



disorder. Appellant stopped work on November 1, 2001. On November 12, 2001 appellant underwent an authorized right-sided surgical release for a carpal tunnel condition, which the Office accepted in a previous claim.<sup>1</sup> She returned to full duty on February 5, 2002.

By letter dated November 29, 2001, the Office advised appellant of the factual and medical evidence needed to support her claim.

In an undated statement, received on December 27, 2001, appellant alleged that the following incidents caused or contributed to her emotional condition: pain from the carpal tunnel syndrome; financial problems because she was not provided with full-time modified work after she was diagnosed with carpal tunnel syndrome; having to return to work on May 22, 2001 after delivering her child four weeks prior because of financial pressures; delays in receiving compensation for wage loss due to her carpal tunnel syndrome because her manager, Darryl Smith, did not provide required forms to the injury compensation office until October 2, 2001; on September 25, 2001 her supervisor, Mareatha Hughes, yelled at her to get off the telephone and returned shortly afterwards to again yell at her to stay off the telephone, pointing a pen inches from her face; on September 25, 2001 she was taken to the hospital after taking an overdose of medication at work and Ms. Hughes failed to contact her mother until 6:00 p.m.; that beginning October 12, 2001, Mr. Smith directed her to sit near Ms. Hughes' desk, which her co-workers ridiculed her for; she had asked Ms. Hughes on November 9, 2001 and George S. Goss, a supervisor, on November 13, 2001 to complete their portions of the CA-2 form for her psychiatric claim and to give her a receipt, but they did not have the time and she did not receive receipt of the completed form from Mr. Goss until November 16, 2001; and on December 1, 2001 she received a copy of an Equal Employment Opportunity (EEO) settlement which only provided that Ms. Hughes would apologize. Appellant additionally attributed the stress of filing her compensation claim and providing a statement regarding her emotional condition. She further related that she did not have any nonwork stressors and reported that she had learned, on December 5, 2001, that she was pregnant again.

The Office received appellant's evaluation and medical reports from Jay Memmott, Ph.D., a licensed clinical social worker, and Dr. Shankar N. Rao, a psychiatrist, who diagnosed a major depressive disorder, single episode, severe, and a pain disorder associated with both psychological factors and a general medical condition, acute.

In an undated statement received December 27, 2001, Terril Darris, a co-worker, stated:

“On September 25, 2001 I witnessed Mareatha Hughes yelling at [appellant] to get off the [tele]phone. [Appellant] told her whom she was talking too. Mareatha said she didn't care if she was talking to a postal inspector and to get off the [tele]phone. Mareatha walked away and then came back yelling at her again while pointing her ink pen a few inches from her face. [Appellant] asked her over and over to stop pointing the ink pen in her face. [Appellant] got upset and ran in the restroom and took some pills.”

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<sup>1</sup> The record reflects that the Office accepted claim number 11-0184562 for bilateral carpal tunnel for which she underwent a left-sided surgical release on September 17, 2001 and a right-sided surgical release on November 12, 2001.

Other witness statements related that on September 25, 2001 appellant was either seen or heard crying in the bathroom and left by ambulance. Appellant's mother reported that she did not learn until 6:00 p.m. about her daughter being hospitalized on September 25, 2001.

In an undated and unsigned statement received December 27, 2001, Keith Pulliam, a coworker, stated that he had observed appellant being "constantly" harassed by Ms. Hughes and Mr. Smith over the previous six months. The harassment was noted as being vocal tones, degrading tactics of humiliation along with inhuman treatment of appellant in which she was made to feel inferior to management by being isolated from working employee areas and made to do work habits against her medical condition, which the doctors had outlined.

Other witness statements indicated that appellant sat close to her supervisor's desk.

In a January 22, 2002 statement, Mr. Smith related that appellant had many personal problems outside of the employing establishment. He related that when appellant was pregnant in the last quarter of 2000, her physician had instructed her not to do any walking or delivering of mail. Mr. Smith advised that appellant was accommodated with office work, but there was not enough work to make an eight-hour day and appellant ran out of leave. He advised that, after her leave ran out, appellant claimed a carpal tunnel injury. Mr. Smith stated that her claim had to be approved by the Office before she could be put on limited duty. He indicated that appellant returned to full duty on October 4, 2000 with her doctor's approval and worked until March 7, 2001 when she took maternity leave. When appellant returned to work, she had been approved for surgery on her hand. Appellant worked in the station answering the telephone and did little street time until eventually she was given the duties of answering the telephone and doing lobby sweeps. He stated that appellant was allowed to sit on the workroom floor where she and Mr. Darris, a rehabilitation employee, shared the telephone answering duties. Mr. Smith advised that, when he started getting complaints from employees on the workroom floor that appellant constantly talked about her personal business, he moved her to another location, noting he had observed her walking around and talking to carriers and interfering with their work.

