

of work assignment and, following a meeting regarding this, she left work. In support of her claim, appellant submitted a September 12, 2005 report in which Dr. Lawrence Zinar, a Board-certified psychiatrist, diagnosed depression and post-traumatic stress disorder, advised that she was unable to work, and that she had entered an outpatient, partial hospitalization program. By report dated September 16, 2005, Dr. Indu Sud, a Board-certified psychiatrist, noted that appellant would be in the partial hospitalization program for four to six weeks. Appellant did not return to work.

On October 6, 2005 the Office informed appellant of the type evidence needed to support her claim. By decision dated November 15, 2005, the Office denied the claim. In a statement dated November 6, 2005, received by the Office on November 11, 2005, appellant reported that in July 2005 she had filed an Equal Employment Opportunity (EEO) Commission claim against Mr. Fair and contended that at that time employing establishment management should have transferred her. She stated that she had a preexisting emotional condition and had been on medication since 2002 when she was harassed by a previous supervisor, but that continued harassment and job threats caused additional stress.¹ Appellant also submitted a duty status report with an illegible signature dated December 2, 2005 advising that she could not work.

On December 12, 2005 appellant requested a hearing or teleconference. She submitted additional statements in which she reported a history that in 2001 she was hospitalized due to depression caused by management harassment and was fine after that until Mr. Fair began to harass her in April 2005 which caused flashbacks, anxiety attacks, nightmares and severe depression. Appellant alleged that he inappropriately changed her work assignments and denied her leave requests, that parking was a problem and the identification and bag checks upon entering work caused stress. She stated that on September 5, 2005 Mr. Fair threatened to write her up if she did not perform her assigned duties and that she was under tremendous stress because Legionnaire's disease was in the employing establishment facility's water system. In a November 4, 2005 report, Dr. Sud noted appellant's report that treatment by her supervisor caused flashbacks of abuse by her husband. He diagnosed post-traumatic stress disorder, chronic, severe and major depressive disorder, recurrent, severe, with mood congruent psychotic feature and inter-episode recovery.

Appellant also submitted evidence regarding EEO claims filed on July 9 and 14, 2005. An EEO investigative summary related appellant's complaints including that in May 2005 Mr. Fair asked her to go out with him, that he persistently paged her, that in June 2005 he threatened her employment, and on July 6, 2005 he stared at her in an uncomfortable manner and made inappropriate comments, that on July 15, 2005 Ms. Talley did not follow-up on appellant's complaints about Mr. Fair, that he closely supervised her, and that on September 6, 2005 she was required to work overtime and was only allowed to drink water during official breaks. Regarding September 12, 2005, appellant stated that Mr. Fair changed her work assignment and threatened to reassign her. The summary reported that Mr. Fair denied that he asked appellant out or sexually harassed her. He stated that appellant was paged because she would not be at her assigned position and would be talking excessively with other employees and that she clocked out early. Mr. Fair noted that on September 6, 2005 appellant was working voluntary overtime

¹ There is no indication in the record that appellant had a previously accepted claim for an emotional condition.

when he disciplined her about drinking water on the workroom floor which was against policy. He stated that on September 12, 2005 he explained to appellant that she was the most junior mail handler and had to perform duties other mail handlers had declined, and that she was insubordinate and refused to do her assigned duties. Mr. Fair then stated that he, Ms. Talley, Alvin Harper and appellant met to discuss a reassignment, but that appellant then filed the CA-1. He stated that there was no Legionnaire's disease at the employing establishment and denied treating appellant differently than other employees. The report stated that Ms. Talley denied that appellant reported to her that she was being sexually harassed by Mr. Fair and knew nothing about the complaint until contacted regarding appellant's EEO claim. She stated that no other employees had complained about Mr. Fair. The report continued that Waverlye Vaughn stated that she supervised appellant when Mr. Fair was off and had no specific knowledge other than appellant's report that Mr. Fair looked her up and down. Greg Hembry, a mail handler, noted appellant's report that Mr. Fair asked her out. He stated that appellant was constantly paged and harassed and he felt these were unwarranted. Cynthia Cuthbertson, a mail handler, noted that appellant was frequently paged, and opined that she was a good worker. She reported that, while at appellant's home, she heard a telephone message that Mr. Fair called appellant there about paperwork, and noted that appellant told her she was asked out by Mr. Fair and harassed by him. Lynette Williams, a clerk, stated that she witnessed Mr. Fair staring at appellant, and that he frequently paged her, ordering her to report back to the dock, and that she had heard other women complain about Mr. Fair. Robyn Lord, an analyst for the EEO Commission, stated that she tried to set up an interview with appellant who did not respond to her messages. Angela Nelson, supervisor of the west dock, stated that Mr. Fair, supervisor of the north dock, would page appellant who would be at the west dock talking with a friend instead of performing her work duties at the north dock. She stated that neither appellant nor other employees had complained to her about Mr. Fair. Ronald E. Smith, a mail handler, noted appellant's report that Mr. Fair asked her out. He stated that appellant would be paged because she would be taking too long coming back to work, and opined that Mr. Fair, who played favorites, harassed and discriminated against appellant. Mr. Smith stated that on September 12, 2005 he and another mail handler passed on the assignment of moving rolling stock. The investigative summary advised that on July 14, 2005 a predisciplinary interview was held to discuss appellant's excessive time off her assigned duties and falsification of time, and that Mr. Fair provided copies of disciplinary actions against other employees. The summary reported that testing showed that Legionella bacteria was not detected at the employing establishment and demonstrated that appellant was the junior mail handler on September 12, 2005.

