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

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| **J.S., Appellant** | ) | |
| **and** | ) | **Docket No. 08-2072** |
| | ) | **Issued: April 20, 2009** |
| **U.S. POSTAL SERVICE, POST OFFICE, Denver, CO, Employer** | ) | |

*Appearances:*
*John S. Evangelisti, Esq.*, for the appellant
*No appearance*, for the Director

Oral Argument November 13, 2008

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

### *JURISDICTION*

On July 21, 2008 appellant filed a timely appeal of a March 14, 2008 decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of these emotional condition claims.[1]

### *ISSUES*

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

Appellant argues that the Equal Employment Opportunity (EEO) decision is dispositive on the issue of whether the supervisor's conduct amounted to unlawful harassment and discrimination, creating abusive and/or hostile work environment. In this regard, she alleges that it is for the Office to determine only whether this unlawful harassment and discrimination equate

[1] Appellant also filed an appeal of a March 24, 2008 Office decision for a traumatic injury claim. That matter is being separately handled by a decision under docket number 09-650.

with error or abuse under the Federal Employees' Compensation Act standard. Appellant further reiterated his request that the case file numbers xxxxxx928 and xxxxxx750 be combined.

## ***FACTUAL HISTORY***

On February 24, 2006 appellant then a 64-year-old window clerk, filed an occupational disease claim alleging that she sustained on-the-job stress due to the postmaster's behavior and other employees' actions. She claimed these actions caused stress, hypertension, an eating disorder and a sleeping disorder. Appellant indicated that she first became aware of the injury and its relation to her work on May 1, 2005. She stopped work on February 25, 2006 and was released to modified duty on April 19, 2006.[2]

On March 6, 2006 the Office requested that appellant submit additional evidence to support her claim. Several medical reports were received from appellant, verifying that she did suffer from anxiety and stress disorder. On April 6, 2006, however, the Office denied the claim noting the receipt of medical records but finding that she failed to provide in detail the employment-related condition or incidents to which she attributed her conditions and that therefore she had failed to meet her burden of proof that her condition was sustained in the performance of duty.

On April 11, 2006 the Office received correspondence from the employing establishment controverting the claim.

On October 25, 2006 appellant requested reconsideration, providing additional information and medical reports regarding her claim. The factual evidence submitted by appellant consisted of statements by her friends and coworkers of her, customers of the employing establishment, medical reports, a provision of the collective bargaining agreement, an employing establishment policy noting zero tolerance for workplace violence, a newspaper clipping citing problems with the employing establishment and an EEO complaint filed on August 28, 2006.

Appellant alleged that Mr. Curry abolished her job, daily subjected her to temper outbursts, verbal abuse, scorn and intimidation, violated her confidentiality by sharing personal information with others, refused to give her telephone messages, listened to private conversation, required her to work long hours and always berated the employees in the employing establishment. She noted that Mr. Curry's actions were usually made when he believed that they were alone. A statement from a friend, Mary Lawrence, noted that appellant had confided to her about Mr. Curry's harassment. Appellant found that his actions made it impossible for her to feel safe or productive.

The employing establishment responded to each allegation specifically, finding most of them vague and unspecific regarding date and time and place and, where the allegations were specific, provided Mr. Curry's statement that specifically denied the allegations.

[2] The record reflects that, prior to her job with the employing establishment; appellant was treated for post-traumatic stress disorder in 1991 after she was attacked by two dogs.

By decision dated July 16, 2007, the Office denied appellant's occupational disease claim, finding that there were no compensable factors.

On December 19, 2007 appellant requested reconsideration and submitted a December 4, 2007 Equal Employment Opportunity Commission (EEOC) decision. In that decision, which addressed the following issue: "Whether the [employing establishment] discriminated against [appellant] on the basis of her sex, female and age … when on July 5, 2006, Postmaster Curry yelled at her and placed her on off duty without pay," the administrative judge found that appellant had established "a *prima facie* case of hostile work environment sex and age." The administrative judge determined that Mr. Curry's actions, which included raising his voice, bringing his face to within 12 inches of appellant's and yelling at her, were sufficiently severe or pervasive to alter the condition of her employment and/or create an abusive working environment. The employing establishment continued to controvert the claim.