In a January 22, 2002 statement, Shirley A. Harris, an EEO dispute resolution specialist, advised that appellant had originally contacted the office and indicated that she wanted to participate in alternative dispute resolution. Ms. Harris stated that appellant had verbally agreed to sign a settlement form after she had been informed that Ms. Hughes was willing to apologize to her when she returned to work. Ms. Harris further stated that appellant was informed that discipline of Ms. Hughes was not part of the settlement. Ms. Harris stated that, if there had not been any verbal consent, she would never have obtained Ms. Hughes' signature or sent the settlement to appellant. It was noted that appellant subsequently rejected the settlement offer.

In a January 23, 2002 statement, Gloria McDaniel, a registered nurse and a member of the employing establishment's threat assessment team, advised that appellant had complained of a hostile work environment. Ms. McDaniel and Grace Corbin investigated the allegations involving Ms. Hughes. She stated, "[t]here appeared to be no hostile environment, although [appellant] indeed believes she is being treated improperly. Based upon the things she told us, there seems to be a lot going on in her personal circumstances that would cause her to be very stressed." In a January 28, 2002 statement, Ms. Corbin reported that Mr. Hughes and Mr. Darris indicated that appellant regularly used the office telephone designated for incoming business

calls instead of the telephone designated for personal calls. This action prevented Mr. Darris from answering an incoming call while Ms. Hughes responded to another call. Mr. Darris stated that he heard the yelling but did not see Ms. Hughes with the pencil in appellant's face. He only observed a pencil land at his feet.

In an undated statement received February 18, 2002, Ms. Hughes stated that around noon on September 25, 2001 she noticed no one was answering the telephones and that Line 2 had been occupied the entire time. When she observed appellant on the telephone, as she had been all morning, she asked appellant to get off the telephone and, when she returned to her desk, she noticed that Line 2 was still occupied. Ms. Hughes stated that appellant was still on the telephone and that she asked her once more to get off. Appellant ended her conversation and became irate yelling "I'm sick of these people." Ms. Hughes stated that she explained that personal calls must be made on another telephone line in order that Mr. Darris could answer the telephone. Appellant continued to yell at her and she had told appellant to get control of herself. At about 1:30 p.m., Mr. Darris alerted her that appellant was in the restroom and may have taken some pain pills. She found appellant in the ladies room making loud noises like she was crying and saw three pills lying on the floor. Because appellant did not know how many pills she had taken, Ms. Hughes called 911 and the paramedics took appellant to the hospital. She sought to inform appellant's mother but was given an incorrect telephone number. Ms. Hughes stated that, although she was able to get the correct number for appellant's mother at 4:30 p.m., she did not know the hospital to which appellant had been taken.

Ms. Hughes stated that on November 9, 2001 appellant came to her office with a CA-2 form and told her that as soon as appellant finished verifying her stamps, she would sign her form. Appellant informed her that she did not have time to wait, indicating that she would be back the next day, but did not return.

In an undated statement which the Office received on February 18, 2002, Mr. Goss advised that on November 13, 2001 appellant demanded that he complete a CA-2 claim form while he was giving overtime to carriers. Mr. Goss told appellant that he was busy and she demanded that he stop work to complete the form. He noted that her voice became loud. Mr. Goss requested that she leave the form and come back later as he had no knowledge of her claim and needed her help. Although appellant stated she would return that day, she did not. Mr. Goss also stated that on November 16, 2001 he completed and forwarded the form to the appropriate office and provided a receipt to appellant.

By decision dated April 1, 2002, the Office found that appellant did not establish any compensable work factors and denied her claim.

By letter dated April 22, 2002, appellant requested an oral hearing, which was held on October 22, 2002.

Rick Piro, appellant's union steward, testified that about two weeks after appellant's November 17, 2001 carpal tunnel claim was filed, Mr. Smith called him to the office and "had commented on several occasions that [he didn't] have to give [appellant] any hours if [he didn't] want to." Mr. Piro further stated that Mr. Smith had indicated that he was going to keep from giving her any hours. Exhibits were submitted pertaining to a February 17, 2001 incident in

which appellant alleged she was not allowed to come in due to her light-duty status. A copy of the grievance describing the February 17, 2001 incident was noted as being settled with management agreeing to pay the employee four hours. Mr. Piro noted that management had appellant sit very close to Ms. Hughes.

