

Ms. Callan, an employee in building maintenance, questioned her time card. Appellant asserted that her time card was none of Ms. Callan's concern. Further, she alleged that Ms. Callan made statements to Garth Warner, another coworker, that appellant had several vehicle accidents and that riding with her would be hazardous to his health.

On November 8, 2006 John Jenkel, a coworker, made a hostile work environment complaint against appellant. On December 8, 2006 an employing establishment investigation was completed. The investigation was requested on November 8, 2006 by a human resources manager and conducted by a labor relations specialist and a postmaster from a different location. Nine workers at the employing establishment were interviewed and eight of them also submitted written witness statements on November 16 and 17, 2006. (The investigators did not ask the employing establishment postmaster, Phyllis Deane, to submit a written statement although she was interviewed.) The investigation disclosed a number of interactions between appellant and Ms. Callan and both individuals wrote statements concerning those incidents and their relationship.

In a November 17, 2006 interview, Gail Vasta stated that appellant and Ms. Callan had personality problems, comparing them to "dogs with bones." She stated that she could not imagine them not having problems. Ms. Vasta discussed a January 2006 incident where appellant and Ms. Callan were "out of control," yelling at each other, and an October 6, 2006 incident. She felt that appellant and Ms. Callan should be evaluated and that management should intervene in the situation.

On November 16, 2006 James Rhodes stated that he had witnessed two confrontations between Ms. Callan and appellant, one being approximately a year ago and the other had been three to four weeks ago. When asked when the situation between Ms. Callan and appellant began, he replied that Ms. Callan had helped appellant move. Mr. Rhodes felt that their relationship deteriorated afterwards.

In a November 16, 2007 interview, Postmaster Deane stated that appellant and Ms. Callan could not respect each other's space and caused problems at the employing establishment. He reported an incident on October 6, 2006 when Ms. Callan claimed she was attacked by appellant and alleged that she had tape recorded the incident. An investigation was conducted after the incident. Postmaster Deane also reported that, on October 16, 2006, Ms. Callan faxed a letter to the Office of the Inspector General (OIG) complaining that she and other coworkers were fearful that appellant would shoot them. He stated that she attempted to control and improve the situation by speaking with Ms. Callan and appellant both together and individually, by conducting employee meetings about workplace behavior and by having a postal service workplace improvement specialist visit the post office.

In a November 16, 2006 interview, Mr. Warner, a co-employee identified by appellant, confirmed that Ms. Callan told him to be careful when he rides with appellant because she had three hit-and-run accidents in one month and should be fired.

In a written statement dated November 17, 2006, Ms. Callan complained that appellant never liked her, that she was aggressive, argumentative and that there was never an opportunity to be friends with her. When asked about any outside relationship with appellant, Ms. Callan

said she had helped appellant move. She claimed she felt sorry for appellant because she was forced to move from her apartment and needed help with a truck. Ms. Callan asserted that appellant “told her things she did not want to know” and that she did not feel comfortable. She described an incident in January 2006 when appellant “came after her,” pushing some telephone books over, and an October 6, 2006 incident in which she secretly tape recorded appellant. Ms. Callan also stated that appellant used to call her house constantly. She stated that appellant asked to borrow money. Ms. Callan said she refused to lend appellant anything. She further admitted that she had told Mr. Warner to be careful when riding with appellant because she has had many accidents and had fallen down at the case.

In a November 16, 2006 interview, appellant agreed in her statement that she had spent time with Ms. Callan outside the employing establishment. She claimed that Ms. Callan and her husband picked up cabinets from appellant’s parents’ house. Appellant confirmed that Ms. Callan helped her move in November 2005 and that they spent the entire Sunday together. Appellant said that, about a week prior to her move, Ms. Callan met her out on her route and stated that she felt guilty because everyone was rooting for another employee to be selected for appellant’s full-time position. She stated that about the end of November she attempted to call Ms. Callan about a washer and dryer that were for sale. Ms. Callan stopped taking her calls and started shunning her at work.

On October 6, 2006 appellant felt as though coworkers were “bad mouthing” her. She approached Ms. Callan at the time clock. Appellant told Ms. Callan that her job was on the line and called her “certifiably nuts.” She did not know that Ms. Callan was recording the conversation. Appellant stated that she was shaking because she was afraid of Ms. Callan. She then asserted, in her statement of November 16, 2006, that Ms. Callan was trying to “bait me to say something on tape.” Appellant admitted that her actions and comments in the taping incident were inappropriate.

In a March 2, 2007 letter, the Office notified appellant of the deficiencies in her claim and requested that she provide additional information. Appellant did not submit any additional evidence.

