

stopped work on July 17, 2007. By letter dated August 16, 2007, the Office informed appellant of the evidence needed to support her claim.

Appellant alleged that she had been harassed by her first level supervisor, Susan Durand, and her second level supervisor, Penny Manczko, since the employing establishment was reorganized in October 2006, noting that she worked in Memphis, Tennessee and her supervisors worked in Chicago, Illinois. She stated that Ms. Durand acted unethically, made false statements, displayed a lack of trust, was dishonest, breached appellant's confidentiality, undermined her position with her staff by not following the chain of command, was inconsistent in personnel and business situations, behaved erratically, and was manipulative, coercive, and threatening such that appellant was fearful of reprisal and retribution. Appellant alleged that Ms. Durand caused problems in March and April 2007 regarding who on appellant's staff could attend a budget conference. At a conference appellant attended in April 2007, Ms. Durand acted inappropriately in a meeting by yelling and walking out. Ms. Durand threatened to pull work from appellant, would not allow her to work overtime and inappropriately asked for medical documentation to support appellant's absence. Appellant alleged that Ms. Manczko would not respond to her e-mails and delayed in responding to an administrative grievance appellant filed on June 12, 2007. She submitted several e-mails and employing establishment policy memoranda.

In reports dating from July 26 to September 20, 2007, Dr. John C. LaBarreare, a general practitioner, advised that appellant's conflicts with her supervisor over a nine-month period caused increased blood pressure, irritable bowel syndrome, and severe stress and anxiety such that she should not work. He recommended counseling. On September 20, 2007 Dr. LaBarreare advised that appellant could return to work but only under a different supervisory structure and have no communication with her previous supervisors for the remainder of her career. In a September 18, 2007 report, Matthew P. Smith, Ph.D., a clinical psychologist, noted that he had seen appellant for seven counseling sessions since August 16, 2007 for anxiety symptoms secondary to job stress. He stated that appellant initially made progress but communications with the employing establishment concerning her grievances resulted in setbacks. Dr. Smith diagnosed adjustment disorder with anxiety, irritable bowel syndrome, hypertension and occupational problems. He advised that appellant would not function well at work under her present supervisor.

By letter dated September 12, 2007, the employing establishment controverted the claim. Ms. Durand disputed each of appellant's allegations denying that she had ever been dishonest, acted unethically, made false statements or breached appellant's confidentiality. She stated that, when appellant was on leave, she contacted the acting supervisor or another employee in order to meet deadlines. Regarding attendance at the conference, while Ms. Durand initially told appellant that several employees could attend, Ms. Manczko overrode her decision and at that time appellant was on leave. Ms. Durand abruptly left a meeting but returned in five minutes and apologized. She told appellant that, if deadlines could not be met in Memphis, she had no choice but to have the work performed in Chicago. When Ms. Durand was notified of appellant's claim of a hostile work environment on April 13, 2007, she requested to be removed from being appellant's supervisor. However, after appellant filed a grievance against Ms. Manczko, her temporary supervisor, on July 9, 2007 Ms. Durand again became appellant's supervisor.

On September 21, 2007 appellant was relieved of duty without loss of pay, effective September 24, 2007, because her medical restrictions could not be accommodated. In an October 4, 2007 statement, Audry Mumford, a coworker, advised that she overheard part of a disagreement between appellant and Ms. Durand concerning overtime. She did not perceive Ms. Durand's responses as a threat. On October 5, 2007 Commander Robert Beede, a Navy chaplain, noted that he and appellant spoke on several occasions regarding work stress. In an October 9, 2007 statement, Captain F.M. Straughan noted that he had been appellant's direct supervisor prior to the reorganization and that her performance and professionalism were always above reproach. Beginning in October 2006, appellant came under more direct supervision, receiving more scrutiny from her regional supervisors which caused her a stress that was complicated by personality conflicts and a lack of communication. In an October 10, 2007 statement, Evelen Johnson, a coworker, stated that she did not want to be involved in appellant's claim. In an October 16, 2007 statement, Kelley Fitzpatrick, a former employee, advised that she resigned in June 2007 due to a hostile work environment and attached a statement regarding her complaints. She overheard Ms. Durand telling appellant that her entire staff could attend a conference but that Ms. Manczko later rescinded this.

By decision dated November 27, 2007, the Office denied the claim on the grounds that appellant did not sustain an injury in the performance of duty. It found that the evidence did not establish a compensable factor.

