

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**G.G., Appellant**

**and**

**U.S. POSTAL SERVICE, CIVIC CENTER POST  
OFFICE, San Francisco, CA, Employer**

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**Docket No. 07-999  
Issued: January 28, 2008**

*Appearances:*  
*Sylvia R. Johnson, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 2, 2007 appellant's representative filed a timely appeal from a March 2, 2006 decision of an Office of Workers' Compensation Programs' hearing representative affirming the denial of her emotional condition claims. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

**ISSUE -- File Nos. 13-2121319 & 13-2123978**

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

**FACTUAL HISTORY -- File No. 13-2121319**

On January 10, 2005 appellant, then a 46-year-old window and distribution clerk, filed a traumatic injury claim alleging that she sustained adjustment disorder with anxiety as a result of a coworker pushing her into a door while he opened it and shoving her with his shoulder on December 14, 2004.<sup>1</sup> Specifically, she stated that on December 14, 2004 Gary K. Fong, her

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<sup>1</sup> The Office assigned File No. 13-2121319.

supervisor, requested that she come into his office for a discussion. Mr. Fong received a telephone call and appellant left to go to the restroom. While she was attempting to close the door on her return, Mario Palomo, a coworker, “forced the door back open pushing [her] with the door.” After entering the office, appellant alleged that Mr. Palomo proceeded to shove her with his shoulder. She also alleged that this was “a culmination of threatening events at work” by Mr. Palomo which started on November 24, 2004 when Mr. Palomo backed his car into her parked car in the employee’s parking lot.

The employing establishment controverted the claim. Mr. Fong stated that he had investigated appellant’s allegations of threats by Mr. Palomo and found that there was no evidence to support appellant’s allegation. On December 14, 2004 he stated that he called appellant into his office to discuss her calling the police department. Mr. Fong noted that she left while he was on the telephone and that Mr. Palomo attempted to come into his office at the same time that appellant returned. He indicated that appellant “blocked the door and attempted to close it, there was no contact between the two employees.” “Appellant then called the police after the incident and the police “determined it was just incidental contact.” Mr. Palomo was temporarily reassigned to provide a cooling off period.

In a January 6, 2005 report, Dr. Robert Avenson, Ph.D., an licensed psychologist, stated that appellant was “obviously emotionally distraught” due to her feeling unsafe at work. He noted November 23, 2004 as the beginning incident. Dr. Avenson stated that appellant experienced disturbing symptoms as a result of events that have continued to occur regarding this incident.” Appellant states that she feels unsafe at work as “the perpetrator of the incident continues to work there” and he has physically and verbally threatened her.

In a letter dated January 24, 2005, the Office informed appellant that the evidence was insufficient to support her claim. It also informed her that as she had filed a traumatic injury claim she must submit factual and medical evidence showing the events that occurred on December 14, 2005 which caused her condition. The Office then informed her of the type of medical and factual evidence required to support her claim.

On January 25, 2005 Dr. Avenson diagnosed adjustment disorder with anxiety. Under injury history, he noted that on November 24, 2004 appellant saw Mr. Palomo back into her car. Mr. Palomo refused to pay for repairing the damages at which point appellant called the police. The police required Mr. Palomo to provide his insurance information to appellant. On or about December 1, 2004 Mr. Palomo “came toward [appellant] and threw his shoulder at her,” which was when appellant “became very fearful of Mr. Palomo.” He allegedly took a picture of appellant in her car the following morning around 6:15 a.m. and swore at her as he passed her. Appellant felt threatened and called her supervisors and the police. Following this incident she “was afraid to work alone with Mr. Palomo” and felt fearful when seeing his car early in the morning. Appellant informed her supervisor and the postal inspector of her fears, but received no help. On December 14, 2004 she saw Mr. Palomo’s car as she was coming to work and “called the police to escort her into work.” When appellant enter her supervisor’s office, “Mr. Palomo pushed the door open, pushing her along with it” and then shoved his shoulder at her. Her supervisor, at appellant’s request for help, told Mr. Palomo to leave. Appellant related feeling chest pains, shaky, shortness of breath and nausea for the remainder of the day. Mr. Palomo was transferred, appellant returned to work on December 16, 2004 and worked until

December 26, 2004. On January 4, 2004 during her vacation, appellant went to pick up her mail and when she saw Mr. Palomo's car she began to cry, became fearful and was physically shaking. Dr. Avenson attributed appellant's condition to the perceived threats from Mr. Palomo after he backed his car into hers. He noted that appellant "perceived Mr. Palomo acting in a threatening manner as he attempted to bump into her with his shoulder, used profanity at her and did physically shove and bump into her in front of their supervisor." Dr. Avenson recommended that appellant be provided a work situation with no possibility of contact with Mr. Palomo and that she could not work until that condition had been met.