By decision dated July 2, 2007, the Office accepted that the incidents occurred as alleged; however, it found that appellant did not submit evidence containing a diagnosis that could be connected to the work events.

On July 31, 2007 appellant filed a request for an oral hearing before an Office hearing representative. She withdrew this request on November 28, 2007.

On March 28, 2008 appellant, through her representative, filed a request for reconsideration.

By decision dated June 26, 2008, the Office modified the July 2, 2007 decision, finding that appellant did not allege any compensable factors of employment and, thus, did not establish that she sustained an injury in the performance of duty.

LEGAL PRECEDENT

The Federal Employees' Compensation Act¹ provides for the payment of compensation benefits for injuries sustained in the performance of duty. To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying compensable employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.²

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*,³ the Board explained that there are distinctions in the type of employment situations giving rise to a compensable emotional condition under the Act. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the coverage under the Act.⁴ When an employee experiences emotional distress in carrying out her employment duties and the medical evidence establishes that the disability resulted from her 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 an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of her work.⁵ 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.⁶ Generally, actions of the employing establishment in administrative matters, unrelated to the employee's regular or specially assigned work duties, do not fall within the coverage of the Act.⁷ However, an administrative or personal matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.⁸

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 a physician when

¹ 5 U.S.C. §§ 8101-8193.

² *George C. Clark*, 56 ECAB 162 (2004).

³ 28 ECAB 125 (1976).

⁴ *George C. Clark*, *supra* note 2.

⁵ *Lillian Cutler*, *supra* note 3.

⁶ *Id.*

⁷ *Michael L. Malone*, 46 ECAB 957 (1995).

⁸ *Charles D. Edwards*, 55 ECAB 258 (2004).

providing an opinion on causal relationship and which working conditions may not be considered.⁹ If a claimant does indicate 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 record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.¹⁰

ANALYSIS

The issue is whether appellant established that she sustained an emotional condition causally related to factors of her employment.

Appellant broadly alleged that she experienced harassment from multiple coworkers. In order to meet the burden of proof to establish a claim for compensation, an employee must identify specific employment factors. General allegations of harassment are insufficient to discharge this burden.¹¹ Appellant only alleged two specific incidents of harassment. First, she claimed that the postmaster informed her that Ms. Callan made a comment about her time card. There is no further detail as to what Ms. Callan might have said or done. However, appellant correctly contended that the issue was not Ms. Callan's concern.

Second, appellant claimed that Ms. Callan defamed her by telling other coworkers that appellant was unable to drive and had been in several vehicle accidents. This incident is confirmed.

The Board finds that the alleged time card incident is not a compensable factor of employment because there is no evidence as to what specifically happened. There is no corroboration of appellant's allegations regarding this incident and it remains a vague, unsubstantiated allegation, not compensable under the Act.¹² It is not even clear from the record whether appellant is complaining about some action by Ms. Callan or by the postmaster who mentioned the occurrence to appellant. The postmaster is certainly entitled to discuss time, leave, time cards and other management and administrative matters with employees and there is no reason she should not have mentioned this matter to appellant.

Further, the Board finds that the second allegation, that Ms. Callan told coworkers that appellant was unable to drive her vehicle, is not a compensable factor of employment. It is certainly tactless and even unkind, but it does not rise to the level of harassment.

⁹ See *Norma L. Blank*, 42 ECAB 384, 389-90 (1992).

¹⁰ *Id.*

¹¹ See *Sherman Howard*, 51 ECAB 387 (2000).

¹² For harassment or discrimination to give rise to a compensable disability, there must be evidence 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 of harassment or discrimination with probative and reliable evidence. *Charles D. Edwards*, 55 ECAB 258 (2004).

Based on the evidence of record, the Board finds that the alleged harassment and hostile work environment arose out of a personal relationship between Ms. Callan and appellant. It did not arise out of the performance of duty, nor did the employment facilitate the situation.¹³ During the course of the hostile work investigation conducted by the employing establishment, both Ms. Callan and appellant admitted to a nonwork relationship outside their employment. In a November 16, 2006 interview, appellant said she had spent time with Ms. Callan and detailed contacts with her outside the employing establishment. She said that Ms. Callan picked up cabinets from her parents' house and that Ms. Callan had helped her move in November 2005. Appellant also stated that she attempted to call Ms. Callan about a washer and dryer for sale but that she stopped taking appellant's calls. She admitted that the relationship deteriorated afterward.