A telephonic hearing was held on March 9, 2006 in which appellant testified that on September 12, 2005 Mr. Fair ordered her to perform various chores and when she complained, Ms. Talley was not sympathetic. She stated that she looked for a shop steward before the meeting but could not locate one, became upset after the meeting, left work, and went to the hospital. Appellant alleged that she was harassed by both Mr. Fair and Ms. Talley, and generally contended that employing establishment management should have transferred her or Mr. Fair. She related that she had filed two sexual harassment cases against Mr. Fair but final decisions regarding these had not been issued, and she did not know if grievances had been filed. Appellant stated that she was still in a partial hospitalization program. The hearing representative explained that appellant needed to submit corroborative statements, and she was given 30 days to provide additional evidence.

By decision dated May 30, 2006, the hearing representative remanded the case to the Office for further development. The Office was to obtain a response from the employing establishment regarding appellant's allegations which submitted statements dated June 16, 2006. Mr. Fair again described the events of September 12, 2005, stating that the meeting was held to discuss appellant's work performance and excessive time away from her assigned duties. He stated that a change in supervisors was suggested but that appellant refused, left and filed the instant claim. Mr. Fair denied that he ever sexually harassed her. Ms. Talley reported that the meeting on September 12, 2005 was held at appellant's request. She stated that she suggested a change in work location but appellant refused and filed this claim. Ms. Talley reiterated that she did not recall appellant telling her anything about Mr. Fair sexually harassing her. Mr. Harper stated that the purpose of the meeting was to inform appellant that she was to be reassigned pending an investigation of the claimed sexual harassment.

By decision dated June 29, 2007, the Office found that, as appellant had not established a compensable factor of employment, she did not sustain an employment injury in the performance of duty.²

LEGAL PRECEDENT

To establish her claim that she sustained an emotional 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 stress-related condition.³

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*,⁴ 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.⁵ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁶ 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

² The Board notes that, as appellant contended that her condition was caused by work factors that extended over a period longer than a single workday or shift, the Office properly adjudicated the case as an occupational disease claim. 20 C.F.R. § 10.5(q).

³ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁴ 28 ECAB 125 (1976).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ See *Robert W. Johns*, 51 ECAB 137 (1999).

assignment or other requirement imposed by the employing establishment or by the nature of the work.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

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.⁹ 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.¹⁰

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. 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. Where an employee alleges harassment and cites specific incidents, the Office or other appropriate fact finder must determine the truth of the allegations. The issue is not whether the claimant has established harassment or discrimination under EEO Commission standards. 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.¹¹

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish that she sustained an employment-related emotional condition. She initially alleged that she suffered stress on September 12, 2005 when she disagreed with job assignments given to her by her supervisor Mr. Fair and during a meeting held later that day. Administrative and personnel matters are not considered factors of employment absent error or abuse by the employing establishment,¹² and an employee's complaints concerning the manner in which a supervisor performs his or her duties as a supervisor or the manner in which a supervisor exercises

⁷ *Lillian Cutler*, *supra* note 4.

⁸ *Roger Williams*, 52 ECAB 468 (2001).

⁹ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁰ *Kim Nguyen*, 53 ECAB 127 (2001).