In a January 25, 2005 attending physician's report (Form CA-20), Dr. Avenson noted December 14, 2004 as the date of injury and diagnosed adjustment disorder with anxiety. He attributed the condition to the incidents with Mr. Palomo beginning with his car hitting her car and ending with his physically bumping into her in front of their supervisor. Dr. Avenson stated that appellant could not return to work until she is provided a workplace where she does not encounter Mr. Palomo.

On February 14, 2005 the Office received several witness statements from coworkers submitted by the employing establishment. In a December 15, 2004 statement, Josephine Leung reported an interview with Alvarro Matus who reported that there was no verbal and physical contact. Cristina dela Rosa, in an undated statement, stated that she saw no threats by Mr. Palomo towards appellant on December 15, 2004. In a December 15, 2004 statement, Ms. Leung stated that she saw no verbal threats or loud talking by Mr. Palomo towards appellant over the past few weeks. Salud B. Lacanlale, in a December 14, 2004 statement, related that she was unable to comment on the incident between appellant and Mr. Palomo as she had not been present at the time of the argument or incident.

In a February 10, 2005 attending physician's report, Dr. Avenson noted December 14, 2004 as the date of injury and diagnosed adjustment disorder with anxiety. He attributed the condition to the incidents with Mr. Palomo beginning with his car hitting her car and ending with his physically bumping into her in front of their supervisor. Dr. Avenson stated that appellant could not return to work until she is provided a workplace where she does not encounter Mr. Palomo.

On March 1, 2005 the Office received additional medical and factual evidence from both appellant and the employing establishment.

In a December 3, 2004 statement, which was sent on January 19, 2005, Mr. Palomo related that appellant wrongfully accused him of being a thief on September 20, 2004 and that he left feeling offended following her stating that she had no proof that he had stolen an exercise bicycle seat. He related that following this incident more problems arose with appellant telling him not to park in back of or in front of her parking space. On November 24, 2004 Mr. Palomo stated that he accidentally and barely touched her car while he was backing out. Appellant allegedly yelled at him, he apologized, her car was examined "and nothing happened and that was the end of it." On November 27, 2004 Mr. Palomo alleged that appellant was waiting for him in the rain and that she verbally assaulted him and accused him of scratching her license plate frame on November 24, 2004. At this point appellant demanded that he pay for the damages and that he said to wait until the sun came out. Once the sun came out, Mr. Palomo

went out to check the damage on the license frame and took a photo. Appellant then called the police, who got his insurance information and gave it to appellant. He related receiving a call from his insurance company on November 29, 2004 regarding appellant's accident report. Mr. Palomo stated that appellant said good morning to him sarcastically on November 30, 2004, that he did not respond and had not spoken to appellant since November 27, 2004. He related that his insurance company paid appellant "the amount of \$73.50 for this fraudulent claim," but appellant continued to be unhappy and began to daily call the police department "to falsely accused (sic) [him] of using the f... word!" Mr. Palomo related having a discussion with Mr. Fong regarding the payment of the insurance money and Mr. Fong stating that appellant "was not a very *logical person*." (Emphasis in the original). Mr. Palomo noted that appellant and he had a meeting with Mr. Fong at which he was told to stay away from appellant, which he did. The following day appellant allegedly called the police on him. Mr. Palomo stated as a result of appellant's constantly calling the police on him, he felt he was on the edge of a nervous breakdown. He noted that he went to see Mr. Fong when he noticed the door was open, but appellant "jumped in front of [him] and slammed the door in [his] face" as he was about to enter. Mr. Palomo related that he then "protected [his] body with the right side of [his] upper arm." At this point appellant was screaming and Mr. Fong told him to leave. After she left, Mr. Palomo returned to Mr. Fong's office stating that he had medical papers to give him from his doctor stating he was not to be near appellant.

