United States Department of Labor
Employees' Compensation Appeals Board

MARY A. WILSON, Appellant	)	
and	)	**Docket No. 04-1334**
	)	**Issued: February 17, 2005**
DEPARTMENT OF AGRICULTURE, ANIMAL & PLANT INSPECTION SERVICE, Baltimore, MD, Employer	)	

Appearances:
Mary A. Wilson, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On April 21, 2004 appellant timely filed an appeal from a March 12, 2004 merit decision by the Office of Workers' Compensation Programs which denied modification of the denial of his emotional condition claim. The Board has jurisdiction over the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether appellant has established that compensable factors of employment caused or contributed to her emotional condition.

FACTUAL HISTORY

On March 24, 1995 appellant, then a 38-year-old plant protection and quarantine officer, filed an occupational disease injury claim for an emotional condition. In an April 5, 1994 report,

Dr. George C. James, a Board-certified psychiatrist, stated that he was treating appellant on a biweekly basis and indicated that appellant was temporarily disabled.

In an October 1, 1995 letter, appellant indicated that she filed her claim immediately after her last exposure to allegedly injurious work factors. In describing her job, appellant stated that she worked at different duty stations performing different activities, such as fumigation, examination of cargo and clearing passengers. She commented that she had to meet a quota of tasks for her performance evaluation even though she had no control over the quantity of work. Appellant reported that her work required her to impose fines, penalties, and extra costs on the public as well as seizing and destroying personal possessions which generated complaints. She contended that the management at the employing establishment reprimanded her for every complaint without investigating and refused to include compliments in her file. Appellant claimed that management had continually refused to provide her with required training even though such training was offered to her coworkers. She contended that the tools she needed for her work were not present at every job site. Appellant stated that overtime was mandatory and she averaged 35 hours of overtime a week. She reported that the employing establishment would make overtime assignments at the end of shifts, which might required her to work several more hours at the work site or transfer to another work site. Appellant claimed that she was required to complete travel vouchers and reposts and read and respond to official mail at home, typing up responses on her own equipment. She contended that her emotional condition was caused by harassment, false accusations, physical threats and rude treatment by management. Appellant traced the start of this treatment to 1988 when an anonymous complaint was sent to the inspector general's office about supervisors cheating on overtime. She stated that management assumed she made the complaint and the harassment began and did not cease when the Inspector General's office publicly stated that appellant was not the source of the complaint. Appellant stated that she was informed that, since she did not make the complaint, she was not entitled to any protection from harassment. She claimed that management's mistreatment became more severe, with coworkers and the secretarial staff joining in the harassment. Appellant claimed that, when she went to California on a special assignment, the project manager informed her that he was a friend of appellant's supervisor and that she would pay for her complaints of harassment against them. She stated that, when she went on sick leave for a month, she was required to submit more medical information to justify the leave than a coworker who was also on sick leave. Appellant contended that she was suspended based on false charges. She grieved the suspension but could not receive what she considered to be a fair hearing. Appellant won her case in arbitration but no one in management was reprimanded for the false accusation and her personnel file was never purged as ordered by the arbitrator. She also stated that the employing establishment did not restore her leave or make her whole financially as ordered by the arbitrator.

Appellant further contended that her work was not objectively evaluated. She added that the employing establishment had not reimbursed her for over $4,000.00 for her expenses even though she had filed repeatedly for reimbursement. Appellant claimed that the employing establishment responded that she had been paid or had refused to file for reimbursement. She related that her supervisor commented that he "did not give a damn" whether appellant was ever repaid.

Appellant complained that she received reprimands for actions which were considered acceptable for her coworkers. She claimed that one supervisor threatened her life and three supervisors had threatened her with their fists.

Appellant related that her reaction to the constant abuse was to cry and become physically ill. She commented that, in her last months at the employing establishment, she became ill and experienced panic attacks every time the office telephone rang. She stated that, for some time, before that period, she had panic attacks while driving to work, nightmares, teeth grinding, anxiety, eating disorders, high blood pressure, rapid pulse, night sweats, headaches, difficulty in concentrating, loss of interest in hobbies and uncontrollable crying spells.

Appellant indicated that she had filed numerous grievances and Equal Employment Opportunity (EEO) complaints. She reported that most of the complaints had not been resolved and complaints over failure to report or claiming reprisal were not even acknowledged by the employing establishment. Appellant claimed that one supervisor made a complaint about her to the Internal Revenue Service which resulted in a tax audit. She contended that a coworker informed her that the employing establishment planned to suspend her twice and then fire her.

Appellant submitted several documents and reports in support of her claim. She contended that George Merrill made an arrangement with one of appellant's coworkers to allow him not to work any holidays, assigning his holiday work assignments to her in addition to her holiday assignments. Appellant stated that even though she was the port safety officer for two years, Mr. Merrill would not allow her to attend meetings. She claimed that he would assign answering service duties to her even if she requested no overtime work, while avoiding assigning such duties to himself or to other select officials. Appellant contended that Mr. Merrill regularly requested her to fill in for coworkers who went home early or came in late without reprimanding the coworkers or requiring them to take leave. She stated that, on two occasions, she was asked to stay on government overtime because the coworker who would relieve her had gone home early. Appellant cited other incidents which she believed showed harassment.

Appellant claimed that David Reeves, another supervisor, had made coworkers aware of his dislike for her, allowing two coworkers to feel free to harass her. She reported that coworkers assigned to work with her would always arrive late and would leave up to 1½ hours early. Appellant stated that coworkers felt free to stuff her desk drawer with items ranging from potato chips to toilet paper. On one occasion, she complained to Mr. Reeves that a coworker had cursed at her. In response, according to appellant, Mr. Reeves proceeded to produce a letter from a file he kept on appellant in which she was given a negative review from an assignment to New Zealand. He then asserted that the letter proved appellant was at fault since she had a problem. Mr. Reeves indicated that appellant's complaint against the coworker was hearsay and, if he did not witness a problem between coworkers, he would ignore it. Appellant contended that Mr. Reeves did not give her information about computer training, causing her to miss the training. She stated that she was not given the chance to volunteer for temporary assignments. Appellant claimed that any request she made for equipment was denied while the same requests made by coworkers were promptly granted.

