United States Department of Labor
Employees' Compensation Appeals Board

J.H., Appellant	)	
	)	**Docket No. 07-1877**
and	)	**Issued: January 28, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Waco, TX, Employer	)	

Appearances:
Michael C. Paul, 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 July 10, 2007 appellant filed a timely appeal from an April 6, 2007 decision of the Office of Workers' Compensation Programs denying her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On December 28, 2001 appellant, then a 50-year-old supervisor, filed an occupational disease claim alleging that she developed anxiety and depression due to factors of her federal employment. She claimed that she was harassed and discriminated against by her supervisors on the basis of gender, age and the race of her spouse.

In an undated narrative statement, appellant identified incidents of employment that allegedly caused or contributed to her emotional condition. She alleged:

1. Jobs assigned to her were impossible to complete "because of various reasons," and she was subjected to constant exposure to stress from seeing delayed mail.

2. Appellant became physically and mentally drained from trying to work while she was "incapable" for anywhere from 10 to 12 hours per day, five to six days per week.

3. Appellant was subjected to continuing harassment and discrimination by her supervisors.

4. Appellant worried about the safety and security of the employees in the office due to the anthrax scare.

5. Appellant's hours were cut from 8 to 12 hours per day, five to seven, days per week, to 8 hours per day, five days per week. She claimed that no one else's hours were cut as dramatically as hers.

6. Appellant was unfairly transferred out of automation. She stated that her belief that a job had been created to take her out of automation as a productive supervisor and to replace her with a male trainee, creating a situation where there were no female supervisors on "T-3." When appellant talked to the plant manager about her problems with her new assignment, he allegedly told her to "handle it" because he was "not going to deal with it."

7. Supervisor, Robert J. Weiseler, told appellant that the medical documentation faxed by her doctor was insufficient to verify her illness on November 1 and 2, 2002.

8. On December 12, 2001 Mr. Weiseler informed appellant that she had delayed "BBM" mail on December 10, 2001. When she inquired as to why she was being questioned about delayed mail when first class mail was routinely delayed and "nothing is ever said," he allegedly said, "Because it is you, [appellant]."

9. On December 13, 2001 Mr. Weiseler refused to deliver her pay check to coworker Ms. Walker, stating that he was required to deliver checks personally to the addressees.

10. On December 12, 2001 Robert R. Rohrberg circulated a letter reminding employees that parking at the back door customer area was prohibited. Mr. Weiseler allegedly said to appellant, "We know who he's talking about, don't we?"

11. On December 17, 2001 the plant manager refused to provide a copy of a doctor's note to appellant's daughter, stating that she could obtain a copy of the note from him, if she wanted it.

In a separate undated narrative statement, appellant indicated that other sources of stress included the need to file for bankruptcy protection due to the drastic reduction of hours at work. She stated that her belief that the reductions were due to her supervisors' "extreme dislike for [her] for being outspoken."

On January 29, 2002 the employing establishment controverted appellant's claim. Mr. Wieseler denied allegations of gender discrimination, noting that he had trained Julie Boarman and Sevela Walker, both females, as acting supervisors. He denied discriminating against appellant on the basis of the race of her spouse, indicating that he had never seen her spouse. Noting that supervisors were not guaranteed overtime, he stated that work schedules for all supervisors were reduced to 40 hours per week, resulting in a less stressful situation. Regarding appellant's claim that she was unfairly transferred, Mr. Wieseler stated that she was offered a preferred-duty assignment to be detailed to daytime hours and that she was given a number of options for assignments that would give her complete autonomy to set her own hours and days off. He acknowledged that he refused to give appellant's check to a proxy, but denied making any negative comments in that regard. Mr. Wieseler also acknowledged that he spoke to appellant about delayed "BBM" mail during a routine talk, but indicated that the situation had been resolved and that no disciplinary action was pending for delayed mail or for failing to provide appropriate medical documentation.

