

environment.¹ He submitted attending physician's reports dated April 4 and 25, 2007 from Dr. Mark Ashby, a Board-certified psychiatrist, who diagnosed PTSD and panic attacks without agoraphobia. Dr. Ashby checked a form box "yes," indicating that the conditions were employment related.

By letters dated May 14, 2007, the Office informed appellant of the evidence needed to support his claim and requested that the employing establishment respond to his allegations.

On May 10, 2007 the employing establishment controverted the claim. In statements dated April 16 and 24, 2007, Sharon L. Ogni, appellant's supervisor, noted that appellant sustained an employment-related injury on August 17, 2004 and worked in a limited-duty capacity until September 5, 2006, when his physician released him to return to full duty.² She stated that she supervised appellant on September 5 and 6, 2006, noted that he had not returned to work since, and provided documentation showing that appellant called in sick on September 7, 2006. Ms. Ogni reported that on September 6, 2006 appellant left a request for leave without pay (LWOP) for September 14 through 18, 2006, which the postmaster, Gerald Huntenberg, denied. She left appellant a message that his leave was denied and that he was expected to report to work as scheduled.³ By letter dated November 28, 2006, the employing establishment informed appellant that he was required to provide updated medical documentation to substantiate his absence from duty. In an April 25, 2007 memorandum, it indicated that appellant had requested unscheduled leave from September 7, 2006 through March 9, 2007, and submitted a number of leave requests. In a May 31, 2007 statement, Ms. Ogni stated that she was not aware of any incidents that took place on September 5 and 6, 2006, noting that appellant worked between eight and nine hours each day. She recalled appellant stating that, since he had not done his route for awhile, he did not know if he would make dispatch.

On June 14, 2007 appellant alleged that Mr. Huntenberg assured him that he would get help with his route when he returned to regular duty. When he reported on September 5, 2006, Ms. Ogni told him he did not need help because he had been returned to full duty. When appellant told Ms. Ogni his mail vehicle would not start, she cursed at him in the presence of others, stating "why the f**k did you wait until now to tell me." He alleged that Ms. Ogni used profanity on other occasions and that this created a hostile work environment. On September 6, 2006 appellant reported the incident to Floyd Pierce, station manager, and again requested help which was not provided. Thereafter, appellant was emotionally drained when he left work. He

¹ Appellant initially filed a Form CA-2a under file number xxxxxx578, a claim accepted for a neck condition. By letter dated May 14, 2007, the Office informed him that the claimed emotional condition would be adjudicated as a new claim.

² A duty status report dated August 25, 2006 with an illegible signature advised that appellant could return to full-time work on September 5, 2006 with no restrictions. The limited duty was described as answering telephones, writing second notices, and any other duties within his limitations.

³ The employing establishment also submitted evidence regarding an investigation concerning appellant's trip to Moses Lake, Washington from September 14 to 18, 2006 when he judged power boat races, and the investigation that ensued for falsifying a leave request. It further noted that he had failed to participate in interviews scheduled on December 27, 2006 and February 7 and March 23, 2007.

did not return to work due to overwhelming anxiety, panic and stress. Appellant submitted therapy notes dated April 4 and June 6, 2007, and an attending physician's report dated June 8, 2007 signed by Joyce R. Anderson, a nurse practitioner. In a May 3, 2007 report, Arthur S. Patterson, Ph.D., a clinical psychologist, provided psychological test results and diagnosed major depression in partial remission, rule out psychotic disorder, paranoid personality disorder and cervical disc problems. On May 21, 2007 Dr. Joseph Richichi, Board-certified in family medicine, advised that appellant had normal physical and mental health before August 17, 2004 with no evidence of PTSD.

By decision dated June 15, 2007, the Office denied the claim, finding that appellant did not provide sufficient evidence as requested in its May 14, 2007 correspondence.

On July 6, 2007 appellant requested a telephonic hearing. In a September 18, 2007 decision, an Office hearing representative remanded the case to the Office to consider evidence submitted by appellant on June 14, 2007.