On December 21, 2007 appellant requested a telephonic hearing which was held on May 7, 2008. She testified about the budget conference, noting that while she was on leave the number of attendees was changed. Appellant felt this was an attack on her integrity because Ms. Durand and Ms. Manczko should have waited until she returned from leave to make the change. After this, she could not talk with Ms. Durand over the telephone. In April 2007, a meeting was held where appellant voiced her concerns. In June 2007, Ms. Manczko wanted her to come to Chicago to meet with Ms. Durand and Linda Kristan and discuss her problems from personnel but appellant refused. Appellant did not file an Equal Employment Opportunity Commission (EEOC) claim but filed an administrative grievance; however, there was no final decision. She was still on paid leave but her position was being abolished through a reduction-in-force. Appellant had been offered a buyout and her retirement had been approved. After the hearing she submitted comments on the hearing transcript, additional e-mails, and a November 29, 2007 decision in which her grievance was denied but mediation was offered. On December 20, 2007 appellant informed the employing establishment that she did not want to engage in formal mediation because "Ms. Manczko, Ms. Durand and I have irreconcilable differences."

In a July 15, 2008 decision, an Office hearing representative affirmed the November 27, 2007 decision.

LEGAL PRECEDENT

To establish her claim that she sustained an emotional or stress-related condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized

medical opinion evidence establishing that the identified compensable employment factors are causally related to her stress-related condition.¹ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.² 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.³

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁴ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁵ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁶ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that, the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁷ A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.⁸

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.⁹ Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹⁰

¹ See *Pamela D. Casey*, 57 ECAB 260 (2005).

² *Dennis J. Balogh*, 52 ECAB 232 (2001).

³ *Id.*

⁴ 28 ECAB 125 (1976).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ See *Pamela D. Casey*, *supra* note 1.

⁷ *Lillian Cutler*, *supra* note 4.

⁸ *Jeral R. Gray*, 57 ECAB 611 (2006).

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

¹⁰ *Kim Nguyen*, 53 ECAB 127 (2001).

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.¹¹ 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.¹²

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish that she sustained a stress-related condition in the performance of duty causally related to factors of her federal employment. Appellant alleged that she worked in a hostile work environment as she had been harassed by her supervisors Ms. Durand and Ms. Manczko. Appellant, however, submitted insufficient evidence to substantiate her allegations. The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made as opposed to mere perceptions.¹³

Appellant alleged that Ms. Durand abusively threatened to pull work and denied overtime, assigned work, monitored work, and approved or denied leave requests. These are administrative functions of a supervisor and are not compensable absent error and abuse.¹⁴ She also alleged that Ms. Manczko did not respond to e-mails and delayed processing a grievance. The Board finds that appellant has not submitted sufficient evidence to establish error or abuse on the part of her supervisors. Generally, complaints about the manner in which a supervisor performs his or her duties or the manner in which a supervisor exercises his or her discretion fall, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor or manager must be allowed to perform his or her duties and employees will, at times, dislike the actions taken. Mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent evidence of error or abuse.¹⁵ Regarding the scheduling of attendees at a budget conference, the record supports that Ms. Durand initially stated that several employees could attend. However, while appellant was on leave, Ms. Manczko overrode this decision. Appellant’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

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

¹² *Beverly R. Jones*, 55 ECAB 411 (2004).

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

¹⁴ *Beverly R. Jones*, *supra* note 12.

¹⁵ *T.G.*, 58 ECAB ____ (Docket No. 06-1411, issued November 28, 2006).

is not compensable.¹⁶ The Board therefore finds that appellant's contentions regarding these administrative matters are not compensable.¹⁷

Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute compensable factors of employment.¹⁸ Ms. Durand acknowledged that she became upset at a meeting attended by appellant but noted that five minutes later she apologized for the incident. The mere fact that a supervisor may raise his or her voice during a conversation or meeting does not warrant a finding of verbal abuse¹⁹ and every statement uttered in the workplace will not give rise to coverage under the Act.²⁰ The Board finds that the evidence concerning Ms. Durand's actions at the meeting do not establish error or abuse. Appellant therefore did not establish this as compensable.

Appellant also alleged that she was harassed at the employing establishment. Mere perceptions of harassment or discrimination are not compensable under the Act.²¹ 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.²² Appellant submitted numerous e-mails and statements which attested to her good character. However, this evidence provided no specific information regarding her claim to substantiate error or abuse and therefore does not corroborate her assertions.²³ As these statements were general in nature, the Board finds that appellant did not establish a factual basis for her claim of harassment by probative and reliable evidence.²⁴

As the record lacks probative evidence to support appellant's claim, the Board finds that she has not established a compensable employment factor of employment. Appellant did not establish that she sustained a stress-related condition in the performance of duty as alleged.²⁵

¹⁶ *Peter D. Butt, Jr.*, 56 ECAB 117 (2004).

¹⁷ *Charles D. Edwards*, *supra* note 9.

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

¹⁹ *See Joe M. Hagegood*, 56 ECAB 479 (2005).

²⁰ *V.W.*, 58 ECAB ____ (Docket No. 07-234, issued March 22, 2007).

²¹ *James E. Norris*, *supra* note 11.

²² *Id.*

²³ *See Mary J. Summers*, 55 ECAB 730 (2004).

²⁴ *See Robert Breeden*, 57 ECAB 622 (2006).

²⁵ 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).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a stress-related condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the July 15, 2008 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 25, 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