By decision dated March 14, 2008, the Office denied modification of its April 6, 2006 and July 16, 2007 decisions.

## ***LEGAL PRECEDENT***

An employee seeking benefits under the Act[3] has the burden of establishing the essential elements of his claim, including the fact that an injury was sustained in the performance of duty as alleged[4] and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[5]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[6] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to claimant's diagnosed condition. To be of probative value, the opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and

[3] 5 U.S.C. §§ 8101-8193.

[4] *Joseph W. Kripp,* 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). "When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury." *See also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q) and (ee) (2002) ("Occupational disease or Illness" and "Traumatic injury" defined).

[5] *Dennis M. Mascarenas,* 49 ECAB 215, 217 (1997).

[6] *Michael R. Shaffer,* 55 ECAB 386 (2004). *See also Solomon Polen,* 51 ECAB 341, 343 (2000).

must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[7]

An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.[8]

Workers' compensation law does not apply to each and every illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.[9] 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.[10]

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition, for which she claims compensation was caused or adversely affected by employment factors.[11] This burden includes the submission of a detailed description of the employment factors or conditions, which that claimant believes caused or adversely affected the medical condition or conditions, for which compensation is claimed.[12]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by the physician when providing an opinion on causal relationship and, which working conditions are not deemed factors of employment and may not be considered.[13] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of the matter establishes the truth of the matter asserted, it must base its decision on an analysis of the medical evidence.[14]

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[7] *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

[8] *Phillip L. Barnes*, 55 ECAB 426 (2004).

[9] 5 U.S.C. §§ 8101-8193.

[10] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 126 (1976).

[11] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[12] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[13] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[14] *Id.*

## ***ANALYSIS***

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions.

Appellant made several allegations related to administrative or personnel matters over the course of April 25, 2005 to July 6, 2006. These allegations involved the alleged abusive method Mr. Curry used to advise her of deficiencies in her work, such as incorrectly keying an express mail package, for giving out Mr. Curry's telephone number, for not receiving personal calls during work, for speaking to her about her work in front of other supervisors, for clocking in early, for refusing to take medical notes as proof of illness, for reprimanding her for taking too long to do tasks, for generally requiring her to provide medical notes when she was on sick leave and for charging her absent without leave.

These allegations are unrelated to the employee's regular or specially assigned work duties and do not generally fall within the coverage of the Act. An employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee.[15] Administrative and personnel matters can become employment factors, however, if there is evidence that discloses error or abuse. In determining whether the employing establishment erred or acted abusively, the Board considers whether management acted reasonably in its exercise of these matters, such as counseling sessions, supervisory discussions, reprimands, for example.[16]

Each of these allegations were disputed by the employing establishment and a reasonable rationale provided for the supervisor's actions. Additional evidence submitted by appellant does not specifically refute any of the employing establishment's response. Coworkers and customers spoke generally about incidents where Mr. Curry had shown some harassing behavior, but not about any specific incidents noted by appellant. As appellant provided no corroborating evidence, such as witness statements corroborating the specific incidents to establish that the statements were actually made or the actions actually occurred, she has not met her burden to show error or abuse in these management activities.[17]

As to specific counseling/disciplinary discussions, the Board has characterized supervisory discussions of job performance and reprimands as administrative or personnel matters of the employing establishment that are not covered under the Act, unless there is evidence of error or abuse.[18] Although appellant has proffered certain facts, these facts have been disputed by the employing establishment. She submitted many statements from others but none specifically addressed any specific counseling session and thus has not factually supported

[15] *Sandra Davis*, 50 ECAB 450 (1999).

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

[17] *See Larry J. Thomas*, 44 ECAB 291, 300 (1992).

[18] *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

these claims. Without further substantiation of these events, appellant fails to prove that these events occurred as alleged.

