

labels on a stack of boxes at her window. Allegedly Ms. Darrow stated that this task was the least “she could do for being worthless and missing work.” Appellant reported Ms. Darrow’s comments to her supervisor, David King, asserting that Ms. Darrow had no right to comment on her personal business. Supervisor King told appellant that Ms. Darrow could tell her what to do and allegedly laughed at her as she walked away. When appellant returned to her window, Ms. Darrow and another employee, Barbara Byers, allegedly “cornered” her and continued to harass and insult her. Since this incident, appellant alleges she was afraid and intimidated to work with these women. She alleged that Ms. Darrow constantly harassed her and this created a hostile work environment which management should have taken measures to correct.

In a statement dated November 20, 2007, Ms. Byers reported that she and Ms. Darrow had a “fight (verbal)” with appellant on November 19, 2007 because appellant would not help with close out. She indicated that she had complained to her supervisors concerning appellant’s attendance and work ethic, but that management had not addressed her concerns about appellant. Ms. Byers also noted that “Dave” had heard the whole argument but did not stop it.

Appellant submitted a note dated March 3, 2008 and signed by a certified physician’s assistant, recommending appellant continue working 9:00 a.m. to 3:00 p.m. through June 1, 2008.

On March 18, 2008 appellant reported that management denied her request to continue working 9:00 a.m. to 3:00 p.m. She alleged that this caused her condition to worsen such that her episodes of anxiety are more frequent and stronger.

In an April 2, 2008 note, James Jarm, customer service supervisor, acknowledged that this argument occurred. He noted that, on the date in question, Ms. Darrow, the Lead SSA, allegedly told appellant to put her stamps away. Allegedly appellant stated that she had to leave right away and did not have time. Allegedly she further stated that Ms. Darrow was not the supervisor and she did not have to take orders from her. Mr. Jarm also reported that Mr. King overheard this discussion and separated the three employees. Following the incident, appellant was permitted to work at a different station for the remainder of the week. He noted that Ms. Byers transferred to another station. He noted that appellant’s regular hours are 12:30 p.m. to 6:30 p.m. When appellant returned to the Pino Station on November 26, 2007 she submitted a medical note reporting that she was able to work 9:00 a.m. to 3:00 p.m. Mr. Jarm reported that the employing establishment honored this request to help defuse the situation. He reported that on March 12, 2008 appellant presented a similar note stating that she should continue to work 9:00 a.m. to 3:00 p.m. through June 1, 2008. Mr. Jarm reported that, because there had been no further incidents and Ms. Byers had transferred to another station, he did not grant this request.

The employing establishment controverted appellant’s claim. It reported that appellant and two other employees were involved in an argument regarding job duties and supervision. The employing establishment noted that management’s response to this incident was to separate the participants and physically relocate appellant to another station, pending a more formal resolution of the dispute. Appellant was given a temporary accommodation, allowing her to work 9:00 a.m. to 3:00 p.m. because she presented a medical note citing stress and anxiety. The employing establishment also noted that appellant did not file a formal claim until management

discontinued this accommodation, requiring her to work her regular bid hours of 12:30 p.m. to 6:30 p.m.

By decision dated May 13, 2008, the Office denied the claim because the evidence of record did not establish she sustained an injury in the performance of duty.

On June 11, 2008 appellant requested review of the written record.

Appellant submitted a June 5, 2008 note in which Donald Gonzales, a coworker, reported witnessing Ms. Darrow and Ms. Byers “yelling and intimidating [appellant].” He noted that appellant’s supervisor had talked to appellant but “did nothing to stop them.”

By decision dated November 17, 2008, the Office affirmed its prior decision because appellant had not established that compensable employment factors caused her alleged emotional condition.

LEGAL PRECEDENT

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers’ compensation. Where the disability results from an employee’s emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees’ Compensation Act.¹ 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.²

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.³ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

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 providing an opinion on causal relationship and which working conditions are not deemed

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

factors of employment and may not be considered.⁵ If a claimant does implicate 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.