In an October 10, 2007 statement, Ms. Ogni noted that she was appellant's supervisor for approximately five years. She reported that appellant had corrective surgery for his August 17, 2004 employment injury on June 28, 2006, and was released to return to full duty on September 5, 2006. Until Ms. Ogni read appellant's statements she believed they had a cordial relationship. She stated that, under union contract, if a carrier had not been able to perform full duties for two years, the route could then be placed for bid. When it was close to the two-year anniversary of appellant's August 17, 2004 employment injury, he requested that she not post his route for bid. Ms. Ogni told him that she would follow the contract and he was returned to full duty by his physician, beginning September 5, 2006. She advised that it was her policy to provide assistance to carriers on Thursday or Friday when there were more employees and less mail. Since appellant did not return to work after September 6, 2006, she was unable to provide him with assistance for his route.⁴ Ms. Ogni did not recall ever cursing at him, she reported that there were vehicle issues almost daily, and that appellant did not fill out a repair tag for the vehicle assigned to his route on September 5, 2006. She took the vehicle of Christine Azar, a substitute carrier, and gave it to appellant. Ms. Azar, an employee, remembered hearing appellant discuss the need for help with Ms. Ogni, but did not recall for cursing or yelling. Ms. Ogni stated that she had limited interaction with appellant on the two days he worked in September 2006, and related that the Office of Inspector General performed surveillance of appellant on September 14 to 18, 2006 while he was refereeing boat races, conducted radio interviews and signed autographs.⁵

In an undated statement, Carl Schacher advised that appellant was told by the postmaster that when he returned to work on September 5, 2006 he would be getting assistance to do his route. However, Ms. Ogni denied him help which, Mr. Schacher believed, was to punish appellant for getting injured on the job. In an October 19, 2007 statement, Ms. Azar noted that in the afternoon September 5, 2006 she heard appellant tell Ms. Ogni that his postal vehicle would not start, and she replied, "and you're telling me this now. Why didn't you tell me this morning

⁴ September 5, 2006 was a Tuesday and September 6, 2006 a Wednesday.

⁵ The record contains reports regarding the surveillance.

like you're supposed to?" Ms. Azar stated that she did not hear the rest of their conversation but that neither appeared happy with the situation. When she was ready to deliver her route, Ms. Azar was told the available vehicle was for appellant and she would have to wait. She stated that day was busy because it was after a holiday and some of the city carriers had taken the rural carriers vehicles.

By decision dated December 12, 2007, the Office denied the claim on the grounds that appellant failed to establish that he sustained an emotional condition in the performance of duty.

On December 19, 2007 appellant requested a telephonic hearing. He submitted a statement noting that he had filed an Equal Employment Opportunity Commission (EEOC) claim and grievances. Appellant alleged that he was continually bullied of the employing establishment and by the Office and alluded to a bomb threat that occurred on September 17, 2001 and that someone died from anthrax. In reports dated June 8 and 20, 2007, Ms. Anderson diagnosed depression and anxiety and advised that appellant could not work. In a statement dated December 12, 2007, Emily Giarratana, a coworker, related that management was hostile and broke rules, stating that Ms. Ogni had lied, needled and screamed at her on many occasions. She stated that appellant was a loyal worker.

A telephonic hearing was held on April 8, 2008. Appellant's attorney alleged that, on September 5 and 6, 2006, appellant was not given help and lacked necessary equipment. Appellant testified that his physician released him to regular duty so that he would not lose his route. He alleged that he was harassed while on limited duty. When appellant reported to work on September 5, 2006, mail was left from the previous day. He reiterated that the postmaster had promised him help several weeks previously, but neither Ms. Ogni nor Mr. Pierce offered any. Appellant reported that Ms. Ogni cursed at him when he told her that his vehicle would not start, and then he had to wait for another vehicle. He stated that it was very stressful trying to meet the 5:00 p.m. deadline for returning to the employing establishment. On September 6, 2006 appellant met with Mr. Pierce, stating that he wanted an apology and for the hostile environment to be changed. He again had leftover mail and had to wait for a postal vehicle. Appellant reported that he did not see a psychiatrist for over six months because he thought he could deal with everything. He did not return to work after September 6, 2006 because he was fearful he would hurt himself or others. Appellant noted that he had been a shop steward since 2001 and that the employing establishment was trying to fire him.