Similarly, Ms. Callan answered affirmatively when asked whether she had an outside relationship with appellant and described helping her move in 2005. She also alleged that appellant repeatedly called her house and, at some point, asked to borrow money, which Ms. Callan refused. Moreover, appellant's coworkers confirmed that the hostile feelings in the workplace were due to the personality conflict between appellant and Ms. Callan. Mr. Rhodes specifically stated that Ms. Callan helped appellant move and that the relationship deteriorated afterward. Ms. Vasta compared appellant and Ms. Callan to "dogs with bones" and said the conflict was based on personality problems.

The Board finds that the alleged harassment arose out of a deteriorating, personal relationship based on events occurring outside the workplace between Ms. Callan and appellant. This is evidenced by the results of the employing establishment's investigation where appellant, as well as her coworkers were interviewed. It is noteworthy that no one involved with the situation mentioned any work-related cause for the disputes between appellant and Ms. Callan. Neither Ms. Callan nor appellant identify a work activity or incident that started their quarrel although both admit they argued at work. Employment was one arena in which they both acted-out their dispute, but not its cause.

The instant case is easily distinguished from cases where friction-and-strain due to appellant's employment resulted in a dispute. The friction-and-strain doctrine provides that a dispute may be said to arise in the course of employment where the work of the participants brought them together and created the relations and conditions which resulted in the clash. In *Janet D. Yates*,¹⁴ the Board found that an altercation arose out of the classification of a piece of mail and did not involve a personal matter between appellant and a coworker. The Board held that the work contributed and facilitated the dispute and, therefore, the altercation arose out of employment and constituted a compensable work factor. Additionally, in *Josie P. Waters*,¹⁵ an altercation occurred at work after a coworker bumped appellant's arm. The Board found the altercation to be a compensable work factor. The Board explained that there was no private prior

¹³ If an altercation or harassment arises out of a personal relationship from appellant's domestic or private life and is imported into the workplace, then the harassment is not found to arise out of the performance of duty. *Agnes V. Blackwell*, 44 ECAB 200 (1996).

¹⁴ 49 ECAB 240 (1997).

¹⁵ 45 ECAB 513 (1994).

relationship that was imported into the workplace and work was the sole connection between appellant and the coworker.

Rather, the evidence in this case, although there is no evidence of a physical confrontation, shows that Ms. Callan and appellant involved in a relationship external to the employing establishment and that the alleged harassment arose out of a deterioration of this nonemployment situation. Appellant appears to have been a willing and active participant in the disruptive behavior rather than the passive victim of harassment. The Board finds that the conflict was imported into the workplace and cannot thereby be considered to have arisen in the performance of duty.¹⁶

The Board notes that Ms. Callan's statement, regarding appellant's driving abilities, does not rise to the level of harassment or otherwise fall within coverage of the Act. Although the Board recognizes that a single event may be compensable, the incident must have more objective impact than casual office gossip.¹⁷ Appellant cites a single statement by a custodial employee regarding appellant's driving abilities. Although corroborated, the statement does not carry the weight or objective impact to break through the normal static and background noise of the workplace.¹⁸

Therefore, the Board finds that appellant did not allege any compensable factors of employment.

CONCLUSION

The Board finds that appellant did not establish that she sustained an emotional condition in the performance of duty causally related to a compensable factor of her employment.

¹⁶ See *Brenton A. Burbank*, 53 ECAB 279 (2002) (where the Board found that an altercation arising from a traffic dispute while appellant and a coworker were on their way to work was a personal dispute imported into the workplace and, therefore, was not a compensable factor of employment); *Edward Savage, Jr.*, (where the Board found that a dispute concerning a personal debt owed to appellant by a coworker was imported to the workplace. Because there was no indication that work contributed or facilitated the dispute, the altercation was not a compensable work factor).

¹⁷ The Board has held verbal altercations or abuse among coworkers may constitute a compensable factor of employment; however, not every statement uttered in the workplace will be covered by the Act. See *Sherman Howard*, 51 ECAB 387 (2000).

¹⁸ Compare *Sandra Davis*, 50 ECAB 450 (1999) (where the Board found a compensable factor of employment where appellant was harassed by derogatory comments regarding her sex life, alcohol and drug abuse and mental problems made by coworkers after personal information relating to a sexual harassment and Equal Employment Opportunity Commission investigation was revealed in a published article and on "60 Minutes" by a director from the employing establishment.); *Dorthea M. Belnavis*, 57 ECAB 377 (2006) (the Board found a compensable factor of employment where appellant's supervisor improperly accessed medical records, made harassing statements about her emotional condition and discriminated against her concerning her job performance.); *Abe E. Scott*, 45 ECAB 164 (1993) (where the Board found that the use of the epithet "apes" by coworkers constituted harassment and was a compensable factor of employment.)

ORDER

IT IS HEREBY ORDERED THAT the June 26, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 25, 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