

shoulder injury.¹ She stopped work in October 2004 due to a second shoulder surgery under that claim. Appellant has not returned to work.

In a January 13, 2005 statement, appellant alleged that Ed Schierberl created a hostile work environment for her when he became the postmaster in 2003. She stated that Lynne Hodge and Tia Durrant, coworkers, belittled her at work and stalked her outside of work. Appellant rearranged her schedule so she would not encounter either Ms. Hodge or Ms. Durrant at work. She alleged that her supervisors refused to do anything about it and that Mr. Schierberl stated that he would not act on any issues because she was in a relationship with a coworker. Appellant indicated that, during that time, she was dating Roger Clark, a customer service manager.

Appellant requested a transfer to the carrier craft side in 1996 and filed a grievance in 1997, when she was not considered for any of the carrier positions. The record reflects that appellant's grievance was sustained in October 2003 and she was awarded a transfer to the carrier side with retroactive seniority and schedule pay to the time she should have been transferred. Appellant alleged that, prior to the arbitration of her grievance in August 2003, Mr. Schierberl told her that he would award her with a two-year detail to the position in which she was currently detailed if she dropped her grievance. She also alleged that Mr. Schierberl tried to get Mr. Clark to assert influence over her because of their personal relationship, but he refused. When appellant did not drop her grievance, she was passed over for the position she was currently detailed in and denied advancement opportunities. She also alleged that Mr. Schierberl fired Mr. Clark on the grounds of providing her preferential treatment. Appellant noted that she and Mr. Clark no longer had a relationship.

Appellant alleged that Mr. Schierberl delayed issuing retroactive pay for several months and that she was paid an amount considerably less than the amount calculated by the union. An agreement about the amount of retroactive pay owed was reached in mediation. Appellant alleged that Mr. Schierberl failed to comply with the agreement and that an Equal Employment Opportunity (EEO) claim was pending. She alleged that Mr. Schierberl kept her in one office, which was contrary to the current practice of rotating new carriers through different offices until they had an assigned route. Mr. Schierberl and some of his supervisors spread rumors concerning her grievance award, which created a hostile work environment. Appellant alleged that the employing establishment delayed her workers' compensation pay on her accepted work-related shoulder injury on several occasions.

Appellant submitted a copy of an October 12, 2003 arbitration decision and documents concerning a grievance filed over the amount of back pay owed due to the arbitration decision of October 12, 2003. She also submitted medical reports from Dr. S. Kathleen Rieves, a Board-certified family practitioner, and Dr. Gerd C. Leopoldt, a Board-certified psychiatrist. The physicians opined that appellant's depression was aggravated by her employment. The reports also identified nonwork stressors.

Stephan Nagy, an injury compensation specialist, disputed appellant's allegations in letters dated March 24 and May 13, 2005. He indicated that, although appellant's grievance was

¹ The record indicates that appellant has an accepted work-related shoulder condition under file number 12-202274.

sustained, it did not establish any workplace harassment or unfair treatment. Ms. Durrant and Ms. Hodge denied belittling, harassing or stalking appellant and Mr. Schierberl and Bill Crain, appellant's immediate supervisor, denied allegations that they failed to take any actions to stop such harassment. Mr. Schierberl denied telling appellant that she would be detailed to a higher level position, attempted to have Mr. Clark influence appellant, or delayed payment of or paid an incorrect amount under the arbitration award. Mr. Nagy noted that the retroactive payment involved complex pay adjustments and \$34,736.25 was paid in pay period 19 of 2004 for the arbitration award.

In a March 23, 2005 statement, Mr. Schierberl advised that appellant was neither harassed nor required to work in a hostile work environment. He stated that there was no reprisal for any refusal to withdraw a grievance. Mr. Schierberl noted that appellant was either a direct or indirect party in a number of investigations but denied that any personal information was inappropriately shared by management.

By decision dated September 29, 2005, the Office denied appellant's claim, finding that she failed to establish any compensable factors of employment.

On October 29, 2005 appellant requested a telephonic hearing, which was held on February 16, 2006. In an October 12, 2005 statement, she reiterated that she was subject to a hostile work environment and that her emotional condition was aggravated due to harassment by Mr. Schierberl, his supervisors and some of her coworkers. Appellant contended that Mr. Schierberl would not admit reprisal with the events involving Mr. Clark and that her fear that the same would happen to her was making her miserable. She submitted documents pertaining to her allegation that her EEO settlement was breached. In an August 11, 2004 letter, the employing establishment's EEO dispute resolution office found that the redress settlement agreement had not been breached. In an undated statement received March 6, 2006, Aaron Buniger, a former employee, noted that he did not accept any job offer in return for damaging statements concerning Mr. Clark.

