

Accountability [SIA] count deadline. She stated that management assigned a coworker to assist her for two weeks; she was able to complete her adjustments by April 20, 2006. However, because appellant was shorthanded most of the time, which required extra time on her part, she was distracted from the task at hand and missed the SIA count deadline. She stated that, although she was doing her best, this was a two-person operation being run by only one person.

In a report dated September 27, 2006, Dr. Jack C. Durham, Board-certified in psychiatry, stated:

“[Appellant] presents today for evaluation of what she feels she may have experienced as a panic attack this morning. She had a lot of stress that’s been coming on for about a couple of weeks in dealing with problems at her work. [Appellant] was talking with her supervisor and she became markedly anxious. She felt her heart rate increasing to the point that she felt she was having a heart attack. [Appellant] became quite short of breath. She felt as if her throat was closing off. [Appellant] has never experienced a panic attack or any amount of anxiety to this extent in the past. She [ha]s been on Effexor XR for depression for many years.”

Dr. Durham diagnosed situational panic attack, asthma and a past history of depression, which was well controlled. He placed her on leave until October 1, 2007.

In a February 14, 2007 report, Dr. Durham stated that appellant was being reevaluated for anxiety. He related that she had experienced two incidences, the one previously reviewed in September 2006 and a stressful encounter with her supervisor which occurred that day. Dr. Durham related that appellant requested a meeting with her supervisor to ascertain the reasons why he denied her an annual raise. Appellant stated that her supervisor gave her no reasons for the denial, after which she became very anxious, with her heart pounding and her pulse rising. Dr. Durham diagnosed situational anxiety and depression and placed appellant on leave for two weeks. He recommended that appellant go through the chain of command at the employing establishment to express her grievances.

In a report dated February 15, 2007, Dr. Durham stated:

“[Appellant] has been a patient in our office since April 30, 1979. She has been treated for depression off and on. Since September 2006, [appellant] has been seen at our office twice for symptoms suggestive of acute anxiety allegedly stemming from confrontations with her immediate supervisor. In all her relationships with her ex-husbands, family members and children I have had no reason to suspect that she would not pass through this impasse in a professional manner. [Appellant’s] depressive symptoms and anxiety attacks appear to be well controlled with medication and I feel these episodes of anxiety are situational.”

Appellant sent an e-mail dated February 13, 2007 to the employing establishment's district manager, Nicholas Rinaldi, in which she described what she considered a pattern of harassment, intimidation, disrespect and abuse on the part of her supervisor, James Dowell. She stated:

"Today I had a scheduled appointment to meet with James Dowell ... to discuss my [annual performance evaluation]. I wanted to know why he gave me a rating of zero in leadership and communication. The meeting should have been an easy one, but it was not. After telling me that I received a zero because I had three late SIA audits and didn't meet my business-connected requirements he said that the overall performance of my office was also an impact. I explained that I did meet my business connects and was late with only one audit for which I received a letter of warning. Mr. Dowell interrupted me every few sentences. He talked to me in a condescending tone. He repeated the audit dates and would not allow me to speak. He told me other offices had been late with audits also but he did not give discipline. I asked why he gave me discipline and not others who were late. He said he wasn't going to tell me; he didn't have to.

"When I asked him to explain how to read the NPA scorecard he refused. He said he didn't have to explain it; everyone got the same form I did so he wasn't going to waste time explaining it to me. Throughout much of the meeting he refused to let me speak more than a few words at a time. When I tried to explain that I still didn't understand why I made a zero he said he didn't have to explain why he gave me the rating he did. He asked why I thought he should have given me a six. I opened my mouth to speak and he cut me off after three words. I became upset at his treatment of me and he saw this. He seemed to enjoy the fact that he was upsetting me. He looked me straight in the eyes and said, 'Maybe you're not fit to run a post office.' This floored me.