In a May 2, 2008 statement, the employing establishment noted that appellant was removed from employment effective June 30, 2007. An August 23, 2007 Step 2 grievance decision regarding his termination found that, as he failed to report for three scheduled investigative interviews, failed to provide medical documentation justifying his absences and was deceptive regarding his absences from September 14 to 18, 2006, his removal was justified.

On May 29, 2008 counsel argued that on September 5 and 6, 2006 appellant was denied the help that had been promised and lacked sufficient equipment to carry out his assigned duties. He contended that the evidence established verbal harassment by Ms. Ogni. In an undated statement, Linda K. McLennan, a former coworker, advised that Ms. Ogni had been her supervisor and treated her well but she overheard Ms. Ogni curse on the workroom floor. In reports dated April 30 and May 14, 2008, Dr. Ashby noted that appellant had not been seen since

June 2007. He diagnosed major depression, recurrent, moderate, generalized anxiety, paranoid personality disorder and panic attacks related to the incidents of September 5 and 6, 2006 while at work. Dr. Ashby stated that appellant had a great deal of difficulty accepting criticism from authority figures and because he was not provided promised help, he could not safely perform his job.

By decision dated June 18, 2008, an Office hearing representative denied the claim, finding that, as appellant failed to establish a compensable factor of employment, he failed to establish that he sustained an emotional condition in the performance of duty.

LEGAL PRECEDENT

To establish an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his stress-related condition.⁶ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.⁷ 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.⁸

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁹ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.¹⁰ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.¹¹ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.¹² Allegations alone by a claimant are insufficient to establish a factual basis for an

⁶ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁷ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁸ *Id.*

⁹ 28 ECAB 125 (1976).

¹⁰ 5 U.S.C. §§ 8101-8193.

¹¹ *See Robert W. Johns*, 51 ECAB 137 (1999).

¹² *Lillian Cutler*, *supra* note 9.

emotional condition claim.¹³ Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.¹⁴ Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹⁵

For harassment or discrimination to give rise to a compensable disability, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations that the harassment occurred with probative and reliable evidence.¹⁶ With regard to emotional claims arising under the Act, the term “harassment” as applied by the Board is not the equivalent of “harassment” as defined or implemented by other agencies, such as the EEOC, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers’ compensation under the Act, the term “harassment” is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by coemployees or workers. Mere perceptions and feelings of harassment will not support an award of compensation.¹⁷

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty causally related to factors of his federal employment.

Appellant alleged that Ms. Ogni used profanity on September 5, 2006. A verbal altercation, when sufficiently detailed by the claimant and supported by the evidence, may constitute a compensable employment factor.¹⁸ This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.¹⁹ In this case, none of the coworker statements submitted by appellant support his contention that he was verbally abused. Ms. Azar noted that she overheard a conversation between appellant and Ms. Ogni on that date regarding his postal vehicle, but she did not overhear the use of profanity and verified that appellant was given her vehicle to use to deliver mail. Ms. Giarratana generally reported that Ms. Ogni had “needled” appellant. Although Ms. McLennan stated that she had heard Ms. Ogni curse, she did address the alleged September 5, 2006 incident involving appellant. The Board has generally held that being spoken to in a raised or harsh voice does not of itself

¹³ *J.F.*, 59 ECAB ____ (Docket No. 07-308, issued January 25, 2008).

¹⁴ *M.D.*, 59 ECAB ____ (Docket No. 07-908, issued November 19, 2007).

¹⁵ *Roger Williams*, 52 ECAB 468 (2001).

¹⁶ *James E. Norris*, 52 ECAB 93 (2000).

¹⁷ *Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁸ *C.S.*, 58 ECAB ____ (Docket No. 06-1583, issued November 6, 2006).

