

supervisors. She became aware of her condition and realized that it was caused or aggravated by her work on October 9, 2006. Appellant stopped work on October 10, 2006.

In an October 23, 2006 statement, appellant advised that she had signed up to volunteer work on the October 9, 2006 holiday on October 3, 2006. Kristi O'Donnell, the officer in charge, had given her the truck schedule and instruction. Appellant stated that, when she showed up to work on October 9, 2006, Ms. O'Donnell yelled at her to get out of the building as she was not on the schedule. She stated that Ms. O'Donnell called the police to remove her from the premises. Appellant called the union president, who had advised her to leave and that she would still get paid for the holiday even though she was not working it. Before she left, she and a police officer went to Ms. O'Donnell's office to ask for a copy of the volunteer to work form. Appellant alleged that Ms. O'Donnell told her to pick it up the next day and then slammed the door in her face.

In an October 9, 2006 police report, Officer P. Burns indicated that Ms. O'Donnell had called to have appellant removed from the premises as she was not supposed to be at work. She indicated that Ms. O'Donnell had shown her a schedule which indicated that appellant had the day off. Officer Burns also noted appellant's versions of events. She indicated that, when appellant and she went to Ms. O'Donnell's office to obtain a copy of the volunteer to work form, Ms. O'Donnell stated that it was somewhere in her office and that appellant could pick it up the next day. Officer Burns stated that Ms. O'Donnell then slammed the door in their faces. She stated that Ms. O'Donnell was extremely rude, unprofessional and very demanding. Officer Burns noted that appellant had three grievances filed against Ms. O'Donnell.

Appellant submitted leave documents. In an October 10, 2006 prescription note, Dr. Henry W. Kong, a Board-certified internist, indicated that appellant was disabled from October 10 to 28, 2006 due to stress and anxiety. In an October 10, 2006 chart note, he diagnosed anxiety and panic attack after a confrontation at work. In October 19 and 23, 2006 notes, Dr. Kong advised that appellant was suffering from chronic headaches and stomachaches likely related to chronic stress and anxiety which started on October 10, 2006. He indicated that appellant would be unable to work for approximately one month.

On November 17, 2006 the Office asked appellant to submit additional factual and medical information, including a detailed description of the employment factors or incidents she believed contributed to her claimed illness. The Office also requested that the employing establishment comment on appellant's claim.

Appellant submitted a December 5, 2006 chronology of events. She alleged that, after she filed three grievances against Ms. O'Donnell on September 28, 2006, Ms. O'Donnell no longer spoke to her. Appellant alleged that Ms. O'Donnell retaliated and harassed her causing a

hostile workplace.¹ On September 30, 2006 she stated that she called Ms. O'Donnell and requested overtime to do the mail. Appellant indicated that Ms. O'Donnell asked to speak to her coworker, Scott, and alleged that Scott told her that Ms. O'Donnell did not want to give her overtime. She reiterated that she had signed up to work the October 9, 2006 holiday. Appellant alleged that Ms. O'Donnell changed the date of the holiday schedule from October 7 to 9, 2006. She also alleged that the October 9, 2006 police report showed that Ms. O'Donnell was unprofessional and extremely rude and very demanding when she asked for a copy of the signed volunteer work on holiday form. Appellant worked two hours overtime on Saturday October 7, 2006. She alleged that her coworker, Scott, told her on October 10, 2006 that Ms. O'Donnell did not want to pay her for the October 7, 2006 overtime. Appellant advised that Ms. O'Donnell changed the schedule on October 3, 2006 after she had already offered her overtime on October 7, 2006. She went to the doctor on October 10, 2006 due to extreme stress and anxiety. Appellant indicated that the employing establishment agreed to pay for the violations which occurred and that Ms. O'Donnell was removed from her duties on November 20, 2006. Copies of three Step 2 settlement agreements were provided. An October 30, 2006 settlement indicated that the October 20, 2006 letter of demand given to appellant was satisfied in full and no repayment of a salary advance would be required. Two settlements dated November 2, 2006 indicated that appellant would receive payments of \$75.00 and \$80.00.

