United States Department of Labor
Employees' Compensation Appeals Board

M.C., Appellant	)	
and	)	**Docket No. 09-1880**
	)	**Issued: June 21, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Englewood, CO, Employer	)	

Appearances:
Appellant, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 20, 2009 appellant filed a timely appeal from an April 15, 2009 decision of the Office of Workers' Compensation Programs denying her emotional condition claim.[1] Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

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

FACTUAL HISTORY

On November 28, 2007 appellant, then a 53-year-old city letter carrier, filed an occupational disease claim for an emotional condition due to various incidents at work. She was aware of her condition on May 9, 2007 and first related it to her job on November 7, 2007.

[1] Appellant was originally represented by *John J. Zodrow, Esq.*, on appeal. However, she advised the Board on August 14, 2009 that she wished to proceed with the appeal without her attorney.

Appellant stated that she was subjected to intense pressure and frequent dismissive and belittling treatment in being told that she was not working hard or fast enough. She stated that her work was never observed nor did she get suggestions for improvement despite her requests to be inspected. Appellant stated that the requested overtime for her route was routinely reduced or denied, which added to her stress. She stopped work on November 8, 2007 after being hospitalized for self-inflicted lacerations to both arms. Appellant was discharged the next day with diagnoses of recurrent, major depressive disorder and adjustment disorder. In December 6, 2007 reports, Dr. Lindy S. Gilchrist, a Board-certified family practitioner, diagnosed stress, anxiety and suicidal ideation and placed appellant off work from November 8, 2007.

After the Office's requested additional evidence, appellant provided a statement. Appellant alleged a stressful and hostile work environment due to constant pressure from her station manager, Linda Woods, and her supervisor, Paula Harmon, about her job performance. She stated that she was told daily that she was not doing a good enough job and that she took too long to deliver her route. Appellant stated that her route had significant growth, due to the addition of four new apartment buildings, which was not included in her street time and her overtime requests to complete the mail delivery were denied. When she asked for a route count in September 2007, she was told that she did not qualify for a route count. Appellant stated that her route took more than eight hours a day to complete. She alleged that the process of filling out the required Form 3996 (request for additional time) to estimate the amount of overtime needed was stressful. Appellant stated that her suggestion that someone follow her on the street and identify any time-wasting practices she could change was ignored. She noted that, while Edward Simmons, afternoon supervisor, had followed her on the street on August 7, 2007 and told her that she did fine, the criticism of her performance continued. Appellant alleged that, when she asked Ms. Harmon if Mr. Simmons' report would mean she might have less pressure applied to her regarding her performance, Ms. Harmon replied someone else would follow her. She stated that on September 15, 2007 Ms. Woods observed her after her request for 40 minutes of overtime was denied. Appellant stated that she did not receive any comment about her working behavior or performance until Ms. Harmon told her weeks later that if she had gotten to her business deliveries earlier that day she might not have been as affected by traffic. She alleged that she continued to be harassed when told that she could do better if she tried harder. Appellant stated that, in October 2007, she had stress from having to sort out-of-sequence mail and her request for overtime was not allowed. She stated that she needed more time to sort mail that was given to her out of sequence. Appellant stated that she was refused a route audit. She asserted that, in an October 16, 2007 informal meeting, Ms. Woods told her no one else had overtime on her route. Appellant indicated that, when she mentioned that the route had grown a lot, Ms. Woods stated that she was given office time to case mail. She noted that no mention was made that it took both office and street time to deliver the mail. During the meeting, Ms. Woods claimed that appellant did not meet the "five o'clock window" deadline a few days prior. Appellant stated that she had told Mr. Simmons that she would not be back before 5:00 p.m. but Ms. Woods misconstrued what he said. She stated that, when Mr. Simmons, who was present at the meeting, read from his notes that she would not make the five o'clock window, Ms. Woods told her that she should do whatever it takes to be back by 5:00 p.m. Appellant alleged this comment did not constitute clear and complete direction.