Appellant submitted a May 29, 1991 EEO complaint. In the affidavit, appellant stated that Mr. Reeves, Mr. Merrill and Jane Levy, her second-line supervisor, continued to actively harass her. She claimed that the supervisors encouraged and condoned a hostile working environment and encouraged the office support staff and coworkers to harass her. She stated that she received her office mail late or not at all. She contended that Ms. Levy docked her pay without using due process and changed her evaluation periods unilaterally. Appellant indicated that Jeff Grode refused to give her the performance levels for the current year and reprimanded her for violating regulations that were not in writing and enforced only against her. She stated that management worked to prevent her from going on foreign assignments. Appellant claimed that she was subject to verbal abuse gossip and innuendo. She recounted an incident that she was talking with Mr. Merrill when Joe Carvy, an area identifier, barged into the meeting, told her to "shut up" and insulted her. She asked Mr. Merrill to order Mr. Carvy to leave but he refused. Appellant stated that, after she left Mr. Merrill's office, Mr. Carvy continued to taunt her, saying that she should be fired. She commented that Mr. Carvy had insulted her on other occasions. She contended that management officials made her the butt of their jokes and rude comments in the presence of the clerical staff and her coworkers. She claimed that management encouraged cruel treatment of her and then reprimanded her for her "unfriendly attitude." As an example, appellant stated that Shirley Jackson, a secretary at the employing establishment, spread a rumor about her, leading a customs officer to complain to Mr. Reeves. But Mr. Reeves reprimanded her for unacceptable conduct and only told Ms. Jackson to be careful about whom she talked to. Appellant gave numerous other examples of supervisors and coworkers insulting her in conversations with other coworkers. She contended that, after she filed an EEO complaint, Mr. Carvy denied receipt of her pest interceptions which resulted in loss of credit. She stated that she was given unacceptable performance ratings even though management did not follow the requirement to give her a warning. Appellant claimed that Ms. Levy forced her to perform fumigation with methyl bromide which was illegal. She indicated that Ms. Levy instructed her to make up gas readings after paperwork was lost. Appellant stated that, after she returned from a four-week sick leave, she was forced to work overtime contrary to her doctor's instructions. She also indicated that, while she was on sick leave, management officials told her coworkers that she was absent without leave. Appellant stated that she was ordered to produce medical records to support her absence even though other coworkers on leave were not required to submit medical records.

In a June 10, 1988 affidavit, Loyce Roberson, a coworker, indicated that she was under the supervision of Mr. Merrill and Mr. Reeves. She commented that appellant did not have an attitude problem, was communicative and was not argumentative. Ms. Roberson related that, when she began work at the employing establishment, she heard other employees state that appellant was paranoid. She concluded that Mr. Merrill and Mr. Reeves were encouraging these coworkers not to get along with appellant. She noted that the coworkers criticized appellant for wanting to go on temporary assignments, alleging that she wanted to get out of work assignments. Mr. Roberson reported that Mr. Merrill asked Judy Jenkins, a coworker, to write her version of an argument with appellant but appellant indicated she was not given a similar opportunity. Ms. Roberson commented that she had never been refused equipment that she requested. She stated that Mr. Reeves and Mr. Merrill had harassed and discriminated against her citing the derogatory comments she had heard them make. In her opinion, Ms. Roberson stated that the supervisors automatically assumed appellant was wrong in any situation.

In an October 31, 1991 affidavit, Ms. Jackson stated that she thought appellant had been the victim of sex discrimination and reprisal. She related that the management officials told other employees to avoid making offending statements against appellant or comments that could be interpreted as discriminatory because she would file an EEO complaint. Appellant commented that management did not fairly evaluate appellant's performance because of the friction between appellant and her supervisors. In an October 3, 1991 affidavit, Rita M. Stanley indicated that appellant was subjected to disparate treatment because management allowed the clerical staff to disrupt appellant's mail by either delivering it late or not delivering it all. In an April 15, 1992 affidavit, Ms. Stanley reported that Ms. Jackson would not distribute mail to appellant. Ms. Stanley stated that Mr. Reeves was aware that appellant was not receiving her mail.

In a December 15, 1995 decision, the Office rejected appellant's claim on the grounds that the evidence of record failed to demonstrate that the claimed injury occurred in the performance of duty.

In a January 22, 1996 letter, the employing establishment responded to appellant's claim. The employing establishment indicated that appellant's removal from the employing establishment was proposed on September 15, 1995 for inappropriate conduct, unauthorized absence, and failure to follow instructions. It commented that the period of unauthorized absence followed a March 1995 hearing at which appellant was appealing a 45-day suspension. The employing establishment noted that the hearing ran for three days but was not concluded. It stated that appellant's proposed removal was the culmination of a long history of misconduct involving rude, abusive, and hostile conduct involving supervisors, coworkers, members of the public, and employees of other agencies, private and public. It reported that, although appellant filed numerous complaints and grievances, only one was sustained. It denied that appellant was ever harassed or ill-treated and claimed that there was considerable evidence that appellant routinely harassed many of her professional contacts.

The employing establishment stated that appellant had received training including computer training. It noted that overtime was a recurring duty for employees. It indicated that appellant's assignments were no different than those of her coworkers. The employing establishment denied all of appellant's allegations. It stated that only one of appellant's grievances had been found to have merit, which occurred in 1989. As for travel vouchers, the employing establishment reported that appellant had refused to sign the vouchers. It commented that appellant had poor relationships with many of her supervisors. It indicated that appellant's performance had been technically good and had been reflected in her performance evaluations. The employing establishment stated that appellant had shown no unusual behavior other than her periodic outbursts of anger.

The employing establishment submitted several documents in support of its statement. Included among the documents was a July 7, 1987 letter from James F. Kearney concerning appellant's assignment to the apple and pear preclearance program in New Zealand. He stated that appellant did a creditable job in the technical aspects of her assignments. Mr. Kearney indicated, however, that there was considerable amounts of reservation when the employees were asked how she performed in general. He commented that he had the strong impression that

appellant would not be requested to return. Mr. Kearney reported that appellant, in a dispute with John Dooley told him to "go to hell." He recommended that appellant not be reassigned to a foreign assignment. In a September 15, 1987 letter, K.S. Deacon, an assistant regional manager, indicated that appellant had a clash of personalities with Mr. Dooley when they worked together but the dispute did not affect appellant's work performance which was of the highest caliber. He noted that, when Mr. Dooley departed New Zealand, appellant was totally responsible for inspections in Hastings which ran without any problems. Mr. Deacon concluded that appellant was a very capable and willing worker who had a good rapport with the staff with whom she worked. He stated that there would be no hesitation in inviting appellant back for further assignments.