Appellant submitted a work excuse dated December 17, 2001 from Dr. Stephen Mark, a Board-certified psychiatrist, reflecting that she was unable to work until her concentration improved. In a report dated January 8, 2002, Dr. Mark stated that he began treating appellant on June 29, 1998 for major depression, severe, nonpsychotic, single episode. He related her condition at that time to stress at work. Dr. Mark indicated that appellant's condition had resolved and noted that he had not seen appellant between July 17, 1998 and August 23, 2001. He reported that on December 17, 2001 appellant told him that she was unable to work due to stress at work. Appellant claimed that her hours were being cut back; that she was being assigned jobs that were impossible to complete; that she was being blamed for late mail that was someone else's responsibility; that appellant was being harassed for parking issues and her failure to provide proper medical documentation; and that she was stressed by seeing delayed mail. Dr. Mark diagnosed major depression, severe, nonpsychotic, single episode and generalized anxiety. He stated, "It does sound like these various incidents have added insult to injury, so to speak and delayed appellant from bouncing back like she did in 1998."

Appellant submitted a November 5, 2001 memorandum from Mr. Wieseler, indicating that she would be detailed as a mail processing operations relocation coordinator effective November 5, 2001 and that she would be responsible for the relocation of mail processing operations from the Waco Plant to the Waco Plant Annex. The memorandum informed appellant that she would be able to determine her own schedule, provided that the relocation was completed by December 7, 2001.

In an undated statement, the employing establishment's plant manager, Mr. Rohrberg, denied appellant's claims of discrimination. He stated that the reduction of hours that affected her also affected other employees, including SDO Willie McDonald, a black male and SDO Harold Youmans, a white male. Mr. Rohrberg emphasized that supervisory overtime was reduced because it was not necessary. He indicated that the decision to detail appellant to

facilitate the move of the Waco Plant operations to the Waco Plant Annex was made without consideration of gender. Mr. Rohrberg stated that appellant's assignment to work on December 24, 2001 was not discriminatory, as all supervisors had worked six to seven days with overtime during the Christmas period. He also noted that he had no knowledge of appellant's stress due to safety and security concerns since September 11, 2001.

The record contains an October 2, 2001 memorandum to appellant from Mr. Wieseler, entitled, "Supervisors' Expectations." Pursuant to the memorandum, supervisors were expected to clock in and out on time (eight hours on the clock); take ownership for instructions given to employees; honestly identify problems and implement solutions; remain on the floor to supervise employees; ensure that weekly safety talks were given; and provide leadership to employees. Appellant signed the memorandum on October 4, 2001.

A November 5, 2001 memorandum to appellant from the employing establishment outlined her responsibilities as a mail processing operations relocation coordinator. She was responsible for the relocation of mail processing operations from the Waco Plant to the Waco Plant Annex on a schedule she determined necessary to deploy identified operations by December 7, 2001. Appellant signed the memorandum on November 5, 2001.

On February 22, 2002 the Office informed appellant that the information submitted was insufficient to establish her claim and requested a detailed description of the conditions or incidents she believed caused or contributed to her illness. It advised her to submit a medical report providing a diagnosis and an opinion with an explanation as to how incidents of her federal employment contributed to her condition.

In an undated letter responding to the Office's request, appellant stated that she "never missed work due to stress until the incident with Mr. Rohrberg and Mr. Wieseler arose." She alleged that she was not the only female that Mr. Rohrberg has harassed and provided the names and contact information of other employees, indicating that "it would be to your advantage and extremely beneficial to me" if they were contacted. Appellant indicated that the plant manager had arrived at work intoxicated on numerous occasions, acting in "such a manner that was extremely repulsive and totally uncalled for." She also alleged that she and other employees had filed Equal Employment Opportunity (EEO) complaints against Mr. Rohrberg due to his "extremely out-of-control behavior."

In a letter dated March 26, 2002, the employing establishment again controverted the claim, contending that the incidents alleged by appellant were administrative in nature and, therefore, not compensable. Additionally, no causal relationship was established between appellant's claimed condition and factors of her employment.

Appellant submitted an April 2, 2002 report from Ron Cole, a licensed professional counselor. Mr. Cole stated that he had met with her on January 7, 2002 for work-related stress due to conflict with a supervisor.

By decision dated August 27, 2002, the Office denied appellant's claim on the grounds that she failed to establish any compensable factors of employment. It accepted as factual that

her schedule had been reduced to a 40-hour work week, but found that none of appellant's other allegations were substantiated.