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

¹² *Kim Nguyen*, *supra* note 10.

supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act.¹³ Although the handling of disciplinary actions, evaluations and leave requests, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹⁴ Mr. Fair explained that appellant was assigned specific duties on September 12, 2005 because two mail handlers with more seniority had declined the specific jobs. When appellant, the most junior mail handler there, refused to perform the assignment, Ms. Talley suggested a reassignment. This was discussed at the meeting held that day. Assigning work is an administrative function of a supervisor, and appellant submitted no evidence to show that Mr. Fair's assignment on September 12, 2005 or at any other time was erroneous or abusive. An employee's frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable.¹⁵ This was thus not a compensable factor of employment.¹⁶

The Board also finds that Ms. Talley acted within her supervisory discretion by calling a meeting on September 12, 2005, which was at appellant's request, to discuss appellant's work assignments. A claimant's own feeling or perception that a form of criticism by or disagreement with a supervisor is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under the Act absent evidence that the interaction was, in fact, erroneous or abusive. This principle recognizes that a supervisor or manager must be allowed to perform his or her duties and that, in performing such duties, employees will at times dislike the actions taken.¹⁷ Ms. Talley, Mr. Fair and Mr. Harper explained that the meeting was held to discuss reassigning appellant to another supervisor while her EEO claims were being investigated. Appellant refused the reassignment and stopped work that day. There is no evidence of record to show error on the part of the employing establishment in conducting this meeting. Appellant therefore did not establish this as compensable.¹⁸

Appellant also generally alleged that she was improperly denied leave. She, however, submitted no evidence regarding specific denials or to establish that the employing establishment committed error or abuse. Appellant also alleged that Mr. Fair paged her on numerous occasions and monitored her work closely. Mr. Fair stated that he only paged appellant when she was away from her workstation, and the monitoring of activities of work is an administrative function of the employer.¹⁹ As there is no evidence of error or abuse in these administrative matters, they would not be compensable factors of employment.²⁰

¹³ *Marguerite J. Toland*, 52 ECAB 294 (2001).

¹⁴ *Cynthia R. Harrill*, 55 ECAB 522 (2004).

¹⁵ *Ronald K. Jablanski*, 56 ECAB 616 (2005).

¹⁶ *See Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁷ *See Michael A. Deas*, 53 ECAB 208 (2001).

¹⁸ *Marguerite J. Toland*, *supra* note 13.

¹⁹ *Phillip L. Barnes*, 55 ECAB 426 (2004).

²⁰ *Id.*

Regarding appellant's allegation that she was sexually harassed by Mr. Fair, while she submitted evidence that she had filed EEO claims in that regard, grievances and/or EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.²¹ Where an employee alleges harassment and cites specific incidents, the Office or other appropriate fact finder must determine the truth of the allegations. The issue is not whether the claimant has established harassment or discrimination under EEO Commission standards. Rather, the issue is whether the claimant has submitted sufficient evidence to establish a factual basis for the claim under the Act by supporting his or her allegations with probative and reliable evidence.²² Appellant submitted no evidence that included a finding of harassment or other probative evidence sufficient to establish a compensable work factor in this regard.²³ While she submitted witness statements, these were insufficient to establish harassment as they either only noted her description of the claimed harassment did not describe with specificity instances of harassment. Mr. Fair denied that he harassed appellant and explained that it was against policy to drink water on the workroom floor. The telephone call made to appellant's home was regarding paperwork, and testing showed that *Legionella's* bacteria was not present at the employing establishment. An employee's allegation that she was harassed or discriminated against is not determinative of whether or not the alleged incident of harassment or discrimination occurred.²⁴ The employing establishment denied that appellant was subjected to harassment or discrimination, and the EEO Commission made a finding of no discrimination or retaliation. The Board therefore finds that appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by employing establishment management.²⁵

Finally, the Board finds that appellant's contentions that finding parking at the employing establishment and having to provide identification and have her bags checked upon entering work are not compensable. Not every situation that has some connection to employment is considered a compensable work factor,²⁶ and these activities would not arise in the performance of duty as they bear no relation to appellant's daily work activities or specially assigned duties.²⁷ As appellant did not submit sufficient probative evidence to establish a compensable factor of employment, she failed to establish that she sustained an emotional condition in the performance of duty.²⁸

²¹ *Charles D. Edwards*, *supra* note 9.

²² *Id.*

²³ *Pamela D. Casey*, 57 ECAB ____ (Docket No. 05-1768, issued December 13, 2005).

²⁴ *See Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

²⁵ *See James E. Norris*, *supra* note 11.

²⁶ *Andrew Wolfgang-Masters*, 56 ECAB 411 (2005).

²⁷ *See Janet L. Terry*, 53 ECAB 570 (2002).

²⁸ Because appellant failed to establish a compensable employment factor, it was not necessary to consider the medical evidence. *Marlon Vera*, 54 ECAB 834 (2003).

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.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 29, 2007 be affirmed.

Issued: February 13, 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