To the extent that appellant was alleging that she was unhappy with Mr. Curry's management style, the Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.[19]

Although the handling of leave requests and assignment of work duties are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[20] Mr. Curry explained that appellant did not provide the proper medical documentation and he was within his management right to demand the proper documentation. He noted that he demanded such documentation from all employees.

Regarding appellant's clocking in early, Mr. Curry denied that he screamed at appellant or sent her home. However, he confirmed that he questioned appellant regarding her early start because it left the window uncovered in the early evening and noted that she left for the day and used "unscheduled leave." Mr. Curry presented a reasonable explanation for his actions and appellant has not otherwise presented evidence of error or abuse.

Regarding appellant's allegations on February 24, 2006 that the employing establishment mishandled her compensation claims, the development of an emotional condition related to such matters would not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties.[21]

Appellant also alleged that her emotional condition was caused by overwork because they were understaffed by four employees. She stated that, on December 22, 2005, she worked 16 hours because she and the clerical staff were directed to work as many hours as needed to send out 13 trays of delayed "CFS" mail. Appellant alleged that she was reprimanded for taking too long. The Board has held that overwork may be a compensable factor of employment.[22] However, the employing establishment denied any understaffing; on the contrary, Mr. Curry noted that his unit was actually overstaffed and that the employees simply took an inordinate amount of time to complete a task that should have been done in one hour using six or seven employees. Mr. Curry explained that employees had delayed the mail and that several workers were reprimanded for those actions. Appellant was neither disciplined nor reprimanded regarding this incident, but rather was thanked by her for staying to complete the task. The Board finds that appellant has not established a compensable factor with respect to overwork due to a staffing shortage.

[19] *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

[20] *Lori A. Facey*, 55 ECAB 217 (2004).

[21] *See George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

[22] *Robert W. Wisenberger*, 47 ECAB 406, 408 (1996); *William P. George*, 43 ECAB 1159 (1992); *Georgia A. Kennedy*, 35 ECAB 1151 (1984).

Appellant stated that she was asked to close out in violation of her medical restrictions on April 29, 2006. She also alleged that on May 4, 2006, Mr. Curry violated her privacy by informing another employee that appellant was not allowed to be alone due to her restrictions. The Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if such activity was substantiated by the record.[23] Other than a simple assertion to that effect, appellant has not provided any evidence to substantiate her claim that she was asked to work in violation of her medical restrictions. Mr. Curry denied revealing personal information about her to another manager. The Board finds that appellant has not shown that she was required to work beyond her restrictions in this situation.

Appellant asserted that, on September 19, 2005, Mr. Curry called her and Judy Sandoval into his office and informed them that he was abolishing their positions and creating a new position in violation of the union contract. She also alleged that he screamed at them. Appellant further alleged over the next six months, Mr. Curry required them to come in at will similar to part-time flexible employees. As noted above, disability is not covered where it results from such factors as frustration from not being permitted to work in a particular environment or to hold a particular position. On the other hand, the Board has held that a change in an employee's work shift may under certain circumstances be a factor of employment to be considered in determining if an injury has been sustained in the performance of duty.[24] Appellant's assertion that the proposed change in work shift was made contrary to the relevant policy relates to an administrative function of the employing establishment. To show that an administrative action such as the proposed change in work shift implicated a compensable employment factor appellant would have to show that the employing establishment committed error or abuse.[25] Appellant did not provide sufficient evidence of error or abuse. Mr. Curry denied screaming on September 19, 2005 and explained the circumstances of the situation noting that two employees were brought in to change their off days on a trial basis for three months and they were paid time and a half for all hours off the normal schedule. Although, he noted that, a grievance was filed for not giving consecutive days off, appellant has not shown that the trial schedule was in error or abusive and there was no finding made pursuant to the grievance that the employing establishment erred in the matter regarding appellant. There is no indication that Mr. Curry was acting contrary to any policy. The Board notes that grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.[26] Thus, appellant has not established that this matter rises to the level of a compensable employment factor under these circumstances.

Appellant alleged that, on August 22, 2005, Mr. Curry refused to allow her to take a message from her granddaughter and advised her granddaughter that she no longer worked there. In support of her allegation, she noted that another person had similar problems with Mr. Curry.