On August 25, 2003 appellant, through her representative, requested reconsideration alleging that the Office denied her due process by selectively picking and choosing facts to support a denial while paying "absolutely no heed to [her] version of the facts." Counsel contended that the Office abused its discretion by accepting the employing establishment's representations. He further argued that appellant's claims of overwork, harassment and fear and inability to perform her duties and to provide safety to her employees are compensable factors of employment because they all arose out of and in the course of employment.

By decision dated September 9, 2003, the Office denied modification of its August 27, 2002 decision. It found that there was no evidence to support any exposure to anthrax; therefore, appellant had failed to establish a compensable factor in that regard. The Office also found appellant's due process claim to be without merit, noting that, although she had been asked to submit all factual and medical evidence believed to be relevant, appellant had provided only her own account of the alleged facts. On the other hand, the employing establishment had submitted evidence controverting the claim.

On September 8, 2004 appellant, through her counsel, requested reconsideration. Counsel reiterated appellant's claim that the transfer from automation to a detail involving tasks that she feared she could not complete or perform, was both gender-based and age-based discrimination. He further contended that appellant's fear and anxiety regarding her ability to carry out her duties was compensable, as was the reduction in the number of hours worked per week. Counsel alleged that supervisor Louis Zedletz had made derogatory statements that constituted a compensable work factor, including a statement to the effect that he was doing away with appellant's extra hours so that he could "run her off."

Appellant submitted witness statements from coworkers in support of her request. In a statement dated September 17, 2002, James Sanders, Sr. indicated that in September 2001, Mr. Rohrberg made drastic changes that adversely affected employees and supervisors at the Waco Plant. He indicated that Mr. Rohrberg displayed a negative attitude toward appellant, which, in his view, made it impossible for her to perform her job.

On September 6, 2002 Willie McDonald stated that Mr. Zedletz and plant manager, Mr. Rohrberg, created a hostile work environment by demanding changes of supervisors without explanation. He alleged that the morale was horrible and people were "walking on eggshells." Mr. McDonald indicated that appellant felt discouraged after being detailed to Tour 2. Appellant had reported to him that, when she attempted to discuss problems she was having with her new detail, Mr. Rohrberg told her to "figure out her own problems." She told Mr. McDonald that she could tell that Mr. Rohrberg was drunk on employing establishment's premises. Appellant related Mr. Rohrberg's plan to detail her to be a Family Medical Leave Act coordinator after her current detail ended and expressed her belief that the detail would be impossible and that she was being set up for failure.

In a sworn statement dated September 6, 2002, Ms. Boarman indicated that Mr. Rohrberg told her that he had detailed appellant out of automation because he was not happy with the way

she was performing her job. She stated that Mr. Rohrberg should have directed any problems he was having with appellant through Mr. Wieseler. Ms. Boarman expressed her belief that her replacement was less qualified than appellant and speculated that the transfer may have been age and gender related.

In a July 10, 2002 statement, Jennell Foster indicated that appellant was a dedicated and competent employee; that Mr. Rohrberg put pressure on appellant to "do things his way or not at all;" that he removed appellant from her position because "he did not agree with the way she was doing the mail;" and that Ms. Foster believed that appellant's stress was due to the way she was being treated by Mr. Rohrberg.

In a September 4, 2002 statement, Ronald K. McDonald indicated that in early November 2001 that he overheard Mr. Rohrberg tell Ms. Boarman that appellant would "never supervise automation as long as he was there." In a statement dated September 15, 2002, Dr. William M. Hutchison, acting manager of distribution operations, reported that appellant was honest and straight-forward. He stated that she had "suffered some illnesses due to undue stress by upper management decisions on her behalf." In a statement dated September 17, 2002, Mary Gomez reported that Mr. Zedletz made comments to her about appellant on the workroom floor to the effect that she had to work extra hours because she was in debt. Mr. Zedletz allegedly once stated that he was doing away with [appellant's] extra hours, so that he could "run her off."