Several documents related to appellant's relationship with her coworkers. In a March 24, 1989 letter, six coworkers stated that appellant had unleashed a barrage of outrageous accusations, investigations, and innuendo that constituted a form of harassment. The coworkers indicated that appellant had attacked them repetitively, directly and indirectly, by letters, grievances and EEO complaints. As a result, every aspect of their work had been investigated in the prior year but none of the allegations had been substantiated. They claimed appellant had abused every available administrative avenue of complaint, raising her charges to various investigatory offices inside and outside the employing establishment. The coworkers stated that appellant bypassed management with her accusations, both in writing and verbally. They indicated that they had endured appellant's criticisms for eight years and did not have a satisfactory forum through which they could refute appellant's charges.

In an April 24, 1989 statement, Paul G. McGowan filed a grievance, stating that the employing establishment had not taken appropriate disciplinary action against appellant for disruptions of the employing establishment that amounted to gross misconduct and fraudulent representation. He stated that appellant had made false and misleading accusations with reckless disregard for the facts. Mr. McGowan contended that the employing establishment had shown unreasonable complacency with appellant's campaign of harassment, innuendo and false representations against her coworkers and supervisors. He stated appellant was behind a number of inspector general investigations, claiming that she had used the complaints to vent her dissatisfactions against others and as retaliation against her supervisors. Mr. McGowan indicated that appellant's actions had resulted in a tense and apprehensive atmosphere at the employing establishment. He cited appellant's attempt to accuse Ms. Levy of stealing appellant's pay check as an example of her actions.

Other documents consisted of a May 22, 1991 letter of warning to appellant for leaving her assigned area without informing her supervisor and for screaming at the supervisor when he asked appellant's reasons for leaving her assignment. In a March 9, 1992 letter, appellant was reprimanded for leaving her assignment of clearing passengers from an incoming international flight, leaving her supervisor to do the work by himself. When the supervisor questioned her about her action, she began yelling at the supervisor and then walked out of his office. When he warned her that he would write her up for insubordination, she responded that she would take the same action against the supervisor.

The employing establishment submitted a February 23, 1993 decision on appellant's EEO complaint, finding no discrimination or reprisal with regard to any complaint of harassment. Charles R. Hilty, the assistant secretary for administration in the employing establishment, stated that the letters of caution to appellant for her conduct were credible because almost every other employee in appellant's work unit stated that appellant was rude, sarcastic, confrontational and difficult to work with. He found that the employing establishment was credible in denying appellant's request for leave on December 29, 1988 due to lack of staff, because five other employees had their requests denied. Mr. Hilty found that the employing establishment did not intentionally harm appellant in delaying approval of her leave. He stated that the supervisors did not improperly deny appellant a within-grade increase because the personnel office had not sent them the appropriate paperwork. When notified of the error, the employing establishment obtained the necessary paperwork and approved the within-grade increase, applying it retroactively. Mr. Hilty found that the employing establishment did not deviate from its procedures in assigning overtime. He found that the employing establishment was credible in stating that employees similarly situated in appellant's position did not receive computer training. Mr. Hilty stated that there was no inequality in temporary assignments, noting that appellant had four such assignments. He indicated that there was clear and convincing evidence that appellant was not harassed by refusals to deny equipment, finding that several employees requested a telephone but the employee who succeeded filled out all the necessary paperwork for the request.

In an August 25, 1993 letter, a spokesman for Coastal Lumber Company stated that appellant had been rude to the transportation coordinator, in a conversation that was hostile, accusing and unprofessional.

In an October 1, 1993 memorandum, Deborah McPartlan explained the problem with appellant's travel vouchers for assisting in the Oriental fruit fly inspections in California. Ms. McPartlan stated that the first voucher needed further documentation to justify that appellant's personal telephone calls went to members of her immediate family as defined by the employing establishment. In regard to the second voucher, she stated that appellant needed to submit an airline receipt or plane ticket to clarify when she traveled because there was conflicting information. Appellant also had to submit other information to clarify the expenses in the second travel voucher.

In an April 19, 1994 letter, the employing establishment proposed to suspend appellant for 45 days. It stated that Frank C. Vollmerhausen, a director in the Resource Management Systems and Evaluation staff, was investigating reports of misconduct at the employing establishment when he received sworn statements, letters and other evidence which showed appellant engaged in a pattern of inappropriate work behavior that negatively impacted on her interactions with her supervisor, coworkers and others outside the employing establishment. Appellant was cited for inappropriate behavior for several incidents. In an August 7, 1993 incident, she told two Jamaican passengers rudely and in a hostile manner to return to a line for inspections after they approached appellant, thinking that she had opened another inspection line. On September 28, 1993 Mr. Vollmerhausen called her to set up a meeting as part of his investigation. Appellant responded by loudly and belligerently refusing to meet with him unless she was given a specification of allegations by registered mail. When Mr. Vollmerhausen

informed appellant that she was required by the employing establishment regulations to cooperate with him, she yelled at him, continued to refuse to meet with him, and hung up on him. Appellant requested sick leave to avoid a meeting with Mr. Vollmerhausen on October 7, 1993 on the orders of her supervisor and refused to provide medical documentation for the sick leave. Appellant refused to sign a subsequent request for sick leave, telling her supervisor to sign it and leaving it in her mailbox to sign even though she was told that such action was unacceptable.

The employing establishment indicated that, on November 8, 1993, Mary Petrie came to tell appellant that she was not selected for a promotion. Appellant refused to meet with her and demanded Ms. Petrie's comments in writing. When Ms. Petrie persisted in requesting a meeting, appellant responded loudly that she would not be intimidated. The employing establishment noted that Petrie found appellant's conduct to be shocking, rude, abusive and hostile. The employing establishment indicated that a supervisor reported that in December 1992 appellant asked why her supervisor did not think that, if she was pushed far enough, she would not grab a gun from a customs agent and start shooting. The employing establishment also found that, on January 7, 1994, appellant failed to appear at her assigned-duty station at the scheduled time. It noted that there appeared to be a misunderstanding regarding appellant's time to report. Appellant, however, met with her supervisor to discuss why she was late and was contentious, disrespectful, screamed at her supervisor in a telephone conversation and called him a liar. On February 17, 1994 appellant responded loudly when Frederick Mann, her supervisor, requested that she speak louder due to his hearing impairment. She continued to respond loudly even after Mr. Grode instructed her to calm down. Appellant was cited for failure to provide a signed statement to Mr. Vollmerhausen as part of his investigation and refusing to correct and sign a draft statement sent by him after she met with him on December 15, 1993. Appellant was also cited for being absent without leave (AWOL) on October 7, 1993 after she was instructed to bring in medical documentation to support her sick leave request. The employing establishment submitted numerous documents to support its findings.