[23] *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

[24] *See Gloria Swanson*, 43 ECAB 161, 165-68 (1991); *Charles J. Jenkins*, 40 ECAB 362, 366 (1988).

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

[26] *James E. Norris*, 52 ECAB 93 (2000) (grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred).

However, Mr. Curry denied making such a statement and indicated that he advised the granddaughter that appellant was busy and that he would give her the message. He noted that office policy was not to have personal telephone calls while working. The Board finds that appellant has not established this allegation. The Board also finds that this is a personal matter and would not be related to her regular or specifically assigned duties.

Appellant also alleged that harassment and discrimination by Mr. Curry contributed to her claimed condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[27] However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[28] In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and she has not submitted sufficient evidence to establish that she was generally harassed or discriminated against by her supervisor.[29]

Appellant alleged that Mr. Curry made verbal and physical threats. They included feeling threatened by Mr. Curry's comments of "I do n[o]t get mad I get even," on May 2, 2005, when she alleged that he became upset that a window clerk used leave to pack his truck for a move. However, Mr. Curry denied this noting that this clerk did not even move from the area in that month and that he rather said, "I do n[o]t get mad. It is not worth it." While appellant submitted a statement from Ms. Sandoval dated May 9, 2006, in which she alleged that she had heard him make this remark, she did not indicate when she heard it or if it was made toward appellant. Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.[30] Appellant has not shown how such an isolated comment would rise to the level of verbal abuse or otherwise fall within the coverage of the Act.[31]

Appellant stated that Mr. Curry screamed and yelled at her on numerous occasions. She also alleged that he would shake his finger at her and got up in her face in front of customers and behind closed doors. Appellant listed instances on May 10, 21, 23 and 24, 2005 when she scanned the same express mail package twice. She also referred to instances on June 27, 2005 and June 6, 2006. Appellant stated that Mr. Curry berated her in front of a customer and put his face within six inches of her while yelling. While she provided statements from her coworkers, Pauline Ulimasso, Janet Fuller, Ms. Sandoval and Ron Velasquez, who generally supported that

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

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

[29] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[30] *Harriet J. Landry*, 47 ECAB 543, 547 (1996).

[31] *See, e.g., Alfred Arts*, 45 ECAB 530, 543-44 (1994) (finding that an employee's reaction to coworkers' comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction).

Mr. Curry's behavior made them feel uncomfortable or that they believed his actions created a hostile work environment, they were generally vague.[32] These statements do not sufficiently describe what was observed on specific dates with regard to Mr. Curry's interactions with appellant.

Mr. Curry denied screaming at appellant on May 10, 2005 for taking too long although he noted that she took longer with customers than did other clerks. Regarding the dates of May 21, 23 and 24, 2005, he confirmed that appellant scanned express mail twice and caused an error, but denied that he yelled or acted improperly. Mr. Curry also denied that he screamed at appellant on June 6 or 27, 2005. Appellant has not substantiated her allegation in this regard.

Appellant further stated that, on August 23, 2005, Mr. Curry approached her shaking his fist and shouting because she gave his telephone number to a customer. Mr. Curry confirmed discussing the matter with appellant but denied approaching her, shaking his fist or yelling. He advised that he had been out of the office for two weeks and came back to many calls from irate customers who had left messages on his telephone but had not received a return call. Appellant has not supported her allegation in this regard. Likewise, she asserted that, on September 13, 2006, Mr. Curry screamed "no one likes you. No one will work with you." Mr. Curry denied screaming at appellant and there is no other evidence confirming that this occurred. Appellant has not supported her allegation in this regard.