Absent error or abuse on the part of the employing establishment, administrative or personnel matters, although generally related to employment, are administrative functions of the employer rather than regular or specially assigned work duties of the employee.⁶ Furthermore, an employee's complaints about the manner in which a supervisor performs supervisory duties or the manner in which a supervisor exercises supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor must be allowed to perform his or her duties and that in performance of these duties, employees will at times dislike actions taken. Mere disagreement or dislike of a supervisory or management action is not actionable, absent evidence of error or abuse.⁷

ANALYSIS

Appellant identified a November 19, 2007 incident involving two coworkers as the employment factor that caused her emotional condition. The Board must, thus, initially review whether this alleged incident is a compensable employment factor under the terms of the Act.

The Board notes that verbal abuse or harassment may give rise to coverage under the Act, but this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.⁸ The Board has held that being spoken to in a raised or harsh voice does not, of itself, constitute verbal abuse or harassment.⁹ The fact that coworkers may not like one another will not constitute a compensable factor of employment absent probative evidence of conduct that may be characterized as harassment, discrimination or verbal abuse.¹⁰

The evidence supports that the incident involving appellant and Ms. Darrow arose because Ms. Darrow, a Lead SSA, provided instruction and appellant became upset. While appellant may not have liked the manner in which Ms. Darrow issued instructions and the content of such instruction, generally complaints about the manner in which a superior performs his or her duties or the manner in which a superior exercises his or her discretion fall, as a rule, outside the scope of coverage provided by the Act, absent evidence of error or abuse.¹¹ This

⁵ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Gregory N. Waite*, 46 ECAB 662 (1995).

⁷ *Daniel B. Arroyo*, 48 ECAB 204 (1996).

⁸ *V.W.*, 58 ECAB 428 (2007).

⁹ *T.G.*, 58 ECAB 189 (2006).

¹⁰ See *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

¹¹ *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

principle recognizes that a superior, supervisor or manager in general must be allowed to perform his or her duties, and employees will, at times, dislike the actions taken.

Appellant also generally alleged that she was verbally harassed by Ms. Darrow and that Ms. Darrow allegedly called her “worthless” and was critical of her missing work. Mr. Gonzales, a coworker, allegedly witnessed Ms. Darrow and Ms. Byers “yelling and intimidating [appellant].” To establish harassment based upon a comment made by a supervisor or coworker, a claimant must establish that the comment was actually made and that the comment or any other action by the employing establishment was a form of harassment.¹² The mere fact that voices were raised during the course of a conversation has been found not to be sufficient to establish verbal abuse.¹³ While the evidence does establish that voices were raised during the incident in question, other than appellant’s allegation regarding the derogatory nature of the comment, there is no corroborating evidence that any error or abuse in fact occurred. Thus, this would not be a compensable employment factor.

Appellant alleged that the employing establishment’s decision to disregard the recommendations of her physician, requiring her to work her regular bid hours, worsened her condition. An employee’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 is not compensable under the Act.¹⁴ Such matters will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively is a question of reasonableness.¹⁵ Appellant has not submitted evidence showing that the employing establishment committed error or abuse with regard to these matters. Thus, this is not a compensable employment factor.

As appellant did not submit sufficient probative evidence to establish a compensable factor of employment, she failed to establish that she sustained an emotional condition in the performance of duty.¹⁶

CONCLUSION

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty

¹² *Ernest J. Malagrida*, 51 ECAB 287 (2000).

¹³ *Id.*

¹⁴ *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

¹⁵ *See Richard J. Duke*, 42 ECAB 916, 920 (1991).

¹⁶ Because appellant failed to establish a compensable employment factor, it was not necessary to consider the medical evidence. *Marlon Vera*, 54 ECAB 834 (2003).

ORDER

IT IS HEREBY ORDERED THAT the November 17 and May 13, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 16, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board