In a March 15, 1997 letter, appellant requested reconsideration. She submitted numerous documents in support of her request. Appellant submitted a copy of the grievance she filed against the employing establishment concerning her 45-day suspension. In an accompanying document, she contended that Mr. Vollmerhausen was only interested in gathering negative information about her. Appellant stated that the employing establishment falsely accused her of being AWOL. She claimed that Mr. Mann and Mr. Grode, supervisors, repeatedly threatened her physically and then charge her with insubordination when she walked away from them.

Appellant contended that management exceeded its authority in requiring medical documentation to support her request for sick leave. She stated that Mr. Mann failed to return her leave requests on a regular basis. Appellant indicated that he had threatened to charge her as AWOL on several occasions after he had approved her leave. She complained that she refused to go on leave without having a signed leave slip in her possession. Appellant stated that she thought a meeting with Ms. Petrie on her failure to be selected for a promotion was a waste of government time. She indicated that she preferred a written explanation. Appellant claimed that, when she told Ms. Petrie that she felt the meeting was a waste of time, she responded by accusing her of wasting government time. Appellant stated that Ms. Petrie refused to give the reasons for nonselection in writing. She declared that she never stated that she would shoot

someone. Appellant indicated that Larry Daubert had stated that, since appellant had no way to resolve her problems with management or to collect her travel voucher repayment, she should kill herself and a list of managers. She claimed that her failure to appear at an assignment on time was because she was not given the schedule of assignments for the next pay period. Appellant therefore thought that she was scheduled to report at 9:30 a.m. instead of 8:00 a.m. She cited examples of coworkers who appeared at the wrong assigned station or did not show up at the required time but were not disciplined for such errors. Appellant also contended that the employing establishment failed to restore two hours of annual leave to her after a leave audit showed the error.

Appellant claimed that her conversation with Mr. Mann on February 17, 1994, concerned his claims that she was AWOL on several occasions. She stated that Mr. Mann constantly asked her to repeat her statements to him so she began to speak louder. Mr. Grode told her not to talk so loud but she pointed out that Mr. Mann could not hear her unless she spoke louder. Appellant contended that she was not unprofessional at any time. In a March 3, 1994 statement, Mr. Mann indicated that, on February 17, 1994, he was having a conversation with appellant when she became loud and abusive because he had asked her to repeat something he had not quite heard. He concurred that Mr. Grode asked appellant to calm down and lower her voice because she was disrupting the work unit. Appellant responded loudly that she had to talk loud so that he could hear her. Two other witnesses stated that she was inappropriately loud in her conversation with Mr. Mann. In the charge that she failed to sign a statement, appellant declared that the employing establishment had no right to discipline her for refusing to sign a statement that did not accurately reflect what she told Mr. Vollmerhausen. Appellant reported that a coworker stated that Mr. Vollmerhausen had altered her statement by excluding questions he had asked and her responses.

Appellant submitted a copy of a January 10, 1996 notice that she was being removed from her job because she had not returned to duty since March 20, 1995 and was AWOL from that time. She also submitted a February 24, 1993 memorandum in which she indicated that the employing establishment had taken her entire salary to recoup $7,000.00 in advances covered by three travel vouchers.

Appellant submitted a January 19, 1990 decision on her grievance concerning a 14-day suspension. The arbitrator in the case indicated that appellant's pay check was sent to the headquarters office of the Custom House on March 29, 1999. Although the checks were usually placed in a locked file cabinet, appellant requested that her check be kept out of the locked cabinet and left for her to pick up. Ms. Jackson placed appellant's check in the mail tray for the Dundalk facility. Ms. Levy picked up the contents of that mail tray in the afternoon and took it home for delivery the next day. Appellant called Ms. Levy who confirmed that she had picked up appellant's check. Before work started, on March 23, 1989, appellant called the Baltimore Police Department to make a report of no receipt of mail. When Ms. Levy arrived at work, she placed appellant's pay check into her mailbox at the Dundalk facility where appellant subsequently picked it up. The police officer investigated appellant's complaint and called the employing establishment's headquarters. The employing establishment then conducted an investigation which resulted in a 14-day suspension for advancing false accusations against her supervisor and for misuse of the criminal process. The arbitrator found that appellant never

accused her supervisor of theft of the pay check. He further found that the person who conducted the investigation, Mr. Van de Vaarst, volunteered for the job and had a personal bias against appellant. The arbitrator found that his investigation was flawed as he did not interview appellant and did not interview Ms. Jackson or the police officer until after the suspension was proposed. He also noted that Ms. Levy was with Mr. Van de Vaarst when he interviewed the police officer, which was a deviation from standard practice. The arbitrator noted that Mr. Van de Vaarst wrote the suspension letter and gathered the material to support the employing establishment's decision to suspend. When appellant grieved the suspension, Mr. Kruse became the agency reviewer and considered only the aggravating factors to disregard any mitigation of the punishment. He ignored appellant's past awards, performance appraisal and personnel file. The arbitrator found that Mr. Kruse's decision to uphold appellant's suspension was not only biased but arbitrary and capricious. He also noted that Mr. Kruse replaced another deciding officer who had drafted a decision favoring appellant. The arbitrator found that appellant created the situation by taking an action that reflected personal enmity toward Ms. Levy. The employing establishment, however, did not charge appellant with this behavior. The arbitrator concluded that the employing establishment's investigation of the incident was so biased and flawed that fairness and impartiality were completely absent. He therefore sustained appellant's grievance and ordered the employing establishment to rescind the suspension, expunge all reference to the suspension from its files, and make appellant whole for all back pay, benefits, and seniority for the period of her suspension.