In an October 12, 2005 statement, Karen Marty, appellant's mother, advised that appellant and Ms. Durrant were friends prior to a falling out they had when appellant started dating Mr. Clark. She related an incident where she was talking to appellant in the parking lot of her work and noticed Ms. Durrant circling the parking lot several times, "obviously watching us talking and making sure that we saw her."

In an October 26, 2005 statement, Tonja Kelm, a neighbor of appellant, indicated on two separate occasions during the period December 2002 through May 2003, appellant pointed out a car driven by a woman identified by appellant as Ms. Durrant.

In an October 25, 2005 statement, Mr. Clark stated that he was the facility manager at work. In 2003 Mr. Schierberl approached him about appellant's grievance and asked "me to use our personal relationship outside of work to try to get [appellant] to drop her grievance." It was implied that, if she did not drop her grievance, Mr. Schierberl would not give appellant the detail. Mr. Clark further stated that Mr. Schierberl removed him from service because of his relationship with appellant. He stated that Mr. Hodge and Ms. Durrant would torment appellant

on the workroom floor “making loud obnoxious statements” and they drove around off the clock looking for her. Mr. Clark alleged that Mr. Crain talked to Ms. Durrant about harassing appellant and that Mr. Schierberl used the situation to fire him for improper conduct. He stated that he settled with the employing establishment, resigned and moved out of state. A copy of Mr. Clark’s notice of proposed removal for improper conduct, dated February 27, 2004 was submitted. It charged that Mr. Clark engaged in consensual relationship with several female employees, including appellant, finding that he abused his position by offering job opportunities and showing favoritism to subordinate employees.

Appellant submitted a handwritten statement from Mary Lu Scholl, a coworker and union representative, who submitted an April 7, 2006 statement noting that she rarely dealt with Mr. Schierberl. She advised that most of the information she had concerning Mr. Schierberl was provided by involved parties, which made her personal viewpoint of Mr. Schierberl’s actions and reactions speculative at best and unsupportable at worst. In statements dated March 22 and 23, 2006, employing establishment personnel disputed the original statement of Ms. Scholl and appellant’s allegations.

By decision dated April 20, 2006, an Office hearing representative affirmed the September 29, 2005 decision.

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

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.⁴ A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.⁵ The issue is whether the claimant has submitted sufficient evidence

² 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁴ *See Michael Ewanichak*, 48 ECAB 364 (1997).

⁵ *See Charles D. Edwards*, 55 ECAB 258 (2004); *Parley A. Clement*, 48 ECAB 302 (1997).

under the Act to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁶ The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.⁷

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.⁸ 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.⁹

ANALYSIS

Appellant alleged harassment and discriminated by Mr. Schierberl, the postmaster, his supervisors and several coworkers. As noted above, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.¹⁰

The factual evidence fails to support appellant's claims of harassment or that she was subjected to a hostile work environment. Appellant has alleged that coworkers, Ms. Durrant and Ms. Hodge, belittled, harassed and stalked her and that the employing establishment did nothing about it because of her personal relationship with Mr. Clark. She noted general allegations and recollections but she did not identify any specific instances of harassment by Ms. Hodge or Ms. Durrant. The statements of appellant's mother and Ms. Kelm are not sufficient to establish witnessing harassment as alleged. The February 27, 2004 notice of proposed removal pertaining to Mr. Clark does not support any specific incidents establishing that appellant was unfairly treated by Ms. Durrant or Ms. Hodge. Mr. Clark made general allegations of harassment by Ms. Hodge and Ms. Durrant, but failed to provide a detailed description of such conduct. Appellant's mother and Ms. Kelm noted, respectively, that they saw someone they believed to be Ms. Durrant drive around the parking lot of the employing establishment near appellant's apartment building. These statements are not sufficient to establish harassment by Ms. Durrant. Underscoring the personal nature of appellant's frustrations is the representation by appellant's

⁶ See *James E. Norris*, 52 ECAB 93 (2000).

⁷ *Beverly R. Jones*, 55 ECAB 411 (2004).

⁸ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁹ *Id.*

¹⁰ *Jack Hopkins, Jr.*, 42 ECAB 818 (1991).

mother that appellant and Ms. Durrant had a falling out at about this time in their personal relationship. Although appellant's mother described an incident which appellant experienced at work, there is no evidence that appellant's mother was a witness to any specific event at work. Mr. Nagy noted that Ms. Durrant and Ms. Hodge denied appellant's allegations. Mr. Schierberl and Mr. Crain also denied appellant's allegations regarding their failure to take actions to stop the alleged harassment. The factual evidence of record fails to support appellant's claim that she was harassed by Ms. Durrant or Ms. Hodges or that the employing establishment failed to take any action on such claim because of her personal relationship with Mr. Clark.¹¹

The factual evidence also fails to support appellant's claims that she was subjected to a hostile work environment or subject to reprisal by Mr. Schierberl as a result of her past relationship with Mr. Clark. Mr. Buniger's statement failed to cite any incidents as alleged by appellant. It does not establish any of appellant's allegations as factual. Ms. Scholl initially provided comments regarding her perceptions that Mr. Schierberl treated appellant differently because of her relationship with Mr. Clark. However, she subsequently recanted her first statement by noting that she did not have any first hand knowledge of the alleged actions as all of her information came from the "involved parties." Ms. Scholl's statement does not establish any of appellant's allegations as factual.