In a January 19, 2005 report, Dr. Avenson reported seeing appellant for a November 23, 2004 incident. He concluded that appellant was emotionally distraught and "was experiencing disturbing symptoms as a result of events that have continued to occur regarding this incident."

By decision dated March 3, 2005, the Office denied appellant's claim on the grounds that she had not established fact of injury. It noted that appellant had also filed an occupational disease claim regarding several incidents with Mr. Palomo including the December 14, 2004 incident. The Office noted that as appellant filed a traumatic injury claim, the focus would be on the incident which occurred on December 14, 2004. The Office accepted that Mr. Palomo and appellant had contact on December 14, 2004, but found "the manner in which you allege the incident took place is not accepted as factual." It noted that appellant's version of the incident was not supported by the evidence. Four coworkers reported no argument or confrontation was witnessed, "[t]he police reportedly determined this to be incidental contact," and Mr. Fong provided a different version of the event. Moreover, Mr. Palomo's statement provided a contradictory version of how the incident occurred. Based on the evidence the Office found that if appellant had not blocked the door while both appellant and Mr. Palomo were entering the room there would have been no physical contact.

On March 30, 2005 appellant's representative requested an oral hearing before an Office hearing representative, which was held on December 20, 2005.<sup>2</sup>

By decision dated March 2, 2006, the Office hearing representative modified the March 3, 2005 Office decision finding that based upon appellant's statements and testimony regarding "a series of incidents occurring over more than one work shift." The hearing

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<sup>2</sup> The record contains evidence from another claimant.

representative concluded, therefore, that appellant's traumatic injury claim "would more appropriately be considered an occupational disease injury rather than a traumatic injury." The hearing representative affirmed the March 3, 2005 Office decision as modified.

**FACTUAL HISTORY -- File No. 13-2123978**

On January 21, 2005 appellant filed an occupational disease claim alleging that on November 24, 2005 she first realized her adjustment disorder with anxiety was employment related.<sup>3</sup> In an attached statement, she attributed her condition to a number of incidents occurring during the period November 24 to January 5, 2005 involving Mr. Palomo, a coworker. The first incident occurred on November 24, 2004 at approximately 12:22 p.m. when Mr. Palomo backed into her parked car. Appellant stated that she complained to Mr. Palomo regarding the damage to her car but he ignored her and left. Following Mr. Palomo's departure, she then went to talk with Mr. Matus, Mr. Palomo's friend and they both went to inspect the damage to her license plate. On November 27, 2004 appellant spoke with Mr. Palomo about the damage to her license plate and requested that he replace it. Mr. Palomo allegedly refused appellant's request including her request for his insurance information. Appellant then called the police as instructed by her insurance company. The police discussed the incident with Mr. Palomo and he provided his insurance information to them. Appellant stated that as a result of the stress from this incident she left work early. Mr. Palomo then reported the incident to his insurance company and appellant was paid \$70.30 for the damage caused to her car. On December 1, 2004 appellant alleged that Mr. Palomo "walked past me at work and came toward me throwing his shoulder out and trying to hit [her]" when she jumped out of the way. She alleged that on the following day, December 2, 2004, Mr. Palomo parked behind her at 6:15 a.m., went into work, returned a few minutes later and started to take photographs of the rear end of her car. Mr. Palomo also allegedly walked past appellant and swore at her. Appellant then called Mr. Fong, her supervisor, regarding this incident. She stated that she was hesitant about being alone in the employing establishment with Mr. Palomo because she opens the employing establishment early and it was dark in the morning during the winter months. After talking with Mr. Fong she tried to call her second level supervisor, Larry Frost, who was unavailable so she then called the police. The police arrived and talked with appellant, Mr. Palomo and Mr. Matus. Appellant was then escorted by the police to her car who watched her drive off when she left that day. She alleged that she returned to work on December 4, 2004 and went into Mr. Fong's office for privacy. As appellant was shutting the door, Mr. Palomo allegedly burst into the office while she was talking with her representative. She stated that she informed her representative on the speaker telephone that Mr. Palomo was in the room. At that point Mr. Palomo left. On December 7, 2004 appellant noted that Mr. Palomo's car was in the parking lot and she felt afraid so she called her supervisor, who did not respond. She stated that she "waited for [six] hours then went home." The next incident occurred on December 10, 2004 when appellant saw the entrance to the employee parking lot was blocked by two mattresses and Mr. Palomo's car was parked on the street. "She called the postal police who removed the mattresses and walked her into work. On December 14, 2004 appellant stated that she requested the police escort her into work when she arrived at 6:00 a.m. They escorted her in and talked with Mr. Palomo. Later that morning, appellant's supervisor requested that she come into his

