguerite J. Toland*, 52 ECAB 294 (2001).

³¹ As appellant failed to establish a compensable factor of employment, the Board need not address the medical evidence of record regarding her emotional condition claim. *Roger Williams*, *supra* note 21.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 10, 1999 be affirmed.

Issued: February 8, 2005
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member