Appellant asserted that she had almost daily harassment to do more in less time, despite her efforts to reason with her supervisors. She expressed to Ms. Harmon that, it seemed that no

matter what she did, she could not meet her expectations. Appellant alleged that, on January 4, 2007, when she called to request more overtime than had been allowed, Ms. Harmon told her that her performance was unacceptable and hung up. On November 7, 2007 Ms. Harmon gave her only 30 minutes of overtime when she requested 45 minutes. Appellant indicated that, when she called Ms. Harmon to tell her she could not make the 30 minutes, Ms. Harmon told her to "get in gear." She indicated that these comments were not clear and complete instructions and contributed to her overwhelming feeling of being under pressure with no ability to change her circumstances. Appellant asserted that her supervisor hanging up on her contributed to a hostile environment and left her feeling that she failed to perform her duties satisfactorily. She noted reaching a crisis point on November 8, 2007 when her overtime request was completely denied. Appellant felt that nothing in her job would improve and took those feelings out on herself by cutting her arms. On November 28, 2007 she went to her duty station to give her statement to Ms. Harmon. However, Ms. Harmon refused to accept her statement and ordered her to exit the building immediately.

Appellant also alleged Ms. Woods was hostile. She stated that Ms. Woods interfered with her October 2006 route bid. Appellant stated that, when she protested that her bid had been disregarded, as the route was awarded to a more junior carrier, Ms. Woods stated that she did not receive the bid. She questioned Ms. Woods' veracity and noted that she ultimately received the route. Appellant alleged that Ms. Woods improperly interfered with a November 2006 motor vehicle accident when she backed her work vehicle into a parked vehicle. She stated that Ms. Woods requested that the owner of the parked vehicle file a complaint against her although there was no damage and he had no complaint. Appellant alleged that Ms. Woods wanted to begin a disciplinary process against her. In June 2007, she found a payroll error in her health insurance premiums. Appellant stated a check reimbursing her for the double premiums was sent to the station manager's attention, but Ms. Woods claimed she never received it. She advised that a stop order had to be placed on the first check and another check reissued which was sent directly to her home.

In a January 15, 2008 letter, Dr. Gilchrist advised that appellant had a significant emotional reaction to stress in her workplace. She advised that appellant was not able to return to work as the workplace was a dangerous environment for her mental wellbeing.

In a February 12, 2008 statement, the employing establishment controverted the claim either refuting appellant's allegations or asserting that they were not compensable. It provided statements from Ms. Harmon and Ms. Woods. In a January 15, 2008 statement, Ms. Harmon verified that appellant's route had grown and that there was disagreement about the time required for completion. She stated that appellant was generally able to perform the required duties and that she was unaware of appellant's stress until November 8, 2007. In a January 23, 2008 statement, Ms. Harmon indicated that on November 28, 2007 appellant gave her an incomplete occupational disease claim. She indicated that she had been led to believe that appellant was not allowed on the employing establishment's premises and that she contacted the postmaster, who instructed her to advise appellant that she was not allowed on the premises. Ms. Harmon noted that appellant had requested a special inspection of her route and the required reports were submitted to the district Office for review. The district Office, however, determined that appellant's route did not qualify for a special inspection. Ms. Harmon stated that she did not believe appellant's behavior needed to change but her work methods needed improvement. She

advised that she attempted to accommodate the growth factor on appellant's route. Ms. Harmon denied appellant using the word "stress" in her presence or of having any direct knowledge of Ms. Woods observing appellant on her route on September 15, 2007. She verified that Ms. Woods had followed appellant on the street and indicated to her that, had appellant done her business deliveries earlier, she might not have been so affected by traffic. In a February 6, 2008 statement, Ms. Harmon advised that she told appellant that she believed someone else would follow her.