In letters dated December 19 and 28, 2006, Nancy A. Hofstetter, manager of customer services, responded to appellant's allegations. She stated that Ms. O'Donnell chose to restrict her conversations with appellant to business after appellant told her "how things were done" and that, if she wanted to keep things running smoothly, she "would not make any changes." Ms. Hofstetter indicated that Ms. O'Donnell believed that her responsibility as an officer in charge was to make changes that she saw fit. She stated that overtime was an administrative matter. Ms. Hofstetter further stated that signing the volunteer list for a holiday was only an indication of the employee's willingness to work on a holiday, if operationally necessary; it was not a guarantee of being scheduled. When the schedule was posted, appellant was not on it as her services were not needed on that holiday. Ms. Hofstetter stated that, while the police report might be controversial, appellant failed to obey instructions to leave the facility and appellant should have addressed her issues through the grievance procedure. She advised that a meeting was held with various management personnel and appellant to open the lines of communication and to attempt to resolve any outstanding issues. Ms. Hofstetter indicated that all matters were resolved during the meeting and appellant offered to return to work prior to her physician's original return to work date. She stated that payments were made to appellant in good faith in order to resolve the issues at hand. Ms. Hofstetter denied that such payments were an admission of any wrongdoing on the part of Ms. O'Donnell. She advised that Ms. O'Donnell had elected to return to her former position and was not removed.

In a January 12, 2007 decision, the Office denied appellant's claim finding that her claimed emotional condition did not occur in the performance of duty. The Office found that appellant established a compensable employment factor on October 9, 2006 when her supervisor

¹ The grievances concerned a September 25, 2006 alleged violation by management regarding the overtime desired list.

slammed the door in her face after being rude and unprofessional in her conversation. However, the claim was denied as the medical evidence did not attribute appellant's emotional condition to the accepted factor.

LEGAL PRECEDENT

To establish a claim that he or she sustained an emotional condition in the performance of duty, a claimant must submit: factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition, medical evidence establishing that he or she has an emotional or psychiatric disorder and rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.² 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.³

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 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 her 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. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of her work or her fear and anxiety regarding her ability to carry out her work duties.⁴ 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 reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.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

² *Leslie C. Moore*, 52 ECAB 132 (2000).

³ *See Dennis J. Balogh*, 52 ECAB 232 (2001).

⁴ *Ronald J. Jablanski*, 56 ECAB ____ (Docket No. 05-482, issued July 13, 2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁵ *Id.*

⁶ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

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

Appellant alleged that Ms. O'Donnell, the officer in charge, harassed and retaliated against her after she filed several grievances. She alleged that Ms. O'Donnell did not want to give her overtime on September 30, 2006 or pay her for overtime worked October 7, 2006; that she had signed the volunteer work form to work the October 9, 2006 holiday but Ms. O'Donnell had changed the dates of the holiday schedule from October 7 to 9, 2006; and that Ms. O'Donnell's behavior was unprofessional and extremely rude and very demanding on October 9, 2006.

To the extent that incidents alleged as constituting harassment by a supervisor 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 did in fact occur. Mere perceptions of harassment are not compensable under the Act.⁹

The factual evidence fails to support appellant's claim regarding harassment. The employing establishment indicated that appellant told Ms. O'Donnell not to make changes; however, it was Ms. O'Donnell's responsibility to make changes she deemed necessary to ensure a smooth operation. Appellant, however, failed to provide sufficient evidence of specific incidents she believed constituted harassment.¹⁰ Although appellant filed a number of grievances with respect to the personnel matters, the Board has held that grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.¹¹ While the record indicates that appellant received various settlements, the employing establishment specifically refuted that such settlements were an admission of wrongdoing on the part of Ms. O'Donnell. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

The Office, however, accepted that Ms. O'Donnell's behavior (yelling at her and slamming the door in her face) on October 9, 2006 constituted a compensable factor. The Board has recognized the compensability of verbal altercation or abuse in certain circumstances. The statement from Officer Burns supports appellant's allegation that Ms. O'Donnell spoke to her in

⁷ *Id.*

⁸ *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). 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).