In an April 18, 1997 decision, the Office denied appellant's request for reconsideration as untimely and lacking clear evidence of error in its decision. Appellant submitted a June 3, 1997 report from Dr. James who stated that appellant's major depression caused severe vegetative symptoms which prevented her from performing even simple tasks. He noted that appellant often isolated herself and had extreme difficulty with concentration. Dr. James concluded that appellant's vegetative symptoms caused her difficulty in completing the paperwork in her case. He repeated his findings and conclusions in a July 10, 1997 report. In a July 22, 1997 letter, the Office stated that, in consideration of the medical report, appellant would be permitted to make a reconsideration request. The Office gave her 30 days to submit any information she deemed necessary to support her request.

In an August 18, 1997 letter, appellant renewed her request for reconsideration. She stated that she worked approximately 35 hours of overtime per week on average. Appellant indicated that, when she was assigned weekend overtime, she would be available around the clock from Friday morning until her return to work on Monday. She commented that frequently the work assignments would be spaced out so that she was unable to sleep, shower or change clothes for 48 hours. Appellant claimed that the employing establishment failed to follow through on many of her EEO complaints or grievances to a resolution. She stated that management intended to destroy her career which caused her depression and panic attacks. Appellant withdrew from her coworkers and had increasing panic attacks when called to the supervisor's office. She indicated that she began to have panic attacks every day just approaching the employing establishment. Appellant noted that her condition became so severe that a ringing telephone or the sight of office mail would bring on panic attacks. She stated that she became afraid to do her job duties such as seizure of a passenger's possessions, fumigation, or levy a fine because she feared the action would result in a complaint to be used as another

reason to discipline her, to find her work unsatisfactory, and result in her dismissal because no amount of evidence or witnesses would exonerate her. Appellant stated that she was passed over for promotion by management repeatedly, while less qualified coworkers were promoted. She contended that the employing establishment's refusal to pay her travel vouchers and to complete the form that would have prevented seizure of her salary was calculated to destroy her financially and mentally.

Appellant submitted a copy of a September 13, 1993 letter in which she stated that she refused to certify lumber from Coastal Lumber because it was not presented for examination due to storage problems. She indicated that, after the complaint was made, her supervisor received information from two witnesses who directly contradicted Lawson's claims. Appellant also submitted a February 19, 1998 witness statement from Iris Jainett who stated that, in the incident involving the Jamaican passenger, appellant acted professionally in the seizure of meat the passengers had brought back from Jamaica. Ms. Jainett indicated that appellant tried to take the prohibited merchandise as quickly and calmly as possible. She commented that the supervisor present did not see appellant act offensively. Ms. Jainett stated that the passengers became unpleasant and subtlety threatened appellant.

In a September 29, 1997 letter, Joseph Kaplan responded to the Office's request to submit evidence in support of his contentions. He indicated that there was no transcript in appellant's March 1995 proceeding and no decision by the arbitrator because the proceeding was not brought to a conclusion. Mr. Kaplan submitted his notes from interviews to support his statements. He indicated that he interviewed Michael Chausee, a witness to the incident involving the Jamaican passengers. Mr. Chausee commented that the Jamaican passengers were completely hostile. He noted that he did not hear appellant scream or yell at the passengers. Mr. Chausee stated that he told the Jamaican passengers to return to the line, not appellant. Mr. Kaplan stated that Louise Beckman testified that she heard both Mr. Mann and appellant raised their voices in an argument, not just appellant. She indicated that both of them were disruptive. Mr. Kaplan indicated that Tony Lilly, a coworker, testified that in October 1993 he reported to the wrong office. He was instructed to stay where he was and was not disciplined for reporting to the wrong office. Mr. Lilly also noted that a coworker put his fist through a wall but there was no evidence that he was ever disciplined for this action. Mr. Kaplan stated that because there was no hearing transcript, there was no documentary proof that the employing establishment referred to appellant's expunged record of the 14-day suspension. He declared that his sworn statement remained an accurate description of the incident.

The employing establishment submitted a November 2, 1993 affidavit from Delores Norris, who stated that an older couple was carrying canned meat which was confiscated by appellant. She indicated that appellant did not give the couple an explanation or a receipt. Ms. Norris commented that she tried to explain the situation to them but she was not an agricultural inspector. She stated that the couple's son, who was there to meet them, also requested an explanation. Ms. Norris noted that she tried to get appellant to talk to the couple but she refused and started to scream to immigration employees that the older couple and their son should be thrown out.

In an October 6, 1997 report, Dr. James stated that appellant was being treated for depression and anxiety. He indicated that appellant had difficulty sustaining tasks on a regular basis and was unable to work at any job. Dr. James noted that there was a question on whether any specific event at work caused appellant's illness. He responded that, with regard to appellant's psychiatric condition, it was the cumulative effect of all the events that led to her symptoms.

Mr. Daubert responded in a November 11, 1993 affidavit. He stated that everything appellant had reported was untrue. Mr. Daubert stated that when he was appellant's acting supervisor, she constantly swore at him and generally used abusive language against him. He commented that appellant was constantly attacking everyone, her coworkers and employees from other agencies. Mr. Daubert requested to be taken off any rotation that included appellant. He expressed concern about her false statements. Dr. Daubert denied that he had ever yelled or screamed at appellant in the August 30, 1993 incident. He contended that appellant failed to provide any substantiation for her allegations.

The Office also received an April 6, 1996 letter to appellant, requesting that she return government property so that she could receive payment for her annual leave balance. Appellant responded that she had left most of the items in her desk at work and that others had been previously turned in to the employing establishment.

The Office also received a March 7, 1995 memorandum from a supervisor to appellant, denying her request to use official time to prepare for the arbitration hearing and instructing her to cease using government time and government supplies in preparing for the arbitration hearing. The supervisor stated that appellant could take annual leave or leave without pay to prepare for the hearing. He warned, however, that, if appellant requested sick leave, she would be required to submit medical documentation. Appellant contended that, before the employing establishment could request documentation of sick leave, it first had to place her on restrictive sick leave, but had not taken this step.

Appellant submitted information that she was put in for a job in Detroit that she did not want. The employing establishment apologized, noting that she had only indicated a preference for Baltimore. She also contended that she was assigned more than her share of holiday overtime. Appellant noted that the duties of her job required her to work with a hostile public. Appellant claimed that her suspension forms from 1989 were not purged from her file. She stated that she was sent for training in April 1988 which was stressful. Appellant declared that one of her interceptions was found to be a ball of lint in order to deny her the ability to meet her quota. She contended that the employing establishment cancelled meetings because they were not making a good faith effort to resolve her complaints. Appellant stated that she was not paid for overtime that she lost during her suspension. She also complained that she was forced to write or type her complaints even though her supervisors knew she had carpal tunnel syndrome.