The record contains a memorandum of an interview with Ms. Walker, conducted by postal inspector Felix Figueroa on February 7, 2003. Ms. Walker stated that management had retaliated against appellant for filing a complaint with her Congressman's office about management's illegal dealings. She indicated that, after filing the complaint, appellant was told by Iris Reddick, Cardell Hardy and Mr. Zedlitz that she was going to be moved to the annex and that Mr. Rohrberg had retaliated against her by "getting her out of her job and replacing her with a 204-B." Ms. Walker stated that appellant complained that she was unable to do the job she was requested to do at the annex which was a 100,000 square foot building, due to her back condition.

Appellant submitted a copy of a petition signed by 81 employees on May 8, 2002 protesting the return of Mr. Zedlitz and Mr. Rohrberg to employing establishment's facilities, based on their inability to communicate with employees or supervisors and alleging that they harassed employees and supervisors and created a hostile work environment.

Appellant submitted a February 18, 2003 report from Dr. Mark reflecting that on January 24, 2003 she informed him that she had been harassed and degraded by Ms. Reddick in front of fellow supervisors. She allegedly informed Ms. Reddick that she was not mentally or physically able to perform her new job in the 100,000-plus square foot building. Dr. Mark related appellant's feeling that she was being pushed into a new job that would be detrimental to her health and her fear of the pressure of learning something new. In a March 4, 2003 addendum to the February 18, 2003 report, he opined that the work-related events described as occurring on January 24, 2003 aggravated appellant's mental condition. Dr. Mark stated that the pressure of learning new procedures in a new building cause emotional distress. He further opined that conditions of employment, including altercations with appellant's supervisors, conflict between

the employees, friction and strain, imposition of unreasonable deadlines and public scoldings, caused appellant's mental condition.

Documents dated May 4 and 12, 2003 reflect that appellant was admitted to Depaul Center on May12, 2003 because she was suicidal and threatening to hurt her boss. Dr. Mark diagnosed major depression, severe nonpsychotic, single continuous episode and chronic back pain. A July 29, 2004 discharge summary reflected that she was admitted to Depaul Center for depression. In a report dated February 11, 2004, Dr. Mark stated that his treatment of appellant since June 29, 1998 was due to psychological problems that arose during her tenure as an employee of the employing establishment.

In a report dated August 16, 2004, Dr. Mark summarized appellant's perceptions as to how her diagnosed condition was related to factors of her employment. Appellant stated that she was worried about the safety of employees due to the anthrax scare; that the plant manager was harassing her with verbal instructions; that she was being discriminated against because of her gender; that appellant's hours had been more drastically cut back than any other supervisor; that the jobs to which she was assigned were impossible to complete because she was mentally and physically drained; that appellant was told her medical documentation was insufficient to verify that she was sick on November 1, 2001; that during the week of November 13, 2001 Mr. Rohrberg announced to other employees that she would not be returning to automation; that Mr. Rohrberg told appellant that he would not deal with her problems on December 12, 2001; that appellant was replaced by an unqualified male, leaving no females in the T-3 area; that Mr. Weiseler refused to provide appellant's check to Ms. Walker, who appellant had designated to receive it on her behalf; that he made inappropriate comments to her regarding hassles she was having at work and unauthorized parking; and that appellant was having trouble obtaining copies of records. Dr. Mark stated that these events "are more probably than not the cause of the factors of her disability."

By decision dated September 28, 2004, the Office denied modification of its previous decisions, affirming its earlier finding that appellant had failed to establish a compensable factor of employment.

On September 27, 2005 appellant, through counsel, requested reconsideration. Counsel contended that appellant's fear of not being able to carry out her duties in the annex was a compensable factor of employment. He also argued that a pattern of hostility had been established by witness statements.

Appellant submitted a September 2, 2005 report from Dr. Mark who stated that on January 8, 2002 she told him that she felt stressed by seeing mail that was "delayed all the time." Appellant also stated that she was being assigned to jobs that were impossible to complete and that she was fearful of not being able to do all the work required in the time period demanded. Dr. Mark opined that being assigned to the annex caused significant fear and anxiety in terms of appellant's ability to carry out her employment duties.

By decision dated January 6, 2006, the Office denied modification of its earlier decisions. In support of its conclusion that appellant had failed to establish a compensable employment

factor, the Office noted that she had not identified any specific assignments or duties that appellant was unable to perform or that contributed to her diagnosed condition.

