

only work six hours a day for the next 30 days to allow a new medication to take effect. The employing establishment controverted the claim, stating that appellant did not submit written notice as to how her eyesight went blank.

By letter dated September 14, 2007, the Office informed appellant of the type of evidence needed to support her claim and, in a September 26, 2007 statement, she noted that, at approximately 3:00 p.m., on July 25, 2007 when she asked her supervisor if she could go into the cage and clear up a mess, the supervisor screamed “no” at her but at 4:15 p.m., the supervisor told appellant to go into the cage to clear it up. Appellant stated that, when she was almost finished clearing, the supervisor asked in a loud tone what was taking her so long, and continued to give directions in a louder tone. She stated that suddenly she could not see and when she could see again she noticed that the supervisor’s face was red, that she was foaming at the mouth screaming “get out right now,” and told her to go work in the lobby. Appellant stated that an Equal Employment Opportunity (EEO) claim had been filed.

An October 24, 2007 notice of right to file from an employing establishment EEO dispute resolution specialist notified appellant that her claim had been processed. It described appellant’s EEO discrimination claim and advised her of the steps needed to continue her complaint.¹ In reports dated September 5, 2007, Dr. Tan stated that appellant had been dealing with “work issues,” noting that she felt picked on and targeted. He diagnosed “depression, major, recurrent, in partial remission”; and “occupational problem,” and advised that appellant was ill and could not work from September 5 through 16, 2007 and could return to full duties with no restrictions on September 17, 2007. On December 20, 2007 Dr. Tan advised that she could not work from December 20, 2007 through January 6, 2008 and could return to work on January 7, 2008 with her prior restrictions.

In a January 30, 2008 statement, an employing establishment supervisor, Oswaldo Carillo, advised that a meeting was held with appellant, Supervisor Steward and others to “address a false accusation” made by appellant about Supervisor Steward screaming at her and appellant blacking out. He stated that appellant’s story kept changing, and that Supervisor Steward stated that she did not yell at appellant and that appellant did not black out or have the appearance of having blacked out, rather that appellant was yelling at Supervisor Steward who told appellant that, if she did not calm down, the postal police would be called. Supervisor Carillo stated that during the meeting appellant admitted that she yelled at Supervisor Steward but did not threaten her. He stated that he had been appellant’s supervisor for seven years and that she had yelled at him and refused to follow instructions.

By decision dated February 7, 2008, the Office denied the claim on the grounds that appellant’s claimed emotional condition did not arise in the performance of duty. On February 25, 2008 appellant requested a hearing and submitted a statement in which she also alleged that she was harassed by Supervisor Steward on July 6, 2007 when Supervisor Steward yelled at her and told her to get out of her office; that there were contradictory policies regarding whether a Dutch door was to be kept open or closed; and that the lighting in the work area was unsafe. In a November 19, 2007 statement, a coworker, Janice Wallace, attested to poor lighting

¹ The notice described factors that appellant apparently alleged were discriminatory and led to the filing of the EEO claim. A copy of the EEO claim is not in the record.

near the front door in the lobby of the employing establishment and that the door was to remain closed. By report dated December 20, 2007, Melanie F. Aoki, Ph.D., a licensed clinical psychologist, advised that appellant would be attending a 10-week pain management program beginning on January 10, 2008. In January 5, 2008 reports, Dr. Tan reiterated appellant's diagnoses and advised that her medications were recently changed due to increased symptoms. He stated that she was unable to work from January 7 through 13, 2008 but could return to work on January 14, 2008 with her prior restrictions. A report of unsafe condition dated July 12, 2007 submitted by appellant noted that she requested new lighting that day and that it had been installed. An October 25, 2007 revised notice of right to file from an employing establishment EEO dispute resolution specialist notified appellant that her claim had been processed.²

At the hearing, held telephonically on December 17, 2008, appellant noted that she had retired on February 28, 2008. She testified that Supervisor Steward inappropriately paged her and chided her for standing by the time clock waiting until the appropriate time to check out for lunch, and screamed at her on July 25, 2007 which caused her to go blind for three or four seconds, and that during the incident Supervisor Steward was yelling and foaming at the mouth. Appellant also stated that she was told to keep the Dutch door open but did not feel safe and that others were told to keep it closed, and that she complained about poor lighting but acknowledged that it was fixed by the end of the day. She generally alleged that she was ordered to work outside her physical restrictions for another accepted claim and that she was harassed. Appellant noted that she had been seeing Dr. Tan for many years.

By decision dated July 10, 2009, an Office hearing representative affirmed the February 7, 2008 decision.

LEGAL PRECEDENT

To establish her claim that she sustained an emotional 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.³ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.⁴ 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.⁵

² The revised notice included a description of a response by Supervisor Steward.

³ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁴ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁵ *Id.*

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*,⁶ 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.⁷ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁸ 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.⁹ Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.¹⁰ Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.¹¹ Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹²

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.¹³ 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.¹⁴

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.¹⁵ 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

⁶ 28 ECAB 125 (1976).

⁷ 5 U.S.C. §§ 8101-8193.

⁸ See *Robert W. Johns*, 51 ECAB 137 (1999).

⁹ *Lillian Cutler*, *supra* note 6.

¹⁰ *J.F.*, 59 ECAB ____ (Docket No. 07-308, issued January 25, 2008).

¹¹ *M.D.*, 59 ECAB ____ (Docket No. 07-908, issued November 19, 2007).

¹² *Roger Williams*, 52 ECAB 468 (2001).

¹³ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁴ *Kim Nguyen*, 53 ECAB 127 (2001).

¹⁵ *James E. Norris*, 52 ECAB 93 (2000).

as the EEO Commission, 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 co-employees or workers. Mere perceptions and feelings of harassment will not support an award of compensation.¹⁶

ANALYSIS

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

Regarding appellant's claim that she was yelled at by Supervisor Steward on July 6 and 25, 2007, a verbal altercation, when sufficiently detailed by the claimant and supported by the evidence, may constitute a compensable employment factor.¹⁷ This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.¹⁸ In this case, appellant submitted no supportive statements to corroborate her allegations that she was verbally abused and Supervisor Carillo advised that a meeting was held regarding the July 25, 2007 incident, stating that appellant admitted that she yelled at Supervisor Steward. The Board has generally held that being spoken to in a raised or harsh voice does not of itself constitute verbal abuse or harassment.¹⁹ Appellant submitted no evidence corroborating her claim that Supervisor Steward yelled at her on July 6 and 25, 2007. She therefore did not establish a factual basis for her allegation of verbal abuse.²⁰ Likewise, appellant's allegations that she was improperly paged and chided by Supervisor Steward are not compensable. 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 in general must be allowed to perform his duties and employees will, at times, dislike the actions taken.²¹ Mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent evidence of error or abuse, and there is no evidence of error or abuse regarding these matters.²²

Appellant's allegations regarding inadequate lighting and that there was contradictory policy regarding the Dutch door relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within coverage of the

¹⁶ *Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁷ *C.S.*, 58 ECAB 137 (2006).

¹⁸ *J.C.*, 58 ECAB 594 (2007).

¹⁹ *T.G.*, 58 ECAB 189 (2006).

²⁰ *C.S.*, *supra* note 17.

²¹ *T.G.*, *supra* note 19.

²² *Id.*

Act.²³ By her own admission, by the end of the day of her complaint, the lighting had been fixed, and absent evidence establishing error or abuse, a claimant's disagreement or dislike of such a managerial action is not a compensable factor of employment.²⁴ 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.²⁵ The Board finds that appellant's claimed emotional reaction due to the poor lighting and perceived contradictory policy regarding the Dutch door resulted from her own desire to work within a particular work environment and from her frustration to effect desired changes. As these did not relate to any requirement of her assigned duties, her reaction did not arise in the performance of duty.²⁶ There is no evidence here to substantiate error or abuse with respect to these administrative matters. Appellant therefore did not establish a compensable factor with respect to this administrative function.²⁷

Regarding appellant's general contention that she was harassed by the employing establishment, mere perceptions of harassment or discrimination are not compensable under the Act,²⁸ and 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.²⁹ In the case at hand, the only statement appellant submitted was in regard to the lighting and the Dutch door, and this statement does not provide a sufficient explanation to demonstrate harassment on the part of employing establishment management. Appellant also submitted notices of right to file an EEO claim compiled by an EEO dispute resolution specialist. The record, however, does not contain appellant's EEO claim and does not contain any decisions. Appellant submitted no evidence to show a persistent disturbance, torment or persecution, *i.e.*, mistreatment by co-employees or workers.³⁰ The Board therefore finds that she did not establish a factual basis for her claim of harassment by probative and reliable evidence.³¹

As the record lacks probative evidence to support appellant's claim, the Board finds that she did not establish a compensable employment factor of employment. Appellant therefore did not establish that she sustained an emotional condition in the performance of duty as alleged.³²

²³ *Brian H. Derrick*, 51 ECAB 417 (2000).

²⁴ *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

²⁵ *L.S.*, 58 ECAB 249 (2006).

²⁶ *See William Karl Hansen*, 49 ECAB 140 (1997).

²⁷ *Tina D. Francis*, 56 ECAB 180 (2006).

²⁸ *James E. Norris*, *supra* note 15.

²⁹ *Id.*

³⁰ *Beverly R. Jones*, *supra* note 16.

³¹ *See Robert Breeden*, 57 ECAB 622 (2006).

³² 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 failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 10, 2009 be affirmed.

Issued: July 19, 2010
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