The Office asked the employing establishment to respond to appellant's additional complaints. In a March 12, 1998 response, the employing establishment indicated that appellant was required to work mandatory overtime as were other employees at the employing establishment. It stated that the quotas appellant mentioned were required of all plant inspectors.

It noted that appellant evidently did not have trouble meeting her quota as her performance ratings were satisfactory from a technical standpoint. The employing establishment commented that plant inspectors were required to travel. The employing establishment indicated that, in emergency situations, such as the med fly eradication program, short notice might be provided of an outbreak, requiring quick reaction time to contain the devastating potential. The employing establishment commented that plant inspectors held a position of regulatory enforcement which might include confrontations with the public. In regard to appellant's complaint that the employing establishment did not purge its files in accordance with the arbitration decision, the employing establishment stated that the documentation had been removed from appellant's personnel file in full compliance with the arbitrator's decision. The employing establishment responded that, in regard to appellant's complaints about travel vouchers, appellant refused to submit properly completed travel vouchers. It indicated that, when appellant applied for a position in Baltimore, a previous entry had shown her geographic preference was Detroit. The preference was not corrected due to a data entry error. The employing establishment corrected the error. The employing establishment noted that Mr. Daubert, in regard to the alleged August 30, 1993 confrontation, swore under oath that the charge was false. It stated that appellant was given holiday assignments in accordance with its policy. It indicated that plant inspectors were in a position that required contact with the public which may entail encounters with hostile individuals. The employing establishment, however, noted that members of the public, of private industry, and coworkers had complained about appellant's hostile conduct toward them. The employing establishment stated that appellant was sent in April 1988 for training on the use of tact and persuasion in dealing with passengers. It indicated that it knew nothing about appellant's claim that one of her inspections was found to be a ball of lint in order to deny her the ability to meet her quota. It noted that appellant was rated satisfactory with regard to the technical aspects of her performance. The employing establishment found no records of discipline concerning appellant in July 1989. It indicated that appellant was reprimanded for insubordination and disrespectful conduct in March 1992 which partly involved appellant leaving her post. In regard to appellant's contention that she had to write or type her complaints despite carpal tunnel syndrome, the employing establishment stated that appellant made numerous serious, and evidently false, allegations against her coworkers. It indicated that, to investigate appellant's allegations, the allegations must be intelligible. Therefore, appellant was requested to give legible allegations. It commented that, if appellant was unable to write or type her complaints, she could have arranged to dictate her charges to someone who could write or type.

The Office prepared a statement of accepted facts. The Office listed incidents that it found had not been proven to have occurred. Included in this list were appellant's claim that she was reprimanded for every public complaint without investigation; that the employing establishment refused to include compliments of her work; that management refused to provide here with training given to other employees; that she was not provided with needed tools at job sites; that one supervisor threatened her life and other supervisors pointed fists at her; that her within grade pay increase was delayed; and that she was not given two hours of annual leave that was to be restored to her. The Office stated that appellant was given work time for reading mail and preparing travel vouchers. The Office indicated that appellant had not shown that she had received an unsatisfactory evaluation. The Office found that appellant had not established that she was harassed on travel assignment to California and New Zealand. The Office found that

appellant's claim that her performance standards, with quotas, were set up to create an opportunity to fabricate complaints did not occur because she was able to meet her quotas without problems. Appellant claimed that one of her supervisors, Mr. Mann filed an EEO complaint to frame her. The Office concluded that Mr. Mann had filed the EEO complaint because of appellant's insensitivity to his hearing loss. The Office listed other events that did not occur within the performance of duty such as not having a secure place to store her work materials; the requirement to provide medical documentation to support sick leave due to an automobile accident; the extensive disputes with the employing establishment over travel vouchers and the money advanced for travel was withheld from her pay; the request to return government property after she stopped working; the denial of administrative leave, government time, and supplies to prepare for an arbitration concerning her 1995 suspension; her fear of being charged with a crime related to her use of pesticides; the denial of promotion; the fear of further complaints; and the petition from coworkers complaining of her behavior. The Office also stated that appellant's claim that she was reprimanded more than other employees did not occur within the performance of duty because coworkers, managers, employees of other agencies, and the public complained about her rude and unprofessional behavior. The Office found three events had occurred within the performance of duty; the reversal of the 14-day suspension by an arbitrator, the requirement that she regularly work overtime, and that the nature of her position occasionally involved negative public contact when she levied fines or confiscated property.

The Office referred appellant, together with her medical records, the statement of accepted facts and the case record, to Dr. Brian Schulman, a Board-certified psychiatrist, for an examination and second opinion. In an April 24, 1998 report, Dr. Schulman indicated that appellant had not worked in three years and was fearful of leaving her house or being seen in her front yard. He noted that appellant had a compulsive urge to perform various repetitive activities such as picking dandelions out of her yard or picking up slugs in her garden. Appellant indicated that she was not able to get over the fact that the Office had determined that she was a liar. Dr. Schulman stated that, in his examination, he noted that appellant was crying in his waiting room. He commented that appellant's emotional liability persisted throughout the examination. Dr. Schulman noted that appellant had a marked anhedonia, some abulia, and a loss of interest in hobbies and activities. Appellant indicated that she had difficulty in focusing and maintaining her attention. Dr. Schulman commented that appellant seemed preoccupied by her problems, feelings of victimization and concern about financial insecurity. He diagnosed recurrent major depression, and obsessive and borderline personality traits. Dr. Schulman stated that appellant presented with evidence of several psychiatric conditions, notably recurrent depression and anxiety. He noted that appellant had an underlying pervasive obsessive/compulsive complexion to her personality. Dr. Schulman commented that obsessive thoughts were often associated with aggressive and horrific impulses such as striking out, retaliating or seeking retribution. Appellant indicated that she wanted the employing establishment to acknowledge that her job was stressful. Dr. Schulman commented that appellant showed compulsive behaviors that she had no control over, even though she recognized the behaviors as senseless. He noted appellant had associated anxiety with frequent feelings of panic when she went out and a tendency to avoid what she regards as frightening circumstances when she could be watched. Dr. Schulman stated that the underlying obsessive-compulsive behaviors and persecutory ideations were components of her psychiatric disorder and contributed to her total disability. He commented that there was minimal indication that the accepted conditions had substantially contributed to the precipitation,

acceleration or aggravation of her current psychiatric condition. In conclusion, Dr. Schulman stated that it was not clear that any particular event or circumstance caused appellant's mental condition. He commented that interpersonal conflicts, supervisory disagreements, and her perception of nonsupportive supervisors appear to be stressful conditions that have most disturbed her but were not attributable to work-related events.