In January 23 and 30 and February 12, 2008 statements, Ms. Woods responded to the allegations. Regarding appellant's October 2006 bid on her route, Ms. Woods stated that only bids that were in the bid box were accepted. She indicated that appellant put in her bid at the Englewood main office and management pulled the bid box and sent the bids to the Englewood downtown station, where the job was awarded by seniority. Ms. Woods indicated that appellant had not been at work for a long period of time due to knee surgery and, because of this, documentation that she could perform the job was required before awarding the bid to her. She denied that the bid was awarded to anyone else. Ms. Woods also indicated that, before appellant bid on the route, management and the previous route carrier agreed that the new growth made the route an eight-hour assignment. She indicated that, prior to the new growth, the route was a seven-hour assignment. Ms. Woods stated that carriers fill out a Form 3996 based on demonstrated workload, not anticipated need. She denied that the procedure was stressful and indicated it was based on daily information computed by hours and volumes on all carriers. Ms. Woods noted that no other carriers reported problems with the 3996 process. Regarding appellant's vehicular accident, she stated that appellant did not report the accident as required. Ms. Woods stated that Shawna Steiger, a carrier, reported the parking lot accident to her and that the manager of the Goodyear store where the accident occurred approached Ms. Steiger about what the employing establishment would do. She acknowledged contacting the Goodyear manager as she was required to investigate allegations of employee misconduct. Ms. Woods denied discussing appellant's accident record with the store manager or asking him to file a complaint. She stated that she had to call the store manager again as he did not supply the information needed to properly complete the investigation. Ms. Woods denied knowing that appellant was reimbursed for double insurance premiums or receiving a check for appellant. She advised that the employing establishment's policy was for all carriers to return by 5:00 p.m. for service and appellant's workload did not justify going past 5:00 p.m. The workload for the day justified overtime or assistance for all employees. Management made its projections by 9:30 a.m. as to how many carriers would be out after 5:00 p.m. Ms. Woods advised that performance was based on the time used to perform the work on a daily basis based on workload and observations, both in the office and on the street. She indicated that management as responsible to correct all observed time-wasting practices of employees. Ms. Woods stated that appellant's pulling one slot at a time was considered a time-wasting practice and pulling out of order was not following handbook rules. She noted that, when she observed appellant on September 15, 2007, there were about two hours of delivery left based on appellant's location. Ms. Woods stated that appellant was delivering the route out of sequence. She advised that street management was management's responsibility and carriers could expect to be supervised at all times while performing their daily duties. Ms. Woods stated that management observed carriers for a reasonable time for work methods and safety.

In a January 23, 2008 statement, Ms. Steiger stated that she reported appellant's automobile accident to Ms. Woods but did not know if Ms. Woods contacted the store manager. In a February 4, 2008 statement, Vi Tien, carrier supervisor, confirmed that appellant bid for a job at Englewood carrier annex. He stated that he forwarded the bids to Englewood downtown station for processing. Mr. Tien stated that appellant was awarded that bid.

In a February 26, 2008 decision, the Office denied the claim finding that no compensable work factors were established. On March 12, 2008 appellant requested a hearing that was held on July 24, 2008. She provided testimony and witness statements regarding the factors of employment she believed caused or contributed to her emotional condition. The employing establishment continued to controvert appellant's claim.

Appellant provided copies of her November 8, 2007 emergency room visit where Dr. Ahmed R. Stowers, Board-certified in emergency medicine, diagnosed depression with self-inflicted wounds. In a November 8, 2007 report, Dr. Claudia L. Clopton, a Board-certified psychiatrist, noted that appellant was treated for depression for the last five to six years. She noted events at work on November 8, 2007 "when [appellant] was denied overtime for the second time." Dr. Clopton diagnosed major depressive and adjustment disorder with mixed features of emotion and behavior. She stated that appellant should not return to work until December 11, 2007. In a November 14, 2007 report, Dr. Gilchrist noted appellant's hospitalization and diagnosed specified adjustment reactions. In a January 15, 2008 report, she noted that appellant experienced "significant emotional reaction to stressful conditions in her workplace" and could not return to work. In a July 11, 2008 report, Dr. Gilchrist advised that she had diagnosed appellant with severe depression and anxiety in November 2007 and had admitted her to the hospital. She stated that there was "no doubt that her stressful work environment contributed to her severe depression and anxiety and led to her self-inflicted wounds."