Appellant testified about the September 25, 2001 incident, stating that she had hung up the telephone and started to cry after Ms. Hughes had yelled at her to get off the telephone. She further related that she had elevated her sore wrist (appellant had undergone surgery about a week prior) on a U-cart and that Ms. Hughes came back and pointed her ink pen inches from her face and yelled at her a second time to stay off the telephone. Appellant stated that she had asked Ms. Hughes three times to get the pen out of her face and that appellant knocked the pen out of her hand. She also testified that her CA-2 form, which she tried to give Ms. Hughes and Mr. Goss on November 9 and 13, 2001 was accepted on November 16, 2001. Appellant also testified about stressors in her personal life.

In a December 11, 2001 report, Ms. Harris confirmed that Ms. Hughes shook a pen at appellant and that appellant knocked the pen out of her hand. She noted that Ms. Hughes denied using any abusive language towards appellant. She related that Mr. Smith confirmed that Ms. Hughes had instructed appellant to get off the telephone because telephone calls were being forwarded to the front of the station. Ms. Harris noted that appellant had advised that she wanted to file a formal complaint as she wanted Ms. Hughes disciplined.

By decision dated January 7, 2003, an Office hearing representative found that appellant's allegations were not established as occurring or because they were not considered part of her regular or specially assigned work duties and affirmed the denial of appellant's emotional condition claim.<sup>2</sup>

In an undated letter received on September 12, 2003, appellant requested reconsideration. In an October 4, 2003 statement, she expressed her disagreement with the Office's factual findings. She advised that on April 15, 2002 she had requested her file from the employing establishment but neither she nor her union had timely received copies of the January 22 or February 8, 2002 statements from Mr. Smith and Ms. Hughes. Duplicate copies of previous material were submitted.<sup>3</sup>

By decision dated October 28, 2003, the Office denied modification of the January 7, 2003 decision.

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<sup>2</sup> The Office hearing representative noted that any claim that appellant's psychiatric condition was causally related to her accepted bilateral carpal tunnel syndrome should be pursued under that file.

<sup>3</sup> Also submitted were: material pertaining to disability benefits; copies of an article from the postal record; a January 15, 2003 fitness-for-duty examination; witness statements and other materials pertaining to appellant's character and life outside of work; and recent medical reports pertaining to appellant's condition. In a September 19, 2003 statement, Ms. Hughes provided comments on appellant working the back end when dispatching mail. In a September 19, 2003 statement, Samuel Buse advised that he had signed a statement to help appellant get disability, but did not read the statement prior to signing. He stated that he did not recall the incident appellant had told him and he did not want to lie.

## LEGAL PRECEDENT

To establish that she sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.<sup>4</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.<sup>5</sup> Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.<sup>6</sup>

In cases involving emotional conditions, the Board has held that when working conditions are alleged as factors in causing 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.<sup>7</sup> If a claimant implicates 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.<sup>8</sup>

For harassment or discrimination to give rise to a compensable disability under the Federal Employees' Compensation Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. 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. Grievances and EEO complaints, by themselves, do not establish that work

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<sup>4</sup> See *Kathleen D. Walker*, 42 ECAB 603 (1991). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

<sup>5</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>6</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>7</sup> See *Normal L. Blank*, 43 ECAB 384 (1992).

<sup>8</sup> *Marlon Vera*, 54 ECAB \_\_\_\_ (Docket No. 03-907, issued September 29, 2003).

place harassment or unfair treatment occurred. Where an employee alleges harassment and cites specific incidents, the Office or other appropriate fact finder must determine the truth of the allegations. The issue is not whether the claimant has established harassment or discrimination under EEO Commission standards. Rather, the issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>9</sup>

### ANALYSIS

Appellant alleged that she had to return to work on May 22, 2001, after delivering a child four weeks prior due to financial concerns; that she had no income from March 7, 2001 until May 22, 2001; that Ms. Hughes telephoned her mother at 6:00 p.m. on September 25, 2001 to advise her that appellant was in the hospital; that she learned on December 5, 2001 that she was pregnant with her eighth child; that it was stressful for her to file the current claim and provide a statement describing the work stressors; and that she was fearful of returning to work. The Board notes that these matters bear no relation to appellant's regular or specially assigned work duties. The development of any condition related to such matters would not arise in the performance of duty as it bears no relation to her regular or specially assigned duties.<sup>10</sup>