In a May 11, 1998 letter, the Office asked Dr. Schulman to clarify his comment that there was minimal indication that the compensable factors of employment substantially contributed to the precipitation, aggravation, or acceleration of appellant's psychiatric condition. The Office requested a firm opinion on whether appellant's diagnosed psychiatric condition was related in any way to the compensable factors of employment. In a May 20, 1998 response, Dr. Shulman stated that, within reasonable medical certainty, it was impossible to rule out a possible causation to appellant's illness. He commented that all possible factors must be considered. Dr. Schulman indicated, however, that this consideration did not imply that the minimal contribution of a life event is a probable constant factor in producing the emotional disorder. He stated that it was only in assessing medical probability that he could render an expert medical opinion. Dr. Schulman commented that, in appellant's case, the presence of psychiatric illness was deemed to be substantially unrelated to conditions of her unemployment. He stated that the persistence of appellant's depressive and anxious symptoms three years after she left her employment strongly suggested that appellant's mental condition was related to an underlying disease process which had a chronic and recurrent element rather than a reaction to any specific, transient, stressful event such as overtime work or emotional tension created by confronting various individuals. Dr. Schulman concluded that there was no probability, based on medical assessment, that the experiences of overtime work or negative public contact would produce a permanent psychiatric illness or a permanent level of mental impairment. He indicated that the preponderance of the evidence was that appellant suffered with mental illness which would manifest itself independent of any specific situational life event.

In a June 16, 1998 decision, the Office modified its December 21, 1995 decision to find that compensation was denied due to appellant's failure to prove that she was injured in the performance of duty. It accepted that appellant had compensable work factors but the medical evidence did not support a causal relationship between those factors and a diagnosed psychiatric condition.

In a June 14, 1999 letter, appellant requested reconsideration. She reiterated her arguments on the events at the employing establishment which she considered to have caused her emotional condition. Appellant also submitted letters and reports that had been submitted previously. She added a February 19, 1993 statement she sent to Mr. Merrill, claiming that Mark Stull ordered her into the office while she was working overtime, clearing an international flight. Appellant refused and continued to clear the flight. She stated that, when she went to the office later, Mr. Stull followed her in, screamed at her and pounded her desk, stating that he was better at the job than appellant and stating that she was suppose to find him for flights. Appellant claimed that subsequently, when she went to the office to destroy contraband, Mr. Stull followed her in, closed the door and the blinds and, with both fists clenched, tried to force her into the back room, stating that he knew how to take care of her and was too smart to have witnesses. Appellant stated that she immediately left the office. She indicated that after Mr. Merrill arrived

he talked with Mr. Stull. He then stood by while Mr. Stull began yelling at her, stating that she was sick and that she needed help. Appellant stated that, on February 16, 1993, Mr. Stull followed her into the office holding pictures of deer he had killed. He offered to show them to her but she declined. Appellant indicated that Mr. Stull was pacing and looking at the pictures while commenting that he loves to kill things, he had a gun, he was a good shot and that appellant better worry. He then left the office. Appellant complained to Mr. Merrill about Mr. Stull's actions but he responded that there was nothing he could do.

Appellant submitted a June 11, 1999 report from Dr. James who indicated that the statement of accepted facts was not entirely accurate. He stated that, based on the proven statement of accepted facts, it appeared that the two specific incidents may not necessarily contribute to significant sets of psychiatric symptoms. Dr. James noted that these events, which were proven, did not occur in isolation over a discrete period of time. He commented that these events that occurred over a period of time, causing appellant considerable anguish and distress for appellant. Dr. James stated that the proven events occurred in the midst of other events which, according to the Office, were not proven but could have substantially caused a significant level of distress and mental anguish to appellant. He pointed out that appellant felt a lack of support from her supervisors and coworkers and had to pursue appropriate steps from a legal standpoint to resolve her situation. Dr. James indicated that appellant's legal actions promoted a negative environment in the workplace as she named specific individuals with regard to her legal concerns. He stated that the time duration over which the incidents occurred, even though the Office found no evidence that the incidents were fully proven, still could have contributed to significant emotional problems because of the day-to-day stress that was created in appellant's life. Dr. James noted that, when he first saw appellant, she attributed her panic attacks and depression solely to work-related stressors, whether proven or not. He commented that appellant did not suffer from any symptoms of depression or anxiety prior to the onset of the work-related stressors. Dr. James also disagreed with Dr. Schulman's report, specifically his statement that appellant's psychiatric condition was an underlying condition unrelated to her employment. Dr. James stated that appellant's symptoms were directly related to work-related stressors which occurred over a period of time. He commented that psychiatric conditions may not necessarily occur due to a specific incident but had to be taken in the context of the various stressors that took place over the years and the negative environment that occurred due to these stressors. Dr. James stated that appellant's inability to work as a result of her symptoms and her subsequent loss of her job only made her condition worse. He concluded that appellant's loss of support from her employer, loss of her job, and financial losses since then could have contributed to her symptoms of depression and panic attacks. Dr. James commented that there was no doubt that the stressors at work were directly responsible for appellant's symptoms. He remarked that it would be difficult for any psychiatrist to state that two proven factors may have contributed to the entire set of symptoms she had experienced since she began treatment. Dr. James recommended that the Office not review appellant's condition on the basis of the specific incidents but look at the larger picture and the stress she went through over three to four years. He stated that the stress of the various events that took place contributed to her symptoms and the lack of resolution of these issues had also contributed to the ongoing presence of the symptoms.

In a June 11, 2001 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of the request was repetitious and cumulative and therefore insufficient to warrant review of the prior decision.