In a January 16, 2008 statement, Tom Kopriva, union steward, verified that the informal meeting on October 16, 2007 occurred as appellant alleged. He indicated that, while Ms. Woods told appellant that no one else had overtime on her route, her statement was false. Mr. Kopriva stated that, as a union steward for 2007, he was aware that other carriers needed overtime to complete that route. He also verified that in October 2007 appellant did not pull down only one slot at a time, but rather adjusted her pulling down depending on mail volume. Mr. Kopriva stated that she was subjected to repeated criticism and reprimand for on-the-job behaviors and the work atmosphere was very hostile. He stated that Ms. Woods spoke to him many times about appellant's job habits, but did not inform appellant or give her an opportunity to correct alleged deficiencies.

In a March 12, 2008 statement, Mr. Simmons indicated that, before appellant arrived at her new bid route, Ms. Woods commented that she should have gotten rid of appellant when she had the chance and she would get her this time. He stated that Ms. Woods indicated that extra scrutiny of appellant's work would happen with a goal to harass appellant until she resigned or bid to another station. Mr. Simmons asserted that Ms. Woods singled out appellant because of her disability. He indicated that the bids from each of the three Englewood stations were removed, copied and forwarded to the station where the available route was located. Mr. Simmons stated that, while it was true appellant's bid was placed in a bid box at the

Englewood main office, the bids were not sent to the downtown station but rather were forwarded to the Englewood carrier annex. He opined that Ms. Woods ignored appellant's bid and then lied about it. Mr. Simmons described the Form 3996 process and opined that it was discriminatory for Ms. Woods to use it as a pretext for a disciplinary interview. He stated that his observation of appellant's performance on August 7, 2007 showed no errors in conduct or discharge of her duties. Mr. Simmons noted that there were errors in the delivery point sorted (DPS) mail, which caused appellant to place mail out of sequence in apartment mailboxes and naturally slowed her down. He noted, however, that this was out of appellant's control as carriers are not allowed to handle the DPS mail before street delivery. Mr. Simmons stated that he was present on at least two occasions when appellant asked Ms. Woods for observation results. He noted one of those occasions took place at his desk and, after Ms. Woods told appellant that she had not finished entering the information, she stated, "I'll give it to her when I am good and ready." Mr. Simmons stated that this was unprofessional and hostile.

In an undated and unsigned statement received on August 1, 2008, David Jungwirth, former Goodyear store manager, confirmed that appellant bumped into a vehicle parked outside the store in early November 2006 and no damage was done. He stated that, several weeks later, Ms. Woods called him about the accident and, although he told her that there was no reason to pursue the matter, she persisted in asking him to file a complaint. Mr. Jungwirth stated that Ms. Woods told him that appellant had a history of accidents in her work vehicle and he should file a complaint so she could pursue disciplinary action. He noted telling Ms. Woods that he saw no reason to file a complaint.

In an undated statement received August 1, 2008, Russell Shamah, former union president, noted that he had spoken with appellant about her bid for a route at the carrier annex. He indicated that he explained to her about how to qualify to be a successful bidder. Mr. Shamah noted that he also called Ms. Woods and she was unaware that appellant had submitted a bid. He noted that, after he called Ms. Woods, appellant got the bid.

In a letter dated July 28, 2008, Julie Rudiger, a licensed social worker, noted that appellant reported that her manager at the employing establishment had "unreasonable performance expectations" of her and that this issue was never resolved.

In an August 22, 2008 report, Dr. Thomas P. O'Hearn, a Board-certified licensed clinical psychologist, described appellant's events of November 8, 2007, her mental status and her treatment. He noted that her ongoing work environment and the events of November 8, 2007 that led to her self-mutilation were causative factors in her behavior. Dr. O'Hearn diagnosed probable major depressive disorder, recurrent and acute stress disorder. Based on his review of appellant's records and statements, he opined that her behavior on November 8, 2007 was directly related to her workplace environment.

In a February 13, 2009 decision, an Office hearing representative found that appellant had established three compensable employment factors but did not submit sufficient medical evidence to show that her emotional condition was due to the established factors. The hearing representative remanded the case to the Office for a referral of appellant for a second opinion psychiatric evaluation. The compensable factors of employment were identified as: the additional assignment of delivering mail to a recently-built apartment complex consisting of

approximately four hundred residents; appellant's reaction to having to spend more time sorting and delivering mail that was not properly sequenced; and appellant's request for suggestions for job improvement and for a route audit, both of which affected her assigned duties, but she received no suggestions and a route audit was denied without any reasons.