"My breathing became labored. I began to sweat. My heart rate increased. All of this was visible to Mr. Dowell. At no time did he ask if I was okay. He said he is my superior and that I better leave before I say something inappropriate. I'm not sure what he meant by that, but I got up to leave. As I was leaving I tried to say something else. All he did say was, 'Have a nice day' several times over and over each time a word came out of my mouth; so I left; shaking and distraught."

Appellant stated that she merely wanted to have Mr. Dowell substantiate why she received such a low rating. However, she stated that he behaved in a disrespectful, offensive, hostile manner toward her, which caused her to experience a panic attack in her car after leaving his office. Appellant stated that this was not the first time he had behaved in such a manner. She alleged that Mr. Dowell routinely abuses his authority and that his management style consists of intimidation, bullying and threats. Appellant asserted that she is incapable of working under such conditions, which resulted in stress, panic attacks, depression and a feeling of helplessness.

The Office controverted appellant's claim and submitted a March 30, 2007 statement from Mr. Dowell, the employing establishment's operations manager, who noted that appellant had been diagnosed with situational stress, depression and panic attacks. Mr. Dowell stated that

appellant had brought stress upon herself by failing to fulfill the duties of postmaster at the employing establishment. He advised that as postmaster appellant was responsible for the deadlines, goals and financial reports of her facility; however, management had formally disciplined her on five occasions between May 11, 2004 and February 8, 2007 based on her substandard performance record.¹ Mr. Dowell stated that appellant was disciplined on May 2, 2006 for failure to perform her duties, based on her untimely submission of an SIA audit for April 2006. He advised that this formal reprimand was implemented as a constructive measure, intended to impress upon appellant the importance of following procedure and meeting deadlines; she, however, continued to submit reports in an untimely fashion in regard to three other audits in the 2006 fiscal year.²

Mr. Dowell denied appellant's allegations that he treated her with disrespect. He stated that his secretary had witnessed and documented telephone conversations between himself and appellant as well as their meeting regarding her year-end performance evaluation. These documented conversations were included in the case file. Mr. Dowell rejected appellant's assertion that her duties were overwhelming and that she needed an additional employee to assist her. He stated that her coworkers had informed him that she is frequently absent from the worksite and provided a list of nine instances between September 26, 2006 and January 29, 2007 in which she had requested leave without providing a reason. In addition, Mr. Dowell listed three other occasions in which appellant left work in the morning or early afternoon for doctor's appointments.³ He asserted that she had amassed an excessive amount of leave throughout her career to the extent where she was abusing her leave privileges.

By letter dated May 10, 2007, the Office advised appellant that she needed to submit additional information in support of her claim. It asked her to describe in detail the employment-related conditions or incidents, which she believed contributed to her emotional condition and to provide specific descriptions of all practices, incidents, etc., which she believed affected her condition.

In a May 28, 2007 letter to the Office, appellant stated:

“Since 2005 I have been required by my immediate manager, James Dowell, to work 50-60 hours weekly, my scheduled days off and several holidays. I have asked for and been denied assistance in the way of a subordinate supervisor and

¹ These reprimands included: (1) a May 11, 2004 predisciplinary interview conducted due to appellant's failure to follow instructions, in which she admitted and apologized for not researching the proper procedures to ensure she followed the guidelines; (2) a letter of warning issued on May 26, 2004 for failure to follow instructions; (3) a May 2, 2006 predisciplinary interview conducted due to appellant's untimely submission of SIA audit for April 2006; (4) a predisciplinary interview conducted on February 6, 2007 due to appellant's failure to collect information and (5) a February 8, 2007 letter of warning in lieu of seven-day suspension.

² Mr. Dowell submitted copies of a February 28, 2007 employing establishment e-mail addressed to him which indicated that appellant's employing establishment had been late on approximately 57 percent of its audits for fiscal year 2006.

³ Mr. Dowell submitted copies of three e-mails from appellant, dated October 13, November 2 and December 11, 2006, in which she stated that she was leaving work early to attend medical appointments.

replacements for vacant clerk and carrier positions from Mr. Dowell as well as District Manager Nicholas Rinaldi and Senior Post Office Manager James Antil.