¹⁹ *J.C.*, 58 ECAB ____ (Docket No. 07-530, issued July 9, 2007).

constitute verbal abuse or harassment.²⁰ Appellant has submitted insufficient evidence to establish his claim that Ms. Ogni cursed at him on September 5, 2006. He did not establish a factual basis for his allegation of verbal abuse.²¹

Regarding appellant's allegations that he was not provided promised help and not given adequate equipment on September 5 and 6, 2006, the Board finds that these allegations relate to administrative or personnel matters, unrelated to his regular or specially assigned work duties and do not fall within coverage of the Act.²² The manner in which a supervisor exercises his or her discretion generally falls outside the ambit of the Act. Absent evidence establishing error or abuse, a claimant's disagreement or dislike of such a managerial action is not a compensable factor of employment.²³ Perceptions of unfair treatment are not enough to establish error or abuse. A claimant must submit real proof that management did in fact commit error or abuse.²⁴ There is insufficient evidence to establish the nature of the aid promised upon appellant's return to full duty. Mr. Schacher generally advised that appellant was told that he would get help; however, he did not address any specific statement by the postmaster. His statement is therefore too general to establish that appellant was not provided with adequate equipment to perform his duties. Ms. Ogni explained that help was usually given on Thursday and/or Friday, less busy days, but that appellant did not report for work on Thursday, September 7, 2006. Appellant did not attribute stress to delivering the mail, merely that he was not provided the help that he was promised. Regarding the problems with the postal vehicles, although provision of equipment is generally related to employment, it too is an administrative function of the employer and unrelated to the employee's regular or specially assigned work duties.²⁵ Appellant also did not submit evidence to establish error or abuse with respect to these matters. The record reflects that when he notified Ms. Ogni that his vehicle would not start, she provided another postal vehicle to him. Appellant therefore did not establish a compensable factor with respect to these administrative functions.²⁶

Appellant generally alleged that he became stressed about meeting a deadline to return to the employing establishment by 5:00 p.m. While the assignment of a work schedule or deadline is an administrative function and not a work factor and is not compensable absent a showing of error or abuse,²⁷ alleged stress in meeting a deadline for mail delivery could be a compensable factor of employment.²⁸ Appellant alleged that it was stressful for him to deliver the mail on

²⁰ *T.G.*, 58 ECAB ____ (Docket No. 06-1411, issued November 28, 2006).

²¹ *C.S.*, *supra* note 18.

²² *Brian H. Derrick*, 51 ECAB 417 (2000).

²³ *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

²⁴ *L.S.*, 58 ECAB ____ (Docket No. 06-1808, issued December 29, 2006).

²⁵ *Brian H. Derrick*, *supra* note 22.

²⁶ *Tina D. Francis*, 56 ECAB 180 (2006).

²⁷ *Barbara J. Latham*, 53 ECAB 316 (2002).

²⁸ *Helen Casillas*, 46 ECAB 1044 (1995).

September 5 and 6, 2006 by a 5:00 p.m. deadline. However, he submitted no evidence to document that there was, in fact, a deadline for mail delivery or sufficiently explains how he had difficulty meeting the deadline. Consequently, this allegation is not established by the evidence, and does not be a compensable employment factor.²⁹

Regarding appellant's general contention that he was harassed while at the employing establishment, mere perceptions of harassment or discrimination are not compensable under the Act.³⁰ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.³¹ Appellant submitted several statements from coworkers and former coworkers; however, none of these individuals provided sufficient explanation to demonstrate harassment on the part of the employing establishment management or personnel. He also stated that he had filed an EEOC claim; however, the record does not contain any decisions finding that he was mistreated by coemployees or workers.³² The Board therefore finds that appellant did not establish a factual basis for his claim of harassment by probative and reliable evidence.³³

Finally, appellant generally alluded to a bomb threat on September 17, 2001 and an anthrax death. However, he did not explain whether he was alleging that these events contributed to his claimed condition. As the record lacks probative evidence to support appellant's claim, the Board finds that he did not establish a compensable employment factor of employment. Appellant therefore did not establish that he sustained an emotional condition in the performance of duty as alleged.³⁴

CONCLUSION

The Board finds that appellant failed to establish that he sustained an employment-related emotional condition in the performance of duty causally related to his federal employment.

²⁹ *Bonnie Goodman*, 50 ECAB 139 (1998)

³⁰ *James E. Norris*, *supra* note 16.

³¹ *Id.*

³² *Beverly R. Jones*, *supra* note 17.

³³ *See Robert Breeden*, 57 ECAB 622 (2006).

³⁴ As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Katherine A. Berg*, 54 ECAB 262 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 18, 2008 be affirmed.

Issued: July 17, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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