¹⁰ See *Joel Parker, Sr.*, 43 ECAB 220 (1991). (The Board held that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹¹ *James E. Norris*, 52 ECAB 93 (2000).

an abusive manner and slammed the door in their faces. This is a compensable factor of employment.¹²

Other allegations by appellant regarding overtime matters and holiday work relate to administrative or personnel actions. As a general rule, an employee's emotional reaction to administrative or personnel actions taken by the employing establishment is not covered because such matters pertain to procedures and requirements of the employer and are not directly related to the work required of the employee. 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.¹³

Appellant alleged that Ms. O'Donnell did not want to give her overtime on September 30, 2006 or pay her for overtime worked October 7, 2006. The Board notes that the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹⁴ Appellant has presented no corroborating evidence to support that the employing establishment erred or acted abusively in this matter. There is no evidence to support appellant's claim that the employing establishment discriminated against her or took actions to avoid paying her overtime. With respect to payment for October 7, 2006 overtime, the record reflects that appellant compensated for such time. Also the record reveals that the settlement agreement does not impute any finding of fault. The employing establishment specifically advised that such payments were done in good faith and were not an admission of any wrongdoing. The Board finds that the employing establishment acted reasonably in this administrative matter and appellant has not established a compensable factor of employment with respect to this allegation.

Appellant alleged that she was not allowed to work on a holiday although she had signed on the holiday schedule. The employing establishment explained that signing the volunteer list for holiday work was not a guarantee of being scheduled. Although appellant assumed her services were needed, they were not needed for that holiday. The Board notes that assignment of work is an administrative function¹⁵ and the manner in which a supervisor exercises his or her discretion falls outside the ambit of the Act. Absent evidence of error or abuse, appellant's mere disagreement or dislike of a managerial action is not compensable.¹⁶ Appellant has not offered sufficient evidence to establish error or abuse regarding not being scheduled for holiday work even though she volunteered for it. The evidence also does not establish that the employing establishment acted unreasonably. While the record reflects that appellant does not have to repay a salary advance, this does not establish that the employing establishment acted improperly. Moreover, the employing establishment had explained why it made payments to appellant who has presented no corroborating evidence to support that the employing

¹² See *Jamel A. White*, 54 ECAB 224, 229 (2002).

¹³ *James E. Norris*, 52 ECAB 93 (2000).

¹⁴ See *Judy Kahn*, 53 ECAB 321 (2002).

¹⁵ *Donney T. Drennon-Gala*, 56 ECAB ____ (Docket No. 04-2190, issued April 26, 2005).

¹⁶ See *Judy Kahn*, 53 ECAB 321 (2002).

establishment acted unreasonably. Appellant has not established a compensable factor of employment in this regard.

Appellant's burden of proof is not discharged by the fact that she has established an employment factor which may give rise to a compensable disability under the Act. To establish her occupational disease claim, appellant must also submit rationalized medical evidence establishing that her claimed conditions are causally related to the accepted compensable employment factor.¹⁷ While it is not disputed that appellant has an emotional condition, the medical evidence does not explain how or why the accepted employment factor caused or contributed to the emotional condition.

Appellant submitted medical evidence from Dr. Wong. In a chart note of October 10, 2006, Dr. Wong indicated that appellant experienced anxiety and a panic attack after a confrontation at work. However, Dr. Wong provided no further details on identifying the compensable employment factor as contributing to appellant's condition. In an October 10, 2006 prescription note and in his October 19 and 23, 2006 notes, he stated that appellant was disabled due to stress and anxiety which started on October 10, 2006. However, this is a vague, general statement with no details or any rationale to explain how or why the accepted employment factor caused or contributed to the emotional condition.

The Board finds that appellant has not submitted rationalized medical evidence establishing that her claimed condition is causally related to the accepted compensable employment factor.

CONCLUSION

Appellant has not met her burden of proof in establishing that she developed an emotional condition in the performance of duty.

¹⁷ See *William P. George*, 43 ECAB 1159 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 12, 2007 is affirmed.

Issued: September 12, 2007
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