

By letter dated April 24, 2006, the Office requested that appellant submit further information.

In a medical report dated April 24, 2006, Dr. Cynthia A. Housel, an osteopath, indicated that she had been taking care of appellant since her hospitalization at Mount Clemens General Hospital at the end of March. She noted that appellant was hospitalized from March 25 through 27, 2006. At that time, appellant was diagnosed with a stroke and a thrombus in her right middle cerebral artery. When Dr. Housel saw her on March 30, 2006, she was improving. She saw appellant again on April 10, 2006. Appellant indicated that for the prior week she had done quite well at work. However, she noted a problem at work on April 8, 2006 regarding her boss. Appellant related that her boss sat behind her that day and watched her work. She felt intimidated. Appellant experienced numbness and tingling on one side of her body. She stated that she ended up in the emergency department with symptoms of increased anxiety and possible impending stroke. Dr. Housel was concerned that, if this situation continued, it could exacerbate symptoms of stroke. She took appellant off work for two weeks. When Dr. Housel saw appellant on April 24, 2006, her symptoms had improved and the situation at work had been taken care of.

In a statement dated April 12, 2006, appellant's supervisor stated:

“On Saturday, [April 8, 2006], at approximately 10:30 a.m., I observed [appellant] standing in her case. She had only cased a small amount of her mail. [Appellant] had one foot of first class mail to case, plus all of her third class and weekend circulars. She was casing letters out of a tray using only one hand to pick up one letter at a time and then put it into her case. [Appellant] would case a few letters and then stop to eat some oatmeal, and then continue to case mail. I instructed her in a calm and normal tone to stop eating in her case and to continue to case mail. [Appellant] became irritated at my instruction and began to argue with me for several minutes. Eventually, she stopped arguing, turned around in her case, crossed her arms and stared at me. I again instructed [appellant] [to] continue casing her mail, which she did after some hesitation. I sat down on a stool, about 15 feet away from her and across the aisle from her to observe her. I wanted to make sure that [appellant] was going to stop eating and I wanted to observe her casing efficiency. After I had been sitting there for 45 seconds, she asked me to stop observing her. [Appellant] threw her oatmeal into the garbage and asked a second time for me to stop observing her. At this point I stood up and start[ed] walking back to my desk. I had not even been sitting down for a full minute at the time when I started walking back to my desk. At 10:40 a.m., as I was walking back to my desk, [appellant] caught up with me and informed me that she had become sick and was going home for the day. I immediately went to another supervisor for advice on what to do. I then had a union steward come back with me to my desk where [appellant] was sitting down and filling out a 3971 form. I instructed her that she would have to bring in documentation stating that she was fully incapacitated to work. [Appellant] then talked with her union steward for a few minutes, and then punched out and went home.”

In a statement dated April 12, 2006, appellant stated that she was casing mail on Saturday, April 8, 2006 at approximately 10:00 a.m. to 10:30 a.m. She noted her supervisor sitting on a stool in the aisle directly behind her, watching her, and holding a clipboard, papers and pen. When [appellant] asked him what he was doing, he responded “in front of everyone, in a raised voice and very intimidating manner [and] very degrading, demeaning [and] disrespectful tone, ‘Just turn around and case your mail [and] tie out [and] go.’” She was shocked by his language and the intensity of his voice. Appellant became upset and could not concentrate on her work. She turned around and told him that she could not work with him watching her. He again told her to case mail and tie out and go in the same manner as before. Appellant began to panic, so she set the mail down and walked away from her case and went to the aisle to see the union president, but he was not there. When she returned to her case, she almost ran into her supervisor, walked around him, and went back to the case. Appellant’s supervisor followed her back to the case and sat directly behind her. Appellant stated that she never had anyone observe her without prior notice. She told her supervisor that she had to leave, at which point he said four times, in a raised, threatening voice in front of everyone that if she left he would give her a letter of warning. Appellant was trying to complete the Form 3971 but was shaking badly. Her supervisor returned with the union steward. Appellant noted that her supervisor continued to follow her and the union steward into the copy room and back to the case. When the union steward stated to her supervisor that he would like to talk to her in private, the supervisor rolled his eyes, let out a heavy sigh and walked away. Appellant noted that she was shaking when she walked to her car. She then went to the emergency room. On May 18, 2006 appellant filed a statement responding to her supervisor’s comments. She stated that she had been eating but, when her supervisor told her to stop eating, she immediately threw her food in the wastebasket without argument. Appellant agreed that she should not have been eating and did not become irritated with his instructions. She stated that she never crossed her arms and stared at him. Appellant denied that she asked him to stop observing her. She noted that she began to panic because she did not know what her supervisor was doing. Appellant indicated that her supervisor never went back to his desk, but he followed her. She noted, “He followed close behind me, yelling at me, threatening me, saying over and over in front of everyone, “If you leave I’m going to give you a letter of warning.”