Appellant also alleged harassment or abusive behavior in the handling of an incident on July 5, 2006. Regarding the July 5, 2006 incident, she stated that Mr. Curry "brought his face within 12 inches of mine" and began yelling for two minutes about her handling of a customer. Appellant noted that a customer overheard Mr. Curry and asked, "What is the matter? Are you ok?" She stated that his "behavior was so physically threatening I was afraid he would hit me. I hurried away, tripped over some buckets and hit my knee bruising it badly." After Mr. Curry continued yelling and following her, appellant stated that he ordered her to clock out and the next day she was given a letter threatening her with removal.[33] Appellant stated that, after filing her July 7, 2006 workers' compensation claim, Mr. Curry told her that he would trump up allegations against her and would protect himself. She alleged that she then received a notice placing her off duty without pay and which directed her to appear for a due process meeting on July 7, 2006.[34]

In support of her assertion, appellant noted that Mr. Miller, a customer, indicated that he heard the postmaster screaming at her on that date. Although Mr. Curry denied that he screamed at appellant, the evidence refutes his denial. Appellant also provided a copy of an EEO decision, dated December 4, 2007. The administrative judge found that Mr. Curry's actions, which included raising his voice, bringing his face to within 12 inches of hers and yelling at her, were sufficiently severe or pervasive to alter the condition of her employment and or create an abusive working environment. He found that appellant had established a *prima facie* case for a hostile

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

[33] Appellant provided a copy of the letter.

[34] Appellant provided a copy of the notice.

work environment related to her sex and age based on the incidents surrounding the July 5, 2006 event.

This evidence is sufficient to support the credibility of the allegations surrounding the June 5, 2006 incident and to support a finding of a compensable factor. It is well established that, while the findings of other federal agencies are not dispositive with regard to questions arising under the Act, such evidence may be given weight by the Office and the Board.[35] Although the EEO decision does not lend any credibility to the overall appellant's general allegations of an abusive workplace, the decision regarding this particular incident is persuasive. It is appellant's burden to prove that harassment by Mr. Curry did in fact occur. Although heartily denied by the employing establishment, appellant has met her burden that this incident did occur and did arise from appellant's performance of her regular duties.

The Board has held that allegations, alone, by a claimant are insufficient to establish a factual basis for an emotional condition claim but must be substantiated by the evidence.[36] Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must establish such allegations with probative and reliable evidence.[37] The Office, in its denial of modification decision, dated March 14, 2008, addressed the EEO decision in this manner:

> "Your attorney submitted a second statement, dated February 1, 2008, in which he discusses the response from the employing agency. In this statement he argues that based on the EEOC determination, the weight of evidence shifts in favor of you, because it provides strong evidence of error or abuse on the part of the [a]gency. Upon review of these transcripts it is found that while they support the findings of the EEOC, they do not specifically verify your previous allegations previously identified with supporting evidence."

While the Office is correct that the decision did not factually support the overall harassment charges appellant alleged over a long period of time, the Board disagrees with the Office and finds that these findings do support appellant's factual allegations of harassment surrounding the one event on July 5, 2006. Appellant's allegations of harassment surrounding that incident, substantiated by the witness statement and the finding of a hostile work environment by the EEO decision, constitutes substantial evidence of harassment by Mr. Curry.

Thus, appellant has identified a compensable factor with respect to the July 5, 2006 incident. As she has implicated a compensable employment factor, the Office must base its

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[35] *See Pamela Casey*, 57 ECAB 260, 264 (2005); *Michael A. Deas*, 53 ECAB 208 (2001).

[36] *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Arthur F. Hougens*, 42 ECAB 455 (1991); and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence established such allegations).

[37] *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (it was found that the employee failed to establish the incidents or actions characterized as harassment ).

decision on an analysis of the medical evidence. As the Office found that there were no compensable employment factors, it did not analyze or develop the medical evidence. The case will be remanded to the Office for this purpose.[38] After such further development as deemed necessary, it should issue an appropriate decision on this matter.

## ***CONCLUSION***

The Board finds that appellant has identified a compensable factor of employment with respect to incident of July 5, 2006. The Board will remand for further development with respect to that allegation. The Board affirms the Office's decision finding no compensable factors on all other allegations.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the March 14, 2008 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside and remanded in part. Upon remand, the Office will combine the case files of case file numbers xxxxxx928 and xxxxxx750 and, following further development consistent with this decision, render an appropriate decision.

Issued: April 20, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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