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<sup>3</sup> The Office assigned File No. 13-2123978.

office for a discussion. Mr. Fong received a telephone call and appellant left to go to the restroom. While appellant was attempting to close the door on her return, Mr. Palomo “followed [her] and pushed the door open and [her] with it.” Mr. Palomo then allegedly shoved his right shoulder at appellant. As a result of this incident appellant related feeling a stabbing pain in her neck, became short of breath and nauseous and went home sick. Mr. Fong then reassigned Mr. Palomo to another work area so appellant returned to work on December 16, 2004. Appellant noted that she was on vacation for the period December 26, 2004 to January 7, 2005, but came into the employing establishment on January 5, 2005. She stated that she asked Mr. Fong to forward her mail from her post office box as her mail had been mishandled in the past. Mr. Fong refused her request even though appellant alleged that he has done this for “customers all the time.” Upon arriving at the employing establishment on January 4, 2005 to pick up her mail, she saw appellant’s car parked outside. At this point appellant alleged that she “broke down and cried” and “shook all over.”

The employing establishment submitted statements by Ms. Lacanlale, Mr. Matus, Ms. dela Rosa and Ms. Leung, coworkers regarding the December 14, 2004 alleged incident with Mr. Palomo.

In a January 19, 2005 report, Dr. Avenson noted that an employment incident occurred about November 21, 2004 between appellant and Mr. Palomo. He reported that appellant felt unsafe at work with Mr. Palomo present and continued to have anxiety as a result of her fear of Mr. Palomo. Dr. Avenson indicated that he would release appellant to return to work when the employing establishment provided her with a safe working environment that would prevent contact with Mr. Palomo.

In a letter dated February 16, 2005, the employing establishment informed the Office that Mr. Palomo had been temporarily reassigned to another workstation and that there was no abusive work environment.

On March 14 and 15, 2005 the Office received additional evidence including reports by Dr. Avenson, a statement by appellant and letters dated December 9 and 14, 2004 from Bob Williamson, General President, American Postal Workers Union and police reports responding to appellant’s calls on December 2 and 14, 2004 regarding Mr. Palomo.

In a December 2, 2004 incident report, L. Mitchell, a police officer, reported being called by appellant for a suspicious occurrence with Mr. Palomo as the suspect. He noted that appellant called the police because Mr. Palomo allegedly swore at her as he went by. Mr. Palomo denied yelling at appellant and stated that he would avoid her. In a follow up incident the police responded to “an alleged ongoing workplace disagreement.” Appellant stated that Mr. Palomo was angry at her and yelled at her and that she was afraid of him. Mr. Palomo denied appellant’s allegations. The police reported interviewing Mr. Matus who works with Mr. Palomo. Mr. Matus stated: “[appellant] and Mr. Palomo do not like each other but that he has not seen [Mr.] Palomo (sic) verbally abuse [her].” A police incident report noted that appellant alleged that Mr. Palomo pushed her that day, December 14, 2004.

Appellant provided a statement for the police regarding the December 2, 2004 incident. She related that around 6:15 a.m. she was in her car when Mr. Palomo parked behind her.

Mr. Palomo went into the employing establishment and shortly returned and started taking pictures of her. He also swore at her. Appellant noted that she then called her supervisor, Mr. Fong, and the police to report the incident.