“On September 27, 2006 I suffered a panic attack while on the telephone with Mr. Dowell. During the call Mr. Dowell berated my managerial abilities ... accused me of not being in my office (I am in my office more than ten hours a day on most days), laughed at me when I became upset and afterwards told me he had me on his speaker phone and that his secretary was taking notes. As a rule, when a work performance discussion is to be held, the employee, me, would be notified that it was a work performance discussion and would be allowed a representative to be present for their protection. When I hung up from that phone call I immediately visited my doctor who advised me that I had a panic attack due to situational job related stress. I forwarded my medical documentation to Mr. Dowell and took two days of sick leave. I returned to work, my mental and physical health uncertain.

“The harassing behavior continued by telephone and teleconference and by auditors being sent to my office no less than six times in a period of less than four months in an effort to find fault with my performance. Consequently, I was denied my yearly merit evaluation for fiscal year 2006 under the pretext that I was late with three SIA audits; I was late on only one audit; as were other postmasters. When I visited Mr. Dowell’s office on February 13, 2007 to discuss my rating, he again berated my work performance. When I tried to speak I was cut off. He refused to explain his evaluation of me, continually interrupted me and ultimately threw me out of his office. But not before telling me that I wasn’t ‘fit to run a post office.’ I experienced another panic attack in his parking lot after the meeting.

“After visiting my doctor again I was advised to stay out of work. I subsequently filed a postal form CA-2; report of on the job illness or injury, due to my doctor’s diagnosis of situational stress and anxiety disorder, panic attacks and clinical depression. I submitted the CA-2 to Mr. Dowell’s secretary, as he refused to see me. After two weeks Mr. Dowell had still failed to submit the form to the injury compensation office. The district EEO investigator finally got him to sign off on the form. After nearly three months I received written notification from the Office that my claim had been challenged and they required further documentation.”

Appellant stated that completing the workers’ compensation and Equal Employment Opportunity (EEO) claims caused her additional stress and anxiety, as did the fact that she continued to receive telephone calls at home from customers and employees despite her medical absence. She also stated that she had been forced to use all of her annual and sick leave to cover her absence because her claim for disability to cover her period of absence was contested. Lastly, appellant asserted that the fact that it took nearly three months for the employing establishment to respond to her Form CA-2 claim was a deliberate, punitive action on the part of Mr. Dowell and other administrative managers to compound her stress and anxiety. She asserted that she also feels stress and anxiety due to the uncertainty as to what will happen next with her

claim and her career. Appellant noted that she had filed more than one claim with the EEO Commission due to Mr. Dowell's hostile behavior. All of this had made her forgetful, nervous and confused and has caused her to experience anxiety and panic attacks.

In a June 6, 2007 report, Dr. B. Rhett Myers, Board-certified in psychiatry, advised that he had seen appellant on May 3 and June 4, 2007. He noted that she had shown improvement in her psychiatric condition and had not experienced a panic attack during that period. Dr. Myers noted that appellant continued to complain of moderate symptoms of depression and impaired stress tolerance. He stated:

“At this time, it is my psychiatric opinion that [appellant] is not quite ready to return back into the stressful work environment which led to her psychiatric problems in the first place. I have talked with her about trying to return to work within the next two to four weeks and I feel that she is sincere and trying to accomplish this. [Appellant] is understandably concerned that if she returns to full duty she will be quickly overwhelmed by excessive work demands. It might be advantageous for her to return to work on a half time basis for the first couple of weeks.”

In a statement received by the Office on June 6, 2007, Debra Mickey, a clerk who worked under appellant, stated:

“On Wednesday, September 27, 2006, I was working on the window when I heard [appellant] on the [tele]phone very upset. By the time I could finish with my customer and check on [appellant] to shut the door I heard her say to [Mr. Dowell] ‘are you laughing at me’ at least twice. I also heard her say that she did n[o]t know anybody else was there listening. [Appellant] thought that it was a one on one conversation and he should [have] told her that someone else was there.”