The Board notes that the following factors cited by appellant as contributing to her emotional condition have not been established as factual. These include appellant's allegation that two weeks after she filed her claim for carpal tunnel syndrome on November 17, 2000, Mr. Smith told Mr. Piro that he did not have to give appellant any light-duty work if he did not want to and that he was going to do everything he could to keep from giving her any hours; that management treated appellant differently from other employees when she was not provided with full-time light-duty work prior to her carpal tunnel claim being accepted as compensable; that Ms. Hughes and Mr. Smith harassed appellant after she filed her claim for carpal tunnel syndrome on November 17, 2000; or that appellant's coworkers had ridiculed her after she was required to sit near Ms. Hughes' desk beginning October 12, 2001. A claimant must support his or her allegations with probative and reliable evidence.<sup>11</sup> In this case, appellant failed to provide sufficient evidence to substantiate these allegations. Accordingly, appellant has not established these incidents as compensable factors of employment.

The remainder of appellant's allegations concern administrative or personnel actions. An employee's emotional reaction to an administrative or personnel matter is generally not covered under the Act,<sup>12</sup> unless there is evidence that the employing establishment acted unreasonably.<sup>13</sup>

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<sup>9</sup> *James E. Norris*, 52 ECAB 93 (2000).

<sup>10</sup> *See Larry J. Thomas*, 44 ECAB 291 (1992).

<sup>11</sup> *Roger Williams*, 52 ECAB 468 (2001).

<sup>12</sup> 5 U.S.C. §§ 8101-8193.

<sup>13</sup> *See James E. Norris*, *supra* note 9.

However, error or abuse by the employing establishment in the administration of a personnel matter, may afford coverage.<sup>14</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined the factual evidence to determine whether the employing establishment acted reasonably.<sup>15</sup>

Appellant alleged that she was directed to sit near Ms. Hughes' desk beginning October 12, 2001. She noted that she was not provided with full-time light-duty work after she was diagnosed with carpal tunnel syndrome and that she was not allowed to work on February 17, 2001 doing light-duty work. Although the assignment of work duties are generally related to employment, they are administrative functions of the employer and not duties of the employee.<sup>16</sup> While changes in workdays and hours, positions, locations and changes in an employee's duty shift may constitute a compensable factor of employment arising in the performance of duty, a change in a duty shift does not arise as a compensable factor *per se*. The factual circumstances surrounding the employee's claim must be carefully examined to discern whether the alleged injury is being attributed to the inability to work his or her regular or specially assigned job duties due to a change in duty shift, *i.e.*, a compensable factor arising out of and in the course of employment or whether it is based on a claim, which is premised on the employee's frustration over not being permitted to work a particular shift or to hold a particular position.<sup>17</sup>

Appellant has not submitted sufficient evidence to establish that the employing establishment committed error or abuse in transferring her work location on October 12, 2001. In a January 22, 2002 statement, Mr. Smith noted complaints from the employees on the workroom floor concerning appellant and that he had observed appellant walking around, talking with carriers and interfering in their work. It was reasonable for the employing establishment to transfer appellant to another work location and the evidence does not establish administrative error in this matter.

Regarding appellant's contention that she was not provided with full-time light-duty work after she was diagnosed with carpal tunnel syndrome, in a January 22, 2002 statement, Mr. Smith noted that appellant was pregnant in the last quarter of 2000 and, because of her medical restrictions, was unable to perform her full letter carrier duties. He stated that appellant was accommodated with office work but there was not enough work to sustain an eight-hour day. He stated that appellant's carpal tunnel claim had to be approved by the Office before she could be put on limited duty. There is no showing that the employing establishment erred or acted abusively in this matter.

Appellant alleged that she was not allowed to work light duty on February 17, 2001. The record indicates that a settlement was reached in this matter, with the employing establishment

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<sup>14</sup> *Roger Williams, supra* note 11.

<sup>15</sup> *See James E. Norris, supra* note 9.