In a statement dated April 8, 2006, the union president indicated that appellant had left the delivery area at 8:55 a.m. for a scheduled 60-day review. Appellant’s consultation ended at approximately 10:20 a.m. The union president noted that, at 10:45 a.m., a union steward approached him to indicate that appellant went home because she was not feeling well due to mistreatment by her supervisor.

Ramona Walker, a letter carrier, stated that on April 8, 2006 she was casing mail when the supervisor rested himself on a stool directly opposite both her casing area and appellant’s. She initially thought the supervisor was watching her. After a few minutes, appellant told the supervisor that she could not work with him staring at her. He told her to turn around and case her mail or he would give her a letter. Ms. Walker indicated that she was stunned because of how he responded to appellant. She noted that appellant went to see a union steward. Shortly after appellant returned with the union steward, she packed up her belongings and left. Ms. Walker noted that she had never seen a supervisor threaten discipline in this fashion. On May 19, 2006 she noted that she had reviewed the supervisor’s statement and that it was not true. Ms. Walker noted that arguing was involved, that the supervisor walked appellant back to her

case and sat across from the two of them while they worked. She noted that appellant looked quite uncomfortable and that she also became uncomfortable. When appellant told the supervisor that he was making her uncomfortable, he told her to keep working or he would write her up. After a few minutes, she asked to see a steward and left her case and the supervisor followed her up the aisle.

Appellant filed a grievance with regard to this incident.

In a decision dated June 1, 2006, the Office denied appellant's claim. The Office found that appellant did not establish a compensable factor of employment.

On June 21, 2006 appellant requested a hearing.

An employing establishment dispute resolution team issued a June 15, 2006 decision finding that on the morning of April 8, 2006 appellant's supervisor told her to "Turn around and case your mail or I'll give you a letter of warning." The team concluded that, although there was a dispute as to the number of times this was said, it was irrelevant because even once was inappropriate. However, it was determined that the supervisor's statement was an attempt to get appellant to listen to him. The postmaster addressed appellant's supervisor regarding his tactics to gain one's attention. It was decided that the grievance did not involve a violation of the *Joint Statement of Violence in the Workplace*.

Appellant submitted a note by Dr. Housel indicating that appellant was off work and under her care on April 4 and 8, 2006.

A hearing was held on February 22, 2007 at which time appellant reiterated her version of the events of April 8, 2006. At the time of the incident, she did not know her supervisor very well as he had been her supervisor for about one month and that he was fine before that date. Appellant had never seen another incident of discipline being discussed publicly on the workroom floor.

In a March 22, 2007 statement, appellant's supervisor reiterated his original statement. On the day in question, he was performing his duties in a professional manner.

In a statement dated March 21, 2007, the postmaster indicated that, although the supervisor did violate some rules, he basically handled himself well. While sitting on a stool to observe an employee was not common place, it had been done previously and there was nothing wrong with it. The postmaster contended that supervisory observations are not only expected, they are mandatory and quite usual. He noted that the supervisor placed the stool in plain view to observe appellant.