In an August 17, 2007 statement, appellant rebutted Mr. Dowell's statements regarding her claim. She asserted that Mr. Dowell erroneously stated that management had investigated her claim; objected to Mr. Dowell's characterizations of predisciplinary interviews, as disciplinary actions (which she stated that were not supposed to be used against employees); and alleged that Mr. Dowell's accounts of her disciplinary history were either erroneous or fabricated. In addition, appellant asserted that only one of the SIA audits, for which she was responsible was late, which occurred due to a problem which was not her fault. She stated that the problem pertained to transferring redeemed stock for destruction when new Office procedures were implemented. Appellant indicated that Mr. Dowell failed to mention that the district financial officers instructed her to un-post the audits and redo them; she asserted that she had originally completed these audits in a timely fashion, but the district financial officers did not yield the desired results on their audits and ordered her to recount and repost the other audits, causing them to be late.

Appellant further stated that Mr. Dowell failed to provide documentation showing that her coworkers stated that she was frequently absent from the worksite; advised that she did not commit abuse with regard to her use of annual and sick leave, which she only used properly to deal with her various illnesses and maladies; alleged that Mr. Dowell arbitrarily her request for advanced

sick leave so that she could undergo back surgery; and reiterated her allegations that she had been pushed over the edge by Mr. Dowell's continued harassment and unreasonable demands to work more and more hours with fewer resources and personnel.⁴

By decision dated October 17, 2007, the Office denied appellant's claim on the basis that she failed to establish any compensable factor of employment and thus fact of injury was not established.

By letter dated October 30, 2007, appellant requested reconsideration. She asserted that Mr. Dowell had included erroneous information in her merit file to which she had been denied access, which hindered her efforts to prove her EEO and OWCP cases. Appellant further stated that she had been personally informed by an employing establishment official that a subordinate supervisor position had been approved for (her former worksite). She contended that this hiring of a new supervisor, while she was currently out of work, supported her allegation that she had been forced by Mr. Dowell to do the work of two people and denied help when she requested it in good faith.

By decision dated January 15, 2008, the Office denied modification of the October 17, 2007 decision.

LEGAL PRECEDENT

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.⁵ There must be evidence that, implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.⁶

The first issue to be addressed is whether appellant has established factors of employment that contributed to her alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁷ On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position or to secure a promotion. Disabling

⁴ Appellant also asserted that the notes from Mr. Dowell's secretary pertaining to the February 13, 2007 meeting are not credible, because Mr. Dowell selectively edited what really happened at the meeting. She alleged that Mr. Dowell intimidated his secretary into writing what he wanted to show in her notes. Appellant stated that Mr. Dowell was rude, abusive, contemptuous, dismissive and unresponsive to her questions regarding her work situations at this meeting, which his secretary's notes failed to show.

⁵ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

⁶ See *Ruth C. Borden*, 43 ECAB 146 (1991).

⁷ *Lillian Cutler*, 28 ECAB 125 (1976).

conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.⁸

ANALYSIS

Appellant alleged that she sustained stress in the performance of her duties as a supervisor due to the responsibilities assigned to her by Mr. Dowell. The Board has held that emotional reactions to situations in which an employee is trying to meet her position requirements are compensable.⁹ However, appellant has not submitted sufficient evidence to support her allegations that Mr. Dowell imposed an unusually heavy workload, forced her to work overtime, issued unreasonable deadlines or subjected her to unreasonable demands in setting performance guidelines for her. Nor has she provided support for her allegations that management erred by failing to provide her with an additional supervisor to help her complete her assignments. Appellant has actually acknowledged that when she asked for additional help to meet an April 21, 2006 inventory deadline, she was assigned a helper who assisted in completing the inventory by April 20, 2006. While she alleged that she was "distracted" during this time period and therefore missed an audit deadline, she has not submitted the necessary evidence to establish that her "distraction" was related to the performance of her job duties. Assignment of a work schedule is an administrative function and not a work factor and is not compensable absent a showing of error or abuse.

