



to being placed in excess status from March through July 2009, after which she was involuntarily assigned to the Jackson Main Post Office. Appellant stated that there was no modified job offer in place and that she was forced to do “make work” under by-operational code, which she stated created a hostile work environment with a previous supervisor. She added that her days and tour were changed, and then her hours were reduced from 40 hours a week to 1 hour, three days a week.

Appellant offered details in a supporting statement. She further alleged that her supervisor had singled her out to return to work and spoke to her loudly, which overwhelmed her and caused her to cry and lose control of her emotions. Appellant then yelled at the supervisor and was suspended after an investigative interview. She added that her supervisor denied her request for one hour of leave to see her daughter off to college. A dispute arose over appellant’s nonscheduled days. A dispute arose over another leave request.

The employing establishment explained that appellant was only one of many who were “excessed” and who, under the National Reassessment Process, had their hours reduced or eliminated because there was no necessary work available within their restrictions.

On January 4, 2011 OWCP denied appellant’s claim for workers’ compensation benefits. It found that the evidence established no compensable factor of employment. Appellant had not submitted evidence to show that the employing establishment acted in an abusive, erroneous or improper manner. OWCP explained that because her allegations were not considered factors of employment, any medical condition that she attributed to the alleged incidents was not compensable.

Appellant requested reconsideration and submitted additional medical evidence.

In a February 28, 2011 decision, OWCP reviewed the merits of appellant’s case and denied modification of its earlier decision. It explained that it denied her claim for failure to establish a compensable work factor; the medical evidence she submitted had no bearing on that issue.

On appeal, appellant states that nothing has changed. She is still in counseling. Appellant is still being treated for insomnia and strong headaches. Her hair is falling out and she is still trying to cope.

### **LEGAL PRECEDENT**

FECA provides compensation for disability resulting from personal injury sustained while in the performance of duty,<sup>2</sup> but workers’ compensation does not cover each and every injury or illness that is somehow related to employment. When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her 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. By contrast, there are disabilities having

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<sup>2</sup> 5 U.S.C. § 8102(a).

some kind of causal connection with the employment that are not covered under workers' compensation because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>3</sup>

An employee's emotional reaction to an administrative or personnel matter is generally not covered by workers' compensation. Nonetheless, the Board has held that error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.<sup>4</sup> Perceptions alone are not sufficient to establish entitlement to compensation. To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations with probative and reliable evidence.<sup>5</sup> The primary reason for requiring factual evidence from the claimant in support of her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by OWCP and the Board.<sup>6</sup>

The Board has generally held that being spoken to in a raised or harsh voice does not in itself constitute verbal abuse or harassment.<sup>7</sup>

### ANALYSIS

Appellant attributes her depression and other conditions to the actions taken by management, including but not limited to being placed in excess status, being involuntarily assigned, being forced to do "make work" under standby operational code. The employing establishment changed her days and tour and significantly reduced her hours. Appellant also implicates the manner in which her supervisors treated her, including denying certain leave requests.

Appellant has thus filed a claim that is not generally covered by workers' compensation. Workers' compensation covers emotional stress that arises from carrying out one's employment duties or from any fear or anxiety one might experience regarding one's ability to carry out those duties. Appellant did not implicate the performance of her assigned duties. She implicated administrative and personnel matters, matters that are not within the scope of workers' compensation as a general rule. The Board recognizes an exception to this general rule, but appellant has submitted no convincing factual evidence to establish that any of the administrative or personnel matters she described were, in fact, erroneous or abusive. With no such corroborating evidence, her claim falls outside the scope of workers' compensation. The Board will therefore affirm the denial of her claim for workers' compensation benefits.

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<sup>3</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Margreate Lublin*, 44 ECAB 945 (1993).

<sup>5</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>6</sup> *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Groom, M., Alternate Member).

<sup>7</sup> *Beverly R. Jones*, 55 ECAB 411, 418 (2004).

Appellant's continued counseling and treatment do not undermine OWCP's denial of compensation. OWCP cannot compensate appellant for her treatment if the precipitating factors were administrative or personnel in nature and there is no proof of administrative error or abuse.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant has not met her burden to establish that she sustained an emotional condition in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 28 and January 4, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 6, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board