<sup>16</sup> *See Janet I. Jones, 47 ECAB 345 (1996); Jimmy Gilbreath, 44 ECAB 555 (1993).*

<sup>17</sup> *Penelope C. Owens, 54 ECAB \_\_\_\_ (Docket No. 03-1078, issued July 7, 2003); see Helen Allen, 47 ECAB 141 (1995).*



compensating appellant for four hours. However, the mere fact that personnel actions were later modified or rescinded, does not in and of itself, establish error or abuse.<sup>18</sup> The settlement reached in this matter is insufficient to establish that appellant not being allowed to work on February 17, 2001 constituted an error or abuse on the part of the employing establishment as it does not purport error in position of either the union or management. Thus, appellant has not established a compensable employment factor under the Act.

Appellant filed a leave repurchase request on July 16, 2001 and the employing establishment did not advise the Office until October 3, 2001 that it was not disputing any of the dates claimed between November 18, 2000 and March 7, 2001. Although a three-month turn around time for appellant's leave repurchase may seem excessive to appellant, there is no evidence of record to establish that the employing establishment erred or acted abusively. Thus, appellant has not established a compensable employment factor under the Act.

Regarding the events of September 25, 2001, the Office hearing representative found that Ms. Hughes raised her voice to appellant when telling her to get off the telephone and that she had returned shortly thereafter and again raised her voice in telling her to stay off the telephone. The Office hearing representative found that Ms. Hughes shook a pen at appellant while standing no more than three feet away and that appellant had knocked the pen out of Ms. Hughes' hand. Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment.<sup>19</sup> Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.<sup>20</sup> The evidence of record indicates that appellant used the office telephone designated for incoming business calls instead of a telephone designated for personal calls and that Ms. Hughes instructed appellant to get off the telephone. When appellant did not get off the telephone, Ms. Hughes shook a pencil at appellant, which appellant subsequently knocked out of her supervisor's hand. The Board finds that the September 25, 2001 interaction between appellant and her supervisor does not rise to the level of verbal abuse or otherwise fall within the coverage of the Act.<sup>21</sup> Although the record supports that Ms. Hughes yelled at and shook a pencil at appellant, the record reflects that appellant failed to obey her supervisor's instructions that she limit her personal telephone calls and knocked the pencil out of her supervisor's hand. Grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.<sup>22</sup> Appellant rescinded a proposed EEO settlement as it did not discipline Ms. Hughes. Appellant has not established this incident as a compensable factor of employment.

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<sup>18</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>19</sup> *Marguerite J. Toland*, 52 ECAB 294 (2001).

<sup>20</sup> *Christophe Joliceur*, 49 ECAB 553 (1998).

<sup>21</sup> *See, e.g., Alfred Arts*, 45 ECAB 530 (1994) and cases cited therein (finding that the employee's reaction to coworkers comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction). *Compare Abe E. Scott*, 45 ECAB 164 (1993) and cases cited therein (finding that a supervisor calling an employee by the epithet "ape" was a compensable employment factor).

<sup>22</sup> *James E. Norris*, *supra* note 9.

Appellant alleged that on November 9, 2001 she had requested Ms. Hughes to complete a CA-2 claim form and on November 13, 2001 requested that Mr. Goss complete the supervisor's portion of the form Mr. Goss complied with appellant's request on November 16, 2001. The Board has held that allegations of stress resulting from the processing of such claims do not relate to appellant's assigned duties and are not compensable.<sup>23</sup> Thus, any stress appellant might have felt over the process of filing of her workers' compensation claim form would not be compensable. The evidence reflects that at the time both Ms. Hughes and Mr. Goss were asked to complete the CA-2 form, both supervisors had advised that they would complete appellant's form at another time and although appellant stated that she would return, she did not return when she stated she would. Nevertheless, as the employing establishment completed the agency portion of the CA-2 and provided appellant with a receipt of the notice along with copies of the completed CA-2 form on November 16, 2001, the employing establishment properly complied with the 10-working day requirement pertaining to the employer's actions for notices and claims for injury.<sup>24</sup> Thus, appellant has not established any error or abuse in the employing establishment's completion of her CA-2 form on November 16, 2001.

Additionally, the Board finds no factual support for appellant's general allegation of harassment in the workplace. The mere perception of harassment or discrimination is not sufficient to establish a compensable factor of employment,<sup>25</sup> and appellant has provided no corroboration that such harassment occurred.

As appellant failed to establish any compensable factors of employment, the Office properly denied her claim.<sup>26</sup>

### CONCLUSION

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

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<sup>23</sup> See *Matilda R. Wyatt*, 52 ECAB 421 (2001).

<sup>24</sup> 20 C.F.R. § 10.110.

<sup>25</sup> *Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>26</sup> As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 28, 2003 is affirmed.

Issued: September 16, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member