In a December 9, 2004 letter, Mr. Williamson wrote to Mr. Fong regarding the “very tense and unhealthy situation” between appellant and Mr. Palomo. He noted that he agreed with appellant that this was “not a conflict of a minor auto[mobile] mishap or insurance claim,” but that was when Mr. Palomo’s aggression began. Mr. Williamson noted that Mr. Palomo’s credibility was at issue as he “at first denied driving his vehicle into [appellant]’s parked vehicle” and only agreed to provide insurance information after a policeman had reviewed the video of the incident. Next, Mr. Williamson stated that appellant “has experienced a very escalated level of hostility from Mr. Palomo on subsequent days” including an incident on December 1, 2004 when he “came right towards her and threw out his shoulder towards her, missing her only because she was alert enough to dodge contact.” Mr. Williamson then noted that Mr. Palomo took a picture of appellant sitting in her car the following day and swore at her. As a result of these incidents, he stated that appellant was “now afraid to step out of her car until she can assure he is not in the vicinity.” In concluding, Mr. Williamson stated that appellant and others were aware “that Mr. Palomo has a lengthy history of ‘anger management’ and self-control problems.” He then recommended placing Mr. Palomo in a different location from appellant.

In a December 14, 2004 letter, Mr. Williamson detailed the December 14, 2004 incident in Mr. Fong’s office. He noted that appellant saw Mr. Palomo following her into Mr. Fong’s office and that she had her hand on the door. Appellant informed Mr. Williamson that “Mr. Palomo forced his way through the door and, with his shoulder pushed [her] out of his way.” Mr. Williamson reiterated that Mr. Palomo needs to be temporarily moved to a different location from appellant.

In a January 25, 2005 report, Dr. Avenson diagnosed adjustment disorder with anxiety. Under injury history, he noted that on November 24, 2004 appellant saw Mr. Palomo back into her car. Mr. Palomo refused to pay for repairing the damages at which point appellant called the police, who got him to provide his insurance information to appellant. On or about December 1, 2004 he “came toward [appellant] and threw his shoulder at her,” which was when she “became very fearful of [him].” Mr. Palomo allegedly took a picture of appellant in her car the following morning around 6:15 a.m. and swore at her as he passed her. Appellant felt threatened and called her supervisor and the police. Following this incident she “was afraid to work alone with Mr. Palomo” and felt fearful when seeing his car early in the morning. Appellant informed her supervisor and the postal inspector of her fears, but received no help. On December 14, 2004 she saw Mr. Palomo’s car as she was coming to work and “called the police to escort her into work.” While entering her supervisor’s office, “Mr. Palomo pushed the door open, pushing her along with it” and then shoved his shoulder at her. Her supervisor, at appellant’s request for help, told Mr. Palomo to leave. Appellant related feeling chest pains, shaky, shortness of breath and nausea for the remainder of the day. Mr. Palomo was transferred, appellant returned to work on December 16, 2004 and worked until December 26, 2004. On January 4, 2004 during her vacation, appellant went to pick up her mail and when she saw Mr. Palomo’s car she began crying, became fearful and was physically shaking. Dr. Avenson attributed appellant’s condition to the perceived threats from Mr. Palomo after he backed his car into hers. He noted that appellant “perceived Mr. Palomo acting in a threatening manner as he attempted to bump into

her with his shoulder, used profanity at her and did physically shove and bump into her in front of their supervisor.” Dr. Avenson recommended appellant be provided a work situation with no possibility of contact with Mr. Palomo and that she could not work until that condition had been met.

In a February 10, 2005 attending physician’s report Form CA-20, Dr. Avenson noted December 14, 2004 as the date of injury and diagnosed adjustment disorder with anxiety. He attributed the condition to the incidents with Mr. Palomo beginning with his car hitting appellant’s car and ending with his physically bumping into her in front of their supervisor. Dr. Avenson stated that appellant could not return to work until she is provided a workplace where she does not encounter Mr. Palomo.

On March 15, 2005 Dr. Avenson reviewed and approved a temporary limited-duty position and released her to return to work.

By decision dated July 12, 2005, the Office denied appellant’s January 21, 2005 claim.

In a letter dated July 15, 2005, appellant’s representative requested an oral hearing before an Office hearing representative which was held on December 20, 2005. At the hearing appellant submitted pictures, a copy of a telephone bill and a copy of insurance claim. The hearing representative heard testimony from appellant, Mr. Williamson and Mr. Fong. At the conclusion of the hearing, the hearing representative stated that she would forward a copy of Mr. Palomo’s statement to appellant’s representative for her review.

On November 17, 2005 the Office received a report dated December 3, 2004, which was sent on January 19, 2005 by Mr. Palomo.