On January 6, 2007 appellant, through counsel, requested reconsideration alleging that she had been denied due process by the Office's failure to seek a second medical opinion or advice from the Office medical director. Counsel contended that appellant had not been provided an opportunity to review and refute contradictory statements prior to the denial of her claim. He also claimed that her April 3, 2001 traumatic injury claim (File No. 162016421), should be considered a compensable factor of employment as it exacerbated her preexisting emotional condition.

By decision dated April 6, 2007, the Office denied modification of its January 6, 2006 decision. Addressing appellant's contentions, it stated that any claim for an emotional condition resulting from a physical injury under File No. 162016421 should be addressed under that case. The Office found appellant's claim of denial of due process to be without merit, noting that the case file had been available for appellant's review. Further, the issue in the case was not medical; therefore, clarification of medical facts was not necessary.

LEGAL PRECEDENT

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.[1]

Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.[2] Assignment of work is an administrative function of the employer,[3] as is an investigation by the employing establishment.[4]

Where the claimant alleges compensable factors of employment, she must substantiate such allegations with probative and reliable evidence.[5] The fact that a claimant has established

[1] *Lillian Cutler*, 28 ECAB 125 (1976).

[2] *Michael Thomas Plante*, 44 ECAB 510 (1993).

[3] *James W. Griffin*, 45 ECAB 774 (1994).

[4] *Jimmy B. Copeland*, 43 ECAB 339 (1991).

[5] *Joel Parker, Sr.*, 43 ECAB 220 (1991).

compensable factors of employment does not establish entitlement to compensation. The employee must also submit rationalized medical opinion evidence establishing that she has an emotional condition that is causally related to the compensable employment factor.[6] The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific compensable employment factors identified by appellant.[7]

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of incidents and conditions at work. The Office denied her claim on the grounds that she did not establish a compensable employment factor. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant contended that the decision to detail her to the Waco Plant Annex was discriminatory and was designed to "take her out of automation." She alleged gender and age discrimination stating that replacing her with an unqualified male would leave no female supervisors in the area. Appellant also stated that being assigned to the annex caused significant fear and anxiety in terms of her ability to carry out her employment duties. She told her physician that she felt she was being pushed into a new job that would be detrimental to her health and that she was afraid of learning something new. However, the Board has consistently held that frustration from not being permitted to work in a particular work environment is not a compensable factor under the Act.[8] Appellant's reaction to the reassignment constitutes a fear of future injury which is also not compensable under the Act.[9]

The Board finds that appellant's allegation that the employing establishment improperly detailed her to the plant annex relates to administrative or personnel matters, unrelated to her regular or specially assigned work duties does not fall within the coverage of the Act.[10] Although the handling of disciplinary actions and leave requests, the assignment of work duties and the monitoring of work activities are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[11] However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In

[6] *James W. Griffin, supra* note 3.

[7] *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[8] *See Cyndia R. Harrill*, 55 ECAB 522 (2004).

[9] *Virginia Dorsett*, 50 ECAB 478, 482 (1999).

[10] *See Lori A. Facey*, 55 ECAB 217 (2004). *See also Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[11] *Id.*

determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[12]

In this case, appellant has not submitted sufficient evidence to show that the employing establishment committed error or abuse with respect to this matter. She has submitted no evidence of age or gender discrimination. On the other hand, Mr. Weiseler denied appellant's allegations of gender discrimination, noting that he had trained Ms. Boarman and Ms. Walker, both females, as acting supervisors. He also denied her claim that she was unfairly transferred, stating that appellant was offered a preferred-duty assignment to be detailed to daytime hours and that she was given a number of options for assignments that would give her complete autonomy to set her own hours and days off. The Board finds that the employing establishment's decision to detail an experienced supervisor to facilitate the move of the Waco Plant operations to the Waco Annex was reasonable and appellant has not provided evidence to the contrary. She submitted statements from coworkers who opined that Mr. Weiseler transferred appellant to the annex because he was not happy with her work performance. Another coworker hypothesized that the transfer was in retaliation for a complaint filed against management. These statements do not provide evidence of error or abuse on the part of the employing establishment. Consequently, appellant has not established a compensable factor of employment in this regard.