On February 25, 2009 the Office referred appellant, together with a statement of accepted facts and the medical record, to Dr. Randolph Pock, a Board-certified psychiatrist, for a second opinion examination.[2] Dr. Pock was asked whether the accepted factors of employment caused, aggravated precipitated or accelerated appellant's psychological disorder and whether she was capable of performing her regular position. In an April 1, 2009 report, he reviewed the history of injury, the medical record and the statement of accepted facts. Dr. Pock diagnosed adjustment disorder with depression and anxiety, rule out major depression. He noted that, although the Office instructed him to base his opinion only on the compensable factors of employment, the factors of employment designated as compensable essentially eliminated the many interactions which appellant, her treating social worker, the examining psychologist and several of her coworkers described. Dr. Pock concluded that he was essentially asked whether an assigned route which experiences significant growth or an employing establishment which refuses the claimants requests for suggestions of how to improve delivery time, constitutes grounds for appellant's symptoms. His answer was "No they do not." Dr. Pock advised that, with the elimination of all appellant's significant interactions at work, the "two (token) factors currently named 'compensable' do not explain her depression." He indicated that he did not feel that the current statement of accepted facts was a fair representation of appellant's work situation.

In an April 15, 2009 decision, the Office denied appellant's claim on the grounds that the medical evidence did not establish that her emotional condition was causally related to compensable work factors.

LEGAL PRECEDENT

To establish a claim that an emotional condition arose in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.[3]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability

[2] The February 25, 2009 statement of accepted facts noted three compensable factors of employment. These were: the assigned route experienced significant growth with the addition of a 400 unit apartment complex; due to mail sorter malfunction, appellant requested additional time to sort out-of-sequence mail, but overtime was not allowed; and the employing establishment refused her request for suggestions of how to improve delivery time and refused a formal route audit.

[3] *D.L.*, 58 ECAB 217 (2006).

results from an employee's emotional reaction to her regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of her work or her fear and anxiety regarding her ability to carry out her work duties.[4] By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.[5]

ANALYSIS

The Office found three compensable work factors. These were: appellant's route experienced significant growth with the addition of a new apartment complex that had about 400 residents; her reaction to having to spend more time sorting and delivering mail that was not properly sequenced; and the employing establishment's refusal of her request for suggestions of how to improve delivery time and the denial of a formal route audit without any reason given. The Board finds that the evidence supports the Office's findings on these factors.

However, appellant's burden of proof is not discharged by establishing compensable work factors. She must also submit rationalized medical evidence establishing that she has an emotional condition that is causally related to the accepted compensable employment factor.[6] In a November 9, 2007 report, Dr. Clopton described the events at work when overtime was denied for a second time. While she diagnosed major depressive disorder and adjustment disorder with mixed features of emotion and behavior, she provided no specific opinion on the relationship between the diagnosis and appellant's work factors. Likewise, while Dr. Gilchrist provided treatment following appellant's November 8, 2007 hospitalization and diagnosed other specified adjustment reactions in various reports, she did not provide an opinion on whether accepted work factors caused the diagnosed condition. As neither Dr. Clopton nor Dr. Gilchrist provided an opinion on causal relationship, their reports are insufficient to meet appellant's burden of proof.[7]

Dr. O'Hearn diagnosed appellant with probable major depressive disorder, recurrent and acute stress disorder. While he opined that her behavior of November 8, 2007 was directly related to her workplace environment, he did not sufficiently explain his conclusion and relate it to established work factors. Thus, Dr. O'Hearn's opinion is insufficient to meet appellant's burden of proof.[8] Appellant also submitted a July 28, 2008 report from a social worker,

[4] *Ronald J. Jablanski*, 56 ECAB 616 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[5] *Id.*

[6] *Charles D. Gregory*, 57 ECAB 322 (2006).

[7] Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship. *Conard Hightower*, 54 ECAB 796 (2003).