In a report dated February 17, 2005, received by the Office on February 23, 2006, Dr. David Rice, PhD, licensed psychologist diagnosed work-related adjustment disorder with anxiety based upon a review of the medical evidence, the Office decisions and hearing transcript. Dr. Rice reported November 24, 2004 was the beginning of the incidents involving appellant’s coworkers. He attributed her condition to Mr. Palomo’s behavior towards appellant beginning November 24, 2004. Dr. Rice indicated his agreement with Dr. Avenson that appellant’s condition had been caused by her employment.

By decision dated March 2, 2006, the Office hearing representative affirmed the July 12, 2005 denial of appellant’s January 21, 2005 occupational disease claim.

**LEGAL PRECEDENT -- File Nos. 13-2121319 & 13-2123978**

To establish that appellant sustained an emotional condition causally related to factors of her federal employment, she must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric



disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.<sup>4</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.<sup>5</sup> Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> An employee's frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable.<sup>10</sup> Similarly, an employee's dissatisfaction with perceived poor management is not compensable under the Federal Employees' Compensation Act.<sup>11</sup>

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<sup>4</sup> See *V.W.*, 58 ECAB \_\_\_\_ (Docket No. 07-234, issued March 22, 2007); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>5</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>6</sup> See *Kathleen D. Walker*, *supra* note 4.

<sup>7</sup> See *Norma L. Blank*, 43 ECAB 384 (1992).

<sup>8</sup> *Felix Flecha*, 52 ECAB 268 (2001).

<sup>9</sup> *Kim Nguyen*, 53 ECAB 127 (2001).

<sup>10</sup> *Barbara J. Latham*, 53 ECAB 316 (2002).

<sup>11</sup> *Id.*

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the Acts alleged or implicated by the employee did, in fact, occur.<sup>12</sup> Mere perceptions of harassment or discrimination are not compensable under the Act.<sup>13</sup>

**ANALYSIS -- File No. 13-2121319**

On appeal, appellant's representative contends that the Office hearing representative denied her the opportunity to identify and clarify evidence in the record. She alleged that the hearing representative failed to send her a copy of Mr. Palomo's statement as requested at the hearing. Next, appellant contends that the hearing representative improperly denied her request to question Mr. Fong regarding the employee statements as they appeared to be written by the same person. The Board finds that appellant has not submitted any evidence supporting her allegation that Mr. Fong wrote the witness statements. As to appellant's allegation regarding Mr. Palomo's statement, the hearing representative stated that a copy of the statement would be sent to her. There is no evidence that the statement was not mailed. Moreover, the hearing representative did not base her findings on Mr. Palomo's statement. She relied upon Mr. Fong's statement, as a witness to the December 14, 2004 incident. In addition appellant submitted no witness statements supporting her allegations regarding Mr. Palomo. Thus, the Board finds appellant's arguments regarding the sending of Mr. Palomo's statement and the allegation regarding the witness statements unpersuasive.

The Board notes that the Office hearing representative properly adjudicated appellant's December 14, 2004 traumatic injury claim, which she filed on January 10, 2005, as an occupational illness claim. In an addendum to her traumatic injury claim form, appellant alleged that the December 14, 2004 incident was "a culmination of threatening incidents going back to November 24, 2004." Moreover, the evidence submitted by appellant and her testimony support the finding that she was alleging a series of incidents occurring over more than one work shift. Thus, her claim is that of an occupational illness and not a traumatic injury.<sup>14</sup> Therefore, the question to be resolved is whether appellant has established a compensable factor of employment.

On January 10, 2005 appellant, then a 46-year-old window and distribution clerk, filed a traumatic injury claim alleging that she sustained adjustment disorder with anxiety as a result of a coworker pushing her into a door while he opened it and shoving her with his shoulder on December 14, 2004.<sup>15</sup> Specifically, she stated that on December 14, 2004 Mr. Fong, her supervisor, requested that she come into his office for a discussion. Mr. Fong received a telephone call and appellant left to go to the restroom. While appellant was attempting to close the door on her return, Mr. Palomo, a coworker, "forced the door back open pushing [her] with the door." After entering the office, she alleged that Mr. Palomo proceeded to shove her with his

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<sup>12</sup> *V.W.*, *supra* note 4.

<sup>13</sup> *L.S.*, 58 ECAB \_\_\_ (Docket No. 06-1808, issued December 29, 2006); *Reco Roncaglione*, 52 ECAB 454 (2001).