As part of the managerial function, a supervisor must assign work. Appellant did not submit any evidence to substantiate that any of her work assignments were in error or were abusive.

The Board finds that appellant has failed to submit sufficient evidence to establish her allegations that her supervisor engaged in a pattern of harassment, intimidation or discrimination. Appellant alleged that Mr. Dowell was hostile and uncooperative and spoke to her in a condescending, offensive manner at the September 27, 2006 meeting,¹⁰ but did not provide sufficient evidence to establish that she was harassed or treated in a discriminatory manner.¹¹ Mere perceptions of harassment or discrimination are not compensable; a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.¹²

⁸ *Id.*

⁹ See *Lillian Cutler*, *supra* note 7.

¹⁰ The Board finds that the June 6, 2007 statement from appellant's coworker, Ms. Mickey, wherein she described a telephone conversation she overheard between appellant and "James" on September 27, 2006 (in which appellant sounded "very upset" and stated "are you laughing at me") does not constitute sufficient evidence of harassment on the part of Mr. Dowell and is not compensable.

¹¹ 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).

¹² *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

Mr. Dowell denied appellant's allegations that she was unfairly singled out or treated in a discriminatory manner. Appellant alleged that he gave her unreasonable restrictions and expectations that he did not impose on other supervisors, but failed to submit documentation to prove these allegations. Mr. Dowell stated that as part of his managerial functions he had counseled appellant about her performance because she had failed to meet deadlines, goals and submit timely financial reports. He advised that management had disciplined her on several occasions between May 11, 2004 and February 8, 2007 due to her substandard performance. Mr. Dowell noted that he had formally reprimanded appellant during the September 27, 2006 meeting; however, he stated that this was a constructive measure implemented to apprise appellant of the importance of following procedure and meeting deadlines. Disciplinary matters consisting of counseling sessions, discussions or letters of warning for conduct pertain to actions taken in an administrative capacity and are not compensable as factors of employment.¹³ Appellant alleged that her supervisor made statements and engaged in actions, such as predisciplinary interviews, which she believed constituted harassment and discrimination,¹⁴ but she provided no corroborating evidence or witness statements to establish that the statements actually were made or that the actions actually occurred.

The Office reviewed all of appellant's allegations of harassment, abuse and mistreatment and found that they were not substantiated or corroborated. To that end, the Board finds that the Office properly found that the episodes of harassment cited by appellant did not factually occur as alleged by appellant, as she failed to provide any corroborating evidence for her allegations. As such, appellant's allegations constitute mere perceptions or generally stated assertions of dissatisfaction with a certain superior at work which do not support her claim for an emotional disability.¹⁵ For this reason, the Office properly determined that these incidents constituted mere perceptions of appellant and were not factually established. Appellant has not submitted evidence sufficient to establish that Mr. Dowell engaged in a pattern of harassment toward her or created a hostile workplace environment.

The Board finds the evidence of record does not establish that the administrative and personnel actions taken by management in this case were in error and are therefore not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.¹⁶ Appellant has not presented sufficient evidence that the employing establishment acted unreasonably or committed error with regard to the incidents of

¹³ *Barbara E. Hamm*, 45 ECAB 843 (1994); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

¹⁴ The Board rejects appellant's assertion that Mr. Dowell's alleged statement, "maybe you [a]re not fit to run a employing establishment," was compensable. Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act. *Harriet J. Landry*, 47 ECAB 543, 547 (1996). Appellant has not shown how such an isolated comment would rise to the level of verbal abuse or otherwise fall within the coverage of the Act. *See Alfred Arts*, 45 ECAB 530, 543-44 (1994).

¹⁵ *See Debbie J. Hobbs*, *supra* note 5.

¹⁶ *See Alfred Arts*, *supra* note 14.

alleged unreasonable actions involving personnel matters on the part of the employing establishment.

