



other employees. She stopped work that day.<sup>1</sup> Ms. Medina asked to speak with appellant regarding the evaluation that she had six days prior but she indicated that she did not want to talk about it. She stated that they spoke for a few minutes and denied that she had verbally abused appellant.

By letter dated October 18, 2007, the Office informed appellant of the evidence needed to support her claim. Appellant provided a list of employees who witnessed the discussion and a form medical report dated October 10, 2007 from Dr. Kevin Regli, Board-certified in family medicine, who diagnosed anxiety/stress and noted that appellant was off work. Coworkers Rosanna Savala, Rozlyn Taylor and Geydi Echeverria provided statements, noting that on October 2, 2007 they overheard a conversation between Ms. Medina and appellant. Ms. Medina expressed her desire to discuss something with appellant, who responded, “not now.” She stated that she wanted to help appellant improve her documentation and had examples for her. Social workers Paul Gonsier and Mark Raymond Sieberling submitted group notes dated October 12 and 16, 2007.<sup>2</sup>

By decision dated November 29, 2007, the Office denied the claim, finding that appellant did not establish that she sustained an injury in the performance of duty.

Appellant submitted additional evidence and in a request postmarked January 4, 2008, requested a hearing. By decision dated February 11, 2008, the Office denied appellant’s request, finding it untimely.

### **LEGAL PRECEDENT -- ISSUE 1**

To establish her claim that she sustained a stress-related condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or stress-related 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 condition.<sup>3</sup>

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*,<sup>4</sup> 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.<sup>5</sup> There are situations where an injury or illness has some connection with the employment but

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<sup>1</sup> The record does not indicate when appellant returned to work.

<sup>2</sup> Appellant also submitted a form report dated October 23, 2007 with an illegible signature.

<sup>3</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>4</sup> 28 ECAB 125 (1976).

<sup>5</sup> 5 U.S.C. §§ 8101-8193.

nevertheless does not come within coverage under the Act.<sup>6</sup> When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an 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 the work.<sup>7</sup> A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>8</sup>

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.<sup>9</sup> Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.<sup>10</sup>

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. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. Rather, the issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>11</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty. Appellant attributed her condition to being verbally abused by Ms. Medina on October 2, 2007. She alleged that Ms. Medina evaluated her performance while in the presence of others. The Board has characterized supervisory discussions of job performance and reprimands as administrative or personnel matters, which are covered only when a showing of error or abuse is made.<sup>12</sup> While Ms. Medina acknowledged that she spoke to appellant near other employees for a few minutes on October 2, 2007, she denied verbally abusing her. She told appellant that they needed to discuss her

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<sup>6</sup> See *Robert W. Johns*, 51 ECAB 137 (1999).

<sup>7</sup> *Lillian Cutler*, *supra* note 4.

<sup>8</sup> *Roger Williams*, 52 ECAB 468 (2001).

<sup>9</sup> *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>10</sup> *Kim Nguyen*, 53 ECAB 127 (2001).

<sup>11</sup> *James E. Norris*, 52 ECAB 93 (2000).

<sup>12</sup> *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

evaluation and that she had some suggestions to improve her documentation. The statements of appellant's coworkers described a brief conversation between appellant and Ms. Medina, who was overheard stating that she wanted to help appellant improve her documentation. None of the statements, however, establish that Ms. Medina raised her voice or spoke in a harsh manner to appellant. While Ms. Medina's request may have engendered embarrassment on appellant's part, the evidence does not establish verbal abuse on the part of appellant's supervisor.<sup>13</sup> Appellant has failed to establish that her emotional condition was due to a compensable factor of employment. The Office properly denied her claim.

### **LEGAL PRECEDENT -- ISSUE 2**

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted in writing, within 30 days of the date of the decision for which a hearing is sought. If the request is not made within 30 days or if it is made after a reconsideration request, a claimant is not entitled to a hearing or a review of the written record as a matter of right.<sup>14</sup> The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.<sup>15</sup> The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.<sup>16</sup>

### **ANALYSIS -- ISSUE 2**

In its February 11, 2008 decision, the Office denied appellant's request for a hearing on the grounds that it was untimely filed. It found that appellant was not, as a matter of right, entitled to a hearing. Her request, postmarked January 4, 2008, was not made within 30 days of the November 29, 2007 decision. As appellant's request was made more than 30 days after the date of the November 29, 2007 decision, the Board finds that she was not entitled to a hearing as a matter of right as her request was untimely filed.<sup>17</sup>

The Office also has the discretionary power to grant a request for a hearing when a claimant is not entitled to such as a matter of right. In the February 11, 2008 decision, it properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's request on the basis that the issue in this case could be addressed through a reconsideration application. The Board has held that, as the only limitation

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<sup>13</sup> See *Peter D. Butt, Jr.*, 56 ECAB 117 (2004).

<sup>14</sup> *Claudio Vazquez*, 52 ECAB 496 (2001).

<sup>15</sup> *Marilyn F. Wilson*, 52 ECAB 347 (2001).

<sup>16</sup> *Claudio Vazquez*, *supra* note 14.

<sup>17</sup> *Id.*

on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deduction from established facts.<sup>18</sup> In the present case, the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant's request for a hearing that could be found to be an abuse of discretion. The Office therefore properly denied her request.

### CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty and that the Office properly denied her request for a hearing.<sup>19</sup>

### ORDER

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated February 11, 2008 and November 29, 2007 are affirmed.

Issued: December 12, 2008  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>18</sup> See *Mary Poller*, 55 ECAB 483 (2004).

<sup>19</sup> The Board notes that appellant submitted evidence with her appeal to the Board. The Board cannot consider this evidence, however, as its review of the record is limited to the evidence that was before the Office at the time it rendered its merit decision. 20 C.F.R. § 501.2(c).