[8] A medical report is of limited probative value on causal relationship if it contains a conclusions regarding causal relationship which is unsupported by medical rationale. *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

Ms. Rudiger. However, social workers are not considered to be physicians under the Act and their opinions do not represent competent medical evidence.[9]

The Office referred appellant to Dr. Pock for a second opinion. In an April 1, 2009 report, Dr. Pock diagnosed adjustment disorder with depression and anxiety and possible major depression. While he noted that he was to base his opinion of causality only on the compensable factors of employment, he felt that the statement of accepted facts was not a fair representation of appellant's workstation. Thus, Dr. Pock concluded that he was essentially asked whether an assigned route which experiences significant growth or an employing establishment which refuses the claimants requests for suggestions of how to improve delivery time, constitutes grounds for appellant's symptoms. He opined that, with the elimination of all appellant's significant interactions at work, the "two (token) factors currently named 'compensable' do not explain her depression." Dr. Pock did not indicate awareness that three compensable factors were accepted. The Board finds that it was improper for him to question the Office's fact findings as a physician's function is only to provide opinion on medial questions, not to determine facts.[10] The Office provided Dr. Pock with a statement of accepted facts to assure that his report was based upon a proper factual background.[11] To the extent that Dr. Pock's opinion is outside the framework of the statement of accepted facts, it is based on an inaccurate history and, thus, of diminished probative value.[12] The Board notes that he did not address all compensable factors found by the Office and did not otherwise provide sufficient medical rationale, based on an accurate history, to support his opinion on causal relationship.

It is well established that proceedings under the Act are not adversarial in nature and that, while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[13] Once the Office undertakes development of the medical evidence, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.[14] Upon return of the record, it should refer appellant for another second opinion and obtain a rationalized opinion addressing whether she sustained an emotional condition caused or aggravated by the compensable employment factors. Following such further development as the Office deems necessary, it should issue a *de novo* decision.

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[9] *K.W.*, 59 ECAB ___ (Docket No. 07-1669, issued December 13, 2007) (social worker is not a "physician" as defined by section 8101(2); their reports are not competent medical evidence). *See* 5 U.S.C. § 8101(2).

[10] *See George Tseko*, 40 ECAB 948, 953 (1989) (a physician's function is only to provide opinions on medical questions, not to determine facts).

[11] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (December 1994) (when the Office medical adviser, second opinion specialist or referee physician renders a medical opinion based on a statement of accepted facts which is incomplete or inaccurate or does not use the statement of accepted facts as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether).

[12] *See Douglas M. McQuaid*, 52 ECAB 382 (2001) (medical reports must be based on a complete and accurate factual and medical background and medical opinions based on an incomplete or inaccurate history are of little probative value).

[13] *Jimmy A. Hammons*, 51 ECAB 219 (1999).

[14] *See Melvin James*, 55 ECAB 406 (2004).

With regard to appellant's other allegations, the Board finds that she did not submit sufficient evidence to establish her allegations that management engaged in a pattern of harassment, intimidation or discrimination. For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.[15] Mere perceptions of harassment or discrimination are not compensable; a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.[16] Appellant alleged that her relationship with Ms. Woods and Ms. Harmon was very hostile and negative. She made general allegations that she was yelled at and subjected to other unprofessional treatment as a result of her performance. Appellant also asserted that Ms. Woods made disparaging remarks about her. The Office reviewed appellant's allegations of alleged harassment and mistreatment and found that they were not substantiated or corroborated. The Board notes that she did not provide any specific examples of how Ms. Woods was negative or hostile towards her. Thus, this allegation is not accepted as factual. While there is some evidence that Ms. Woods made disparaging remarks about appellant, the allegations by appellant and the witnesses are general or vague statements as no specific information was provided to indicate the times, dates and circumstances under which Ms. Woods statements were made. As such, they constitute mere perceptions or generally stated assertions of dissatisfaction with a certain superior at work which do not support her claim for an emotional disability.[17] Appellant has not submitted evidence sufficient to establish that management engaged in a pattern of harassment and intimidation toward her or created a hostile workplace environment.