Appellant alleged that Mr. Weiseler singled her out in eliminating her ability to work overtime, thereby dramatically reducing her income; unfairly reprimanded her for having delayed "BBM" mail; chastised her for failing to provide sufficient medical documentation of an illness; refused to provide a copy of a doctor's note to her daughter; and refused to deliver her pay check to a coworker. She also claimed that her supervisors failed to adequately address her concerns about problems with her new assignment. These allegations also relate to administrative or personnel matters and are not compensable in the absence of error or abuse.

Appellant submitted statements from coworkers corroborating her allegations that her hours were reduced and that her supervisor refused to deliver a pay check and medical documentation to designated proxies. Ms. Gomez alleged that she once heard Mr. Zedletz state that he was doing away with appellant's extra hours, so that he could "run her off." However, the evidence submitted is not sufficient to establish that the employing establishment committed error or abuse with regard to these matters. On the other hand, the employing establishment has explained the reasonableness of its actions. Noting that supervisors were not guaranteed overtime and that overtime was not necessary, Mr. Weiseler stated that work schedules for all supervisors had been reduced to 40 hours per week, resulting in a less stressful situation. He acknowledged that he spoke to appellant about inadequate medical documentation and delayed "BBM" mail during a routine talk, but indicated that the situation had been resolved and that no disciplinary action was pending. The Board finds that Mr. Weiseler's refusal to provide appellant's pay check and medical documentation to proxies was not only reasonable, but necessary under the circumstances. The Board further finds that the elimination of overtime was an appropriate exercise of management's discretion. As Ms. Gomez' statement was silent as to when Mr. Zedletz allegedly indicated that he was doing away with appellant's extra hours so that

[12] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

he could "run her off" and unclear as to what was meant by the term "run her off," it fails to establish abuse or error. Additionally, appellant's belief that the reductions were due to her supervisors' extreme dislike for her must be considered self-generated. Thus, she has not established a compensable employment factor under the Act with respect to administrative matters.

To the extent that disputes and incidents alleged as constituting harassment and discrimination are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[13] However, for harassment or 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.[14] Appellant claimed that she worked in a hostile work environment and that her supervisors harassed her about parking issues; made derogatory statements to her; blamed her for the poor performance of other employees; and discriminated against her on the basis of the race of her spouse. In support of her claims, appellant submitted statements from witnesses who alleged generally that management created a hostile work environment by demanding changes of supervisors without explanation; that Mr. Rohrberg made drastic changes that adversely affected employees; that the morale at the employing establishment was bad; that Mr. Rohrberg displayed a negative attitude toward appellant. The petition submitted by appellant, which again reflects general allegations of harassment based on an inability to communicate with employees or supervisors, is also insufficient to establish her claim. Appellant has not provided any evidence to corroborate a specific allegation of harassment or discrimination, as required. The employing establishment denied these allegations and appellant has not submitted sufficient evidence to establish that she was harassed by her supervisors, as alleged.[15] Thus, the Board finds that appellant has not established a compensable employment factor under the Act with respect to these above-described allegations.

Appellant reported that she worried about the safety and security of employees. She also claimed that she lived in constant fear of exposure to anthrax following the events of September 11, 2001. However, under the circumstances of this case, the Board finds that appellant's emotional reaction must be considered self-generated, as there is no evidentiary basis for her concerns.[16]

The record reflects that appellant filed an EEO complaint. However, the filing of an EEO complaint by itself does not establish that workplace harassment or unfair treatment occurred.[17] 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

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[13] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[14] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[15] *See Joel Parker, Sr., supra* note 5 at 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[16] *See David S. Lee*, 56 ECAB ___ (Docket No. 04-2133, issued June 20, 2005).

[17] *James E. Norris*, 52 ECAB 93 (2000). *See also Parley A. Clement*, 48 ECAB 302 (1997).

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 her allegations with probative and reliable evidence.[18] Appellant has failed to do so in this case.