As appellant's contentions of harassment and retaliation in the above-described incidents are not supported by corroborating evidence, she had not established a compensable employment factor in that regard.

Appellant's other allegations pertain to administrative or personnel actions. These include her contention that the employing establishment improperly denied her a higher-level detail, did not comply with the terms of the arbitration award, failed to rotate her to other stations, and improperly processed her claims for compensation. As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Act.¹² 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.¹³ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.¹⁴ An employee's complaints concerning the manner in which a supervisor performs his duties as a supervisor; or the manner in which a supervisor exercises his supervisory discretion;¹⁵ or mere disagreement of supervisory or management action,¹⁶ as a rule, fall outside the scope of coverage

¹¹ See *Michael A. Deas*, 53 ECAB 208 (2001).

¹² *Roger Williams*, 52 ECAB 468 (2001).

¹³ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁴ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁵ *Margaret J. Toland*, 52 ECAB 294 (2001).

¹⁶ *Christophe Jolicoeur*, 49 ECAB 553 (1998).

provided by the Act. An employee's frustration from not being permitted to work in a particular environment is not compensable.¹⁷

Appellant alleged that Mr. Schierberl told her that, if she dropped her grievance regarding a transfer to the carrier craft, she would be assured of a two-year detail to a higher-level detail. She also alleged that Mr. Schierberl tried to get Mr. Clark to influence her to drop her grievance. Appellant alleged that, because she would not drop her grievance, she was not selected for the higher-level detail and denied advancement opportunities. The assignment of work is an administrative matter.¹⁸ Appellant did not submit sufficient evidence to establish that Mr. Schierberl acted unreasonably in these matters. Although she submitted a statement from Mr. Clark, his statement is insufficient to establish administrative error or abuse. The record reflects that Mr. Clark was personally involved with appellant, among other female employees and was terminated for giving subordinate employees preferential treatment at work. Appellant has presented insufficient evidence to support that Mr. Schierberl erred or acted abusively with regard to her grievance. Mr. Schierberl denied that he attempted to influence either appellant or Mr. Clark. Appellant indicated that she applied for but was not selected for the higher-level detail. Denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment as they constitute her desire to work in a different position.¹⁹ Appellant has not presented evidence that she was improperly denied advancement opportunities. Thus, she has not established a compensable employment factor with regard to these allegations.

Appellant alleged that, when she won her grievance, Mr. Schierberl delayed issuance of her back pay for several months and paid her less than the amount the union calculated. She further alleged that Mr. Schierberl improperly delayed processing the workers' compensation claim related to her accepted work-related shoulder condition. The Board notes that the development of any condition related to such matters would not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties.²⁰ An August 11, 2004 letter from the employing establishment's EEO dispute resolution manager found that the settlement agreement had not been breached. Appellant has not submitted evidence that the employing establishment erred or acted abusively in this matter. She has not supported her allegations that Mr. Schierberl improperly or delayed processing her workers' compensation claim. Appellant has not established administrative error or abuse in the performance of these actions and, therefore, they are not compensable under the Act.

Appellant alleged that Mr. Schierberl subjected her to a hostile work environment. She alleged that she was kept in the same office and not rotated through the different offices. Appellant further alleged that Mr. Schierberl and certain supervisors spread rumors concerning her grievance award. The Board finds that these contentions relate to administrative or personnel

¹⁷ *Roy E. Shotwell, Jr.*, 51 ECAB 656 (2000).

¹⁸ *Donney T. Drennon-Gala*, 56 ECAB ____ (Docket No. 04-2190, issued April 26, 2005).

¹⁹ *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

²⁰ *See George A. Ross*, 43 ECAB 346, 353 (1991).

matters unrelated to the employee's regular or specially assigned work duties and do not fall within coverage of the Act.²¹ Appellant has submitted no evidence that the employing establishment erred or acted abusively in keeping her in one office or submitted any corroborating evidence with respect to her allegations of rumors concerning her award. Mr. Schierberl explained that appellant was either a direct or indirect party in a number of investigations but denied that appellant's personal information was inappropriately shared by management. Appellant has not established a compensable employment factor with respect to these allegations.

For the foregoing reasons, the Board finds that 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.²²

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.

²¹ See *Debora L. Hanna*, 54 ECAB 548 (2003).

²² As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *Karen K. Levene*, 54 ECAB 671 (2003); see also *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the April 20, 2006 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: November 24, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board