The Board further finds that the evidence of record does not establish that the administrative and personnel actions taken by management in this case were in error and are therefore not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.[18] Appellant has not presented sufficient evidence that the employing establishment acted unreasonably or committed error with regard to the incidents of alleged unreasonable actions involving personnel matters on the part of the employing establishment.

Appellant alleged that the process of requesting overtime by submitting a Form 3996 (request for additional time) was stressful. She asserted that, when her overtime requests were not approved or partially approved, it contributed to her emotional condition. Matters relating to overtime and the assignment of work are administrative functions of a supervisor and are not

[15] *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).

[16] *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

[17] *See Debbie J. Hobbs*, 43 ECAB 135 (1991).

[18] *See Alfred Arts*, 45 ECAB 530 (1994).

compensable absent error and abuse.[19] Ms. Woods noted the process of submitting a Form 3996 and how the need for additional time was determined. The Board finds that Ms. Woods provided a reasonable explanation of the process and appellant has not submitted sufficient evidence to establish error or abuse on the part of her supervisors. Also, 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.[20]

Appellant also alleged that Ms. Woods interfered with her route bid in October 2006 and used inappropriate methods to investigate a motor vehicle accident she had in November 2006. The record reflects that she ultimately received the bid. Appellant submitted evidence regarding the process in which bids were processed and considered but she did not submit any evidence clearly corroborating that Ms. Woods acted abusively in this administrative matter in which appellant received the bid. Ms. Woods explained that appellant was required to provide documentation that she could perform the bid position as she had been out of work for a long period of time due to knee surgery. She denied that the bid was awarded to anyone other than appellant. As appellant has not shown that management erred or acted unreasonably in this administrative matter, this is not a compensable factor of employment.

Regarding Ms. Woods' investigation of appellant's motor vehicle accident, investigations are considered to be an administrative function of the employer. The employing establishment retains the right to investigate an employee if wrongdoing is suspected.[21] Ms. Woods explained that appellant did not report the accident in accordance with postal regulations, so she investigated the accident. Appellant alleged that Ms. Woods inappropriately told the store manager of the Goodyear store that she had a history of accidents and that he should file a complaint so she could pursue discipline. While an undated statement from the former manager of the store that gave some support for appellant's version of events, the Board notes that this statement is unsigned and, despite whether Ms. Woods suggested follow-up by the manager, there is no evidence to support that the investigation by Ms. Woods was abusive or improper under the circumstances presented. As such, there is no evidence that Ms. Woods engaged in inappropriate behavior in investigating appellant's accident. This does not rise to the level of a compensable employment factor.

While appellant alleged that Ms. Woods interfered with a check issued to her in June 2007 for health insurance premiums, she had not submitted any evidence to collaborate this event. Ms. Woods denied any knowledge of this event or ever receiving a check for appellant. Thus, this allegation is not accepted as factual or having occurred as alleged.

[19] *See Beverly R. Jones*, 55 ECAB 411 (2004).

[20] *T.G.*, 58 ECAB 189 (2006).

[21] *K.W.*, *supra* note 9.

Appellant also alleged that her meeting with Ms. Woods on October 16, 2007 regarding why she failed to make the "five o'clock window" deadline contributed to her condition. While Mr. Simmons supports appellant's claim that she had told him she would not make the "five o'clock window" deadline, she has submitted no evidence to show how Ms. Woods erred or acted abusively in holding the informal meeting. Ms. Woods explained that the 5:00 p.m. deadline was employing establishment policy that applied to all employees. Appellant's dissatisfaction with perceived poor management constituted frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable.[22] The Board finds that appellant's contention regarding this administrative matter is not compensable.

CONCLUSION

The Board finds that the case is not in posture for decision with regard to whether appellant sustained an emotional condition causally related to accepted factors of her employment. The Board affirms the Office's findings that the other factors alleged by appellant are not compensable employment factors.

[22] *Peter D. Butt, Jr.*, 56 ECAB 117 (2004).

ORDER

IT IS HEREBY ORDERED THAT the April 15, 2009 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded to the Office for further action consistent with this decision of the Board.

Issued: June 21, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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