Regarding appellant's allegation that she developed stress due to the uncertainty of her job duties and her insecurity about maintaining her position, the Board has previously held that a claimant's job insecurity is not a compensable factor of employment under the Act.¹⁷ Accordingly, she has presented no evidence that the employing establishment acted unreasonably or committed error with regard to these incidents of administrative managerial functions. A reaction to such factors did not constitute an injury arising within the performance of duty; such personnel matters were not compensable factors of employment in the absence of agency error or abuse.

The Board notes that matters pertaining to use of leave are generally not covered under the Act as they pertain to administrative actions of the employing establishment and not to the regular or specially assigned duties the employee was hired to perform.¹⁸ However, error or abuse by the employing establishment in an administrative or personnel matter or evidence that the employing establishment acted unreasonably in the administrative or personnel matter, may afford coverage.¹⁹ Mr. Dowell indicated that he acted in his administrative capacity in rejecting appellant's leave requests because her attendance was unsatisfactory, because she took unauthorized breaks and because she had accumulated an excessive leave balance to the extent where he felt she was abusing her leave privileges. He rejected appellant's allegation that he harassed appellant by arbitrarily denying her requests for leave. As appellant has failed to show that these actions demonstrated error or abuse on the part of management, they are not compensable.

Appellant has failed to establish error or abuse with regard to her allegation that the employing establishment acted improperly in issuing her letters of warning and conducting predisciplinary interviews. She has not submitted sufficient evidence to support her allegations that the employing establishment ignored her requests for assistance, denied access to erroneous information in her merit file, which had been improperly included in the file or hindered her efforts to prove her EEO and the Office cases. Appellant's complaints that she was treated unfairly by management were rebutted by Mr. Dowell, who provided documentation that management had to formally discipline appellant five times between May 2004 and February 2007 based on her failure to perform her duties in an adequate fashion. Mr. Dowell stated that although appellant had been admonished for her untimely submission of the April 2006 SIA audit, she continued to submit reports in an untimely fashion in regard to three other audits in the 2006 fiscal year. His assertions pertaining to appellant's chronic inability to meet auditing deadlines were supported by an internal e-mail from management, which indicated that appellant's employing establishment had been late on approximately 57 percent of its audits for fiscal year 2006. Thus, these actions on the part of management did not constitute a factor of employment.

¹⁷ See *Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

¹⁸ *Elizabeth Pinero*, 46 ECAB 123 (1994).

¹⁹ *Margreate Lublin*, 44 ECAB 945 (1993).

Appellant also failed to substantiate her allegations that Mr. Dowell erroneously stated that management had investigated her claim, improperly characterized predisciplinary interviews as disciplinary actions and provided fallacious accounts of her disciplinary history. Regarding her allegation that the employing establishment intentionally delayed processing her compensation claim, 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 As appellant has failed to show that these actions demonstrated error or abuse on the part of management, they are not compensable.

The Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regularly or specially assigned employment duties are not considered to be employment factors.²¹ 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. Although appellant has made allegations that the employing establishment erred and acted abusively in conducting its investigative interviews, she has not provided sufficient evidence to support such a claim. A review of the evidence indicates that she has not shown that the employing establishment's actions in connection with its investigation of her were unreasonable. Appellant alleged that her supervisor made abusive statements during the course of the investigation of her, but she provided no corroborating evidence, such as witness statements, to establish that the statements were actually made.²² Thus, she has not established a compensable employment factor under the Act in this respect.

The Board finds that appellant has not established a compensable work factor. For this reason, the medical evidence will not be considered.²³ The Board will affirm the October 17, 2007 and January 15, 2008 decisions, denying compensation for an alleged emotional condition.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

²⁰ See *George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

²¹ *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

²² See *Larry J. Thomas*, 44 ECAB 291, 300 (1992).

²³ See *Margaret S. Krzycki*, *supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the January 15, 2008 and October 17, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 24, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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