In a decision dated May 9, 2007, the hearing representative found that the supervisor observing appellant on the stool outside of her casing area was a noncompensable factor of employment as it involved an administrative or personnel matter. However, he did find the fact that the supervisor threatened appellant with disciplinary action on the workroom floor to be a compensable factor. She found that appellant had not established that the supervisor yelled at her, lost control or threatened appellant. The hearing representative found that the medical evidence did not establish that appellant sustained an emotional condition arising out of the

accepted factor. She explained that Dr. Housel did not provide a firm diagnosis. The hearing representative modified the June 1, 2006 decision to find that appellant established a compensable factor of employment

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.¹ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.² A claimant must also submit rationalized medical opinion evidence establishing a causal relationship between the claimed condition and the established, compensable work factors.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 the employment but nevertheless does not come within the coverage of workers compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position or to secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specifically assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁴

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.⁵ 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.⁶

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. Unsubstantiated allegations of harassment or discrimination are not determinative of

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

³ *See Bonnie Goodman*, 50 ECAB 139, 141 (1998).

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Charles D. Edwards*, 55 ECAB 258 (2004).

⁶ *Kim Nguyen*, 53 ECAB 127 (2001).

whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations that the harassment occurred with probative and reliable evidence.⁷

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.⁸

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors 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.⁹ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates the 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.¹⁰

ANALYSIS

Appellant attributed her emotional condition to an incident on April 8, 2006 when her supervisor sat on a stool and observed her do her work. The Board notes that the supervisor's monitoring of appellant's work performance is part of his administrative duties and thus not compensable without a showing of error or abuse.¹¹ The postmaster noted such that observation of an employee was part of the duties of the supervisor. Accordingly, his observations of appellant were a part of his administrative and personnel duties and not compensable. Appellant has not established harassment, as there is no evidence to support her allegations that the supervisor lost control of his temper or raised his voice. Her own perceptions of the incident are insufficient to establish that her supervisor acted in a harassing or discriminatory matter.¹²

However, appellant did establish that her supervisor improperly threatened her with disciplinary action while on the workroom floor. Her allegation is supported by the statement of the postmaster who noted that the supervisor violated some rules in this matter. The Office accepted that the supervisor did this on the work floor in front of other employees and acted

⁷ *James E. Norris*, 52 ECAB 93 (2000).

⁸ *Roger Williams*, 42 ECAB 468 (2001).

⁹ *See Norma L. Blank*, 43 ECAB 389-90 (1992).

¹⁰ *Id.*

¹¹ *Kim Nguyen*, *supra* note 6.

¹² *Roger Williams*, *supra* note 8.

abusively with regard this matter.¹³ Accordingly, appellant has established a compensable factor of employment.

However, appellant did not submit medical evidence that showed that this factor, *i.e.*, improperly threatening disciplinary action on the work floor, caused her emotional condition and disability for work. Dr. Housel noted that appellant became upset that her supervisor observed her without telling her and that this intimidated her. She did not make a specific diagnosis of an emotional condition; she merely indicated that, if appellant returned to work, she could exacerbate the symptoms of her stroke and she removed appellant from work for two weeks. However, the fear of a future injury is not compensable under the Act.¹⁴ Dr. Housel did not attribute appellant's condition to the erroneous threat of disciplinary action. As she provided the only medical opinion of record, the evidence is not sufficient to support appellant's claim. Appellant has not established entitlement to compensation under the Act for an emotional condition.

CONCLUSION

The Board finds that appellant has not established an emotional condition arising as a result of incidents that occurred during her federal employment on April 8, 2006, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 9, 2007 is affirmed.

Issued: February 8, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

¹³ *Kim Nguyen, supra* note 6.

¹⁴ *Manuel Gill, 52 ECAB 282 (2001)*.