Appellant alleged that her supervisors made statements and acted in ways that she believed constituted harassment, but she provided no evidence such as witness statements, to establish that the statements actually were made or that the actions actually occurred.[19] She claimed that in response to a letter that was circulated reminding employees that parking at the back door customer area was prohibited, Mr. Weiseler said to appellant, "We know who he [is] talking about, don't we?" Appellant alleged that, when she asked Mr. Weiseler why he questioned her about delayed mail when nothing was ever done about delayed first class mail, he said, "Because it [is] you, [appellant]." When she talked to the plant manager about her problems with her new assignment, he allegedly told her to "handle it" because he was "not going to deal with it." Appellant alleged that the plant manager had arrived at work intoxicated on numerous occasions, acting in "such a manner that was extremely repulsive and totally uncalled for." The Board has recognized the compensability of 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.[20] Appellant provided no evidence to corroborate the alleged statements or actions. However, assuming arguendo that the statements were actually made, the Board finds that they do not constitute verbal abuse or harassment. While the statements may have engendered offensive feelings, they did not sufficiently affect the conditions of employment to constitute a compensable factor.[21] Appellant has not alleged, nor does the evidence reflect, that the plant manager posed any threat to her. The Board finds that her emotional reaction to her supervisor's alleged drunken behavior must be considered self-generated in that it resulted from her perceptions regarding her supervisor's actions.[22]

The Board has held that emotional reactions to situations in which an employee is trying to meet her regularly assigned position requirements are compensable.[23] In *Antal*, a tax examiner filed a claim alleging that his emotional condition was caused by the pressures of trying to meet the production standards of his job. The Board, citing the principles of *Cutler*, found that the claimant was entitled to compensation. In *Francis*, where appellant claimed that stress related to her regular and specially assigned supervisory duties caused her emotional condition, the Board found that she had established compensable employment factors.

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[18] *See James E. Norris, supra* note 17. *See also Michael Ewanichak*, 48 ECAB 354 (1997).

[19] *See William P. George*, 43 ECAB 1159, 1167 (1992).

[20] *See Mary A. Sisneros*, 46 ECAB 155, 163-64 (1994); *David W. Shirey, supra* note 13.

[21] *See Denis M. Dupor*, 51 ECAB 482, 486 (2000).

[22] *See David S. Lee, supra* note 16.

[23] *See Tina D. Francis*, 56 ECAB 180 (2004). *See also Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

The evidence of record establishes that appellant worked substantial amounts of overtime prior to her detail to the Waco Plant Annex. It is undisputed that, until the transfer, appellant worked 10 to 12 hours per day, five to six days per week and Mr. Rohrberg admitted that all supervisors had worked six to seven days with overtime during the Christmas period. It is also undisputed that appellant was responsible for overseeing the processing of mail and that she was, on at least one occasion, reprimanded by Mr. Weiseler for delayed "BBM" mail. Appellant has claimed that stress related to these regular and specially assigned duties caused her emotional condition. Given that these duties were part of her job requirements, the Board finds that she has established compensable employment factors.

In the present case, appellant has established employment factors with respect to the above-described work duties, including her responsibilities for overseeing the timely processing of mail and assigned overtime. As appellant has established compensable employment factors, the Office must base its decision on an analysis of the medical evidence. The Office found that there were no compensable employment factors and did not analyze or develop the medical evidence. The case will be remanded to the Office for this purpose.[24] After such further development as deemed necessary, the Office should issue an appropriate decision on this claim.[25]

On appeal, appellant's counsel contends that appellant was denied due process, as the Office failed to properly consider her claim and her evidence in accordance with its own procedures. The evidence supports a different conclusion. The record reflects that the Office carefully reviewed and considered appellant's allegations and evidence submitted in support thereof. The Office issued five merit decisions in this case, in each instance explaining the rationale for its ruling. Appellant and her counsel were afforded ample opportunity to present evidence and argument and to review the factual and medical evidence of record. The Board finds appellant's due process argument to be without merit.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant sustained an emotional condition in the performance of duty. Appellant has established employment factors as described above and the case is remanded to the Office to analyze and develop the medical evidence as it deems necessary and to determine whether appellant sustained an emotional condition due only to the accepted employment factors.

[24] *See Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

[25] The Board notes that any claim for an emotional condition related to appellant's April 3, 2001 traumatic injury should be addressed under that case (File No. 162016421).

ORDER

IT IS HEREBY ORDERED THAT the April 6, 2007 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to the Office for proceedings consistent with this decision of the Board, including the issuance of an appropriate decision.

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