<sup>14</sup> *See* 20 C.F.R. § 10.5(ee) (traumatic injury defined); 20 C.F.R. § 10.5(q) (occupational disease defined).

<sup>15</sup> This was assigned file number 13-2121319.

shoulder. Appellant also alleged that this was “a culmination of threatening events at work” by Mr. Palomo which started on November 24, 2004 when he backed his car into her parked car in the employee’s parking lot.

Appellant attributed her emotional condition to a number of incidents involving Mr. Palomo which began on November 24, 2004 when he backed his car into her car in the employee parking lot and subsequent threatening behavior by Mr. Palomo. There is no evidence that she was in the car at the time Mr. Palomo backed into her car. Moreover, appellant has not shown how Mr. Palomo backing into her car and her reaction to the reimbursement she received from the insurance company was related to her employment duties. Thus, the Board finds that appellant has not established a compensable factor.

Appellant alleged that following the November 24, 2004 incident there were a number of “threatening events at work.” With regard to emotional condition claims arising under the Act, the term harassment as applied by the Board is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by coworkers. To the extent that disputes and incidents alleged as constituting harassment by coworkers are established as occurring and arising from appellant’s performance of her regular duties, these could constitute a compensable employment factor.<sup>16</sup> However, for harassment and 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.<sup>17</sup> In this case, appellant has not submitted any evidence or identified specific incidents of threatening to establish her claim.<sup>18</sup> Her unsupported allegations alone are insufficient to establish a factual basis for her claim.<sup>19</sup> The Board finds that appellant has not established a compensable factor of employment under the Act with respect to his allegations of threatening behavior by Mr. Palomo following the November 24, 2004 incident.

Appellant attributed her emotional condition to an incident which occurred on December 14, 2004 when her supervisor requested she come into his office for a discussion. While she was attempting to close the door on her return, Mr. Palomo “followed [her] and pushed the door open and [her] with it.” Mr. Palomo then allegedly shoved his shoulder at appellant. Mr. Fong initially stated that Mr. Palomo attempted to enter his office at the same time as appellant, but she blocked the door and tried to close it and there was no contact between the two employees. The evidence supports that appellant and Mr. Palomo were both attempting to enter Mr. Fong’s office at the same time and that she blocked the door and attempted to shut it on Mr. Palomo.

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<sup>16</sup> See *Charles D. Edwards*, 55 ECAB 259 (2004).

<sup>17</sup> *Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>18</sup> See *Joel Parker, Jr.*, 43 ECAB 220 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

<sup>19</sup> See *Charles E. McAndrews*, 55 ECAB 711 (2004).

Based on the evidence of record, appellant has not substantiated a compensable work factor. Since she has not established a compensable work factor, the Board will not address the medical evidence.<sup>20</sup>

**CONCLUSION -- File No. 13-2121319**

The Board finds that appellant has not established an emotional condition in the performance of duty for the claim filed on January 10, 2005.

**ANALYSIS -- File No. 13-2123978**

Appellant alleged a number of incidents involving Mr. Palomo in December 2004. To the extent that she generally alleged verbal or physical threats by Mr. Palomo in December 2004, the Board has recognized the compensability of physical threats or verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.<sup>21</sup> On December 1, 2004 appellant alleged that Mr. Palomo “walked past me at work and came toward me throwing his shoulder out and trying to hit [her]” when she jumped out of the way. Mr. Williamson in his statement reiterates appellant’s version of the event. He, however, was not present and did not witness the alleged event. Mr. Williamson was merely restating appellant’s version of the events. Appellant submitted no witness statements or other factual evidence to substantiate this allegation. As she has not submitted any evidence supporting her allegation of verbal abuse on December 1, 2004, she has not established a compensable factor of employment.

Appellant also alleged that Mr. Palomo on the following day, December 2, 2004, parked behind her at 6:15 a.m., went into work, returned a few minutes later and started to take pictures of the rear end of her car. He also allegedly walked past appellant and swore at her. At the hearing appellant submitted a copy of a picture she allegedly took of him taking a picture of her. The Board notes that while appellant stated that the picture she took was of Mr. Palomo taking a picture of her, no person can be identified in the picture. The picture shows the back of a car with a white dot in the middle of the back window. Assuming arguendo, that the picture in question does show Mr. Palomo photographing appellant in her car, she has not shown how this is related to the performance of her work duties. He allegedly swore at her as he passed her. Appellant then called Mr. Fong, her supervisor, regarding this incident. After talking to Mr. Fong she tried to call her second level supervisor, Mr. Frost, who was unavailable so she called the police, who arrived and talked with appellant, Mr. Palomo and Mr. Matus. Appellant’s mere perception that Mr. Palomo’s taking a picture was threatening behavior did not establish that a threat was made against her.<sup>22</sup> She did not submit any witness statements to support her allegation. While appellant did call the police, there is no report by the police

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<sup>20</sup> *D.L.*, 58 ECAB \_\_\_\_ (Docket No. 06-2018, issued December 12, 2006); *T.G.*, 58 ECAB \_\_\_\_ (Docket No. 06-1411, issued November 28, 2006); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>21</sup> *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>22</sup> *David S. Lee*, 56 ECAB 602 (2005).

finding that Mr. Palomo threatened her. Thus, she has not established a compensable factor of employment with the December 2, 2004 incident.

Appellant alleged that she returned to work on December 4, 2004 and went into Mr. Fong's office for privacy. As she was shutting the door, Mr. Palomo allegedly burst into the office while she was talking and she informed her representative on the speaker telephone that Mr. Palomo was in the room. While her representative heard a noise on the telephone, there is no other witness statement to support her allegation that Mr. Palomo burst into the room. Thus, appellant has not established a compensable factor of employment.

On December 7, 2004 appellant noted Mr. Palomo's car was in the parking lot and she felt afraid so she called her supervisor, who did not respond. Appellant stated that she "waited for [six] hours then went home." The next incident occurred on December 10, 2004 when she saw the entrance to the employee parking lot was blocked by two mattresses and Mr. Palomo's car was parked on the street. Appellant called the postal police who removed the mattresses and walked her into work. However, she has not provided any evidence showing that Mr. Palomo placed the two mattresses to block the entrance to the parking lot or that she had any contact with Mr. Palomo on December 7, 2004. As appellant has not submitted any probative evidence to support her claim, she has not established a compensable factor of employment with respect to these two incidents.

Next appellant alleged that on December 14, 2004 she stated that she requested the police escort her into work when she arrived at 6:00 a.m. They escorted her in and talked with Mr. Palomo. Later that morning, her supervisor requested that she come into his office for a discussion. While she was attempting to close the door on her return, Mr. Palomo "followed [her] and pushed the door open and [her] with it." Mr. Palomo then allegedly shoved his shoulder at appellant. Mr. Fong initially stated that Mr. Palomo attempted to enter his office at the same time as appellant, but she blocked the door and tried to close it and there was no contact between the two employees. The evidence supports that appellant and Mr. Palomo were attempting to enter Mr. Fong's office at the same time and that she blocked the door and attempted to shut it on Mr. Palomo.

Appellant allegedly requested Mr. Fong to forward her mail from her post office box as her mail had been mishandled in the past. He refused her request even though he allegedly had done this for "customers all the time." The Board has 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.<sup>23</sup> No evidence was presented as to error or abuse by the employing establishment in this matter. The mere fact that appellant's supervisor refused her request to forward her mail from her post office box does not establish error or abuse. Appellant has submitted no evidence to show that the employing establishment erred in an administrative matter and thus has not established a compensable employment factor.

Appellant also alleged that upon arriving at the employing establishment on January 4, 2005 to pick up her mail, she saw appellant's car parked outside. At this point she alleged that she "broke down and cried" and "shook all over." As noted above, appellant was on leave on

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<sup>23</sup> C.S., 58 ECAB \_\_\_ (Docket No. 06-1583, issued November 6, 2006).

January 4, 2005 when she arrived at the employing establishment to pick up her mail. Moreover, she did not encounter Mr. Palomo, but merely saw that his car was parked outside. As appellant was not scheduled to work on January 4, 2005 she has not established a compensable factor of employment.

**CONCLUSION -- File No. 13-2123978**

The Board finds that appellant has not established an emotional condition in the performance of duty for the claim filed on January 21, 2005.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs' hearing representative dated March 2, 2006 is affirmed.

Issued: January 28, 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