Appellant submitted a June 7, 2002 report from Dr. James who emphasized that appellant's symptoms began after her supervisor made false allegations against her, resulting in a suspension from work in 1989. He noted that the allegations were later proven to be false and were dismissed after arbitration. He stated that appellant never felt welcome at work since that time and faced multiple challenges at work and in pursuit of other jobs due to the lack of support from her supervisors and the employing establishment. Dr. James indicated that the situation led to further losses and fears which maintained appellant's level of depression and anxiety. He noted that appellant had been unable to work due to her symptoms of depression and anxiety. Dr. James commented that the accumulated stressors at work, including threats against her, delays in reimbursement, increasing isolation, and finally the loss of her job and shattered plans for her future contributed to the worsening of her symptoms of depression and anxiety.

In a January 5, 2004 letter, appellant indicated that her request for reconsideration was received by the Office in June 2004. She submitted a copy of the signed return receipt from the Office, dated June 11, 2002. Appellant requested the status of her claim.

In a March 12, 2004 merit decision, the Office denied appellant's request for modification of its prior decisions.

LEGAL PRECEDENT -- ISSUE 1

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. 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 his frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.[1] When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.[2] In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any

[1] *Lillian Cutler*, 28 ECAB 125 (1976).

[2] *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.[3]

Actions of an employee's supervisors or coworkers which the employee characterizes as harassment or discrimination may constitute factors of employment giving rise to coverage under the Act. However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment and discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[4] To establish entitlement to benefits, the claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence that incidents occurred as alleged, including proof of alleged harassment by supervisors or coworkers.[5] The evidence cannot be general in nature but must cite specific incidents that would establish appellant's allegations of harassment.[6]

ANALYSIS -- ISSUE 1

The Office found that numerous incidents cited by appellant as part of the cause of her emotional condition had not been proven to have occurred. Appellant complained that she was reprimanded for every public complaint without an investigation. The evidence of record shows that the employing establishment investigated complaints against appellant. She was investigated for rudeness toward the Jamaican passengers. Appellant submitted a statement from two witnesses who stated that appellant was professional as she attempted to confiscate the meat brought by the passengers. Her attorney stated that a witness at the March 1995 hearing stated that the Jamaican passengers were hostile. The witness indicated that he did not hear appellant scream or yell at the passengers. On the other hand, Ms. Norris stated that appellant confiscated the canned meat and did not give the passengers an explanation or receipt. She indicated that when she suggested to appellant that she talk to the passengers, appellant refused and started to scream that the Jamaican passengers be tossed out. Since opposing statements described appellant's actions as either professional or unprofessional, it cannot be determined whether appellant or the Jamaican passengers were hostile. The incident therefore has not been shown to have occurred as appellant alleged.

The employing establishment received a complaint from Coastal Lumber about appellant's actions in inspecting the lumbar. The company representative indicated that appellant was rude, screaming at a coordinator because the lumber to inspect was not in the proper place. The representative stated that the mill had loaded the lumber with samples on top, centered in the container. She later withdrew her complaint about appellant. Appellant, therefore, was not reprimanded for the incident. There is no indication of error or abuse by the employing establishment in this incident.

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[3] *Thomas D. McEuen,* 41 ECAB 387 (1990) *reaff'd on recon.,* 42 ECAB 566 (1991).

[4] *Anna C. Leanza,* 48 ECAB 115, 122 (1996).

[5] *David G. Joseph,* 47 ECAB 490, 496 (1996).

[6] *Jose L. Gonzalez-Garced,* 46 ECAB 559, 564-65 (1995).

Mr. Hilty, in his February 23, 1993 EEO decision, stated that the letters of caution appellant received for her conduct were credible because numerous coworkers stated that appellant was rude, sarcastic, confrontational and difficult to work with. The records contain affidavits and complaints about appellant's actions at work which resulted in the alienation of those coworkers from appellant. The employing establishment submitted records relating to a May 21, 1991 warning letter issued against appellant for leaving her assigned area without informing her supervisor and for screaming at the supervisor when he asked appellant's reason for leaving her assignment. It also submitted a March 9, 1992 letter of reprimand for a similar incident in which appellant left her duty station, leaving her supervisor to do all the work. When the supervisor questioned appellant, she began screaming at him. There is no evidence that these actions were done in error or were abusive. The evidence indicates that these disciplinary actions by the employing establishment were justified.

Appellant complained that the employing establishment refused to honor her travel vouchers and withheld $7,000.00 from her salary to repay the travel advance sent to her. The employing establishment responded that it was requesting verification of appellant's charges, particularly relating to telephone calls that appellant made while on a temporary assignment. As the employing establishment was investigated whether appellant had submitted a misleading or possible fraudulent travel vouchers, its actions were administrative in nature.[7] The employing establishment's request for additional information from appellant to justify her expenses while on travel was not error or abusive but a legitimate investigation from the employing establishment.

Appellant claimed that she did not receive the training she needed for her position. The employing establishment noted that appellant had been sent to training and had not been denied appropriate training. There is no other evidence that establishes that appellant was denied training. Appellant contended that she was given more overtime on holidays than her coworkers. The employing establishment showed that it followed a set procedure to determine who would perform overtime work. There is no other evidence beyond appellant's statement to show that she was assigned overtime unfairly. Appellant complained that she had received poor performance evaluations and that her supervisors took actions to keep her from meeting the quotas set in her performance standards. The employing establishment showed that appellant received satisfactory performance evaluations from 1989 to 1992. The satisfactory performance evaluations show that appellant was not kept from meeting her performance standards by the actions of management at the employing establishment. Appellant claimed that the employing establishment deliberately withheld a within-grade step increase. The employing establishment showed that the paperwork for the increase was not prepared in a timely fashion. When it realized its error, appellant received the step increase retroactive to the appropriate date. She therefore did not suffer any harm from an error made by the employing establishment. Appellant claimed that she was required to use a prohibited pesticide for fumigation. The evidence of record shows that the pesticide, methyl bromide, was approved for the restricted use of fumigation by the employing establishment. There is no showing that the action was taken in error or abusive. Appellant claimed that the employing establishment failed to restore two hours of annual leave that she was entitled to. There is no evidence of record to show that the

[7] *Drew Weissmuller*, 43 ECAB 745, 752 (1992).

employing establishment failed to reinstate the two hours of annual leave. Appellant stated that the employing establishment did not purge her records as ordered by the arbitrator. The employing establishment contended that it followed the orders of the arbitrator. There is no evidence of record that the employing establishment failed to perform the actions ordered by the arbitrator. Appellant also claimed that she was harassed by the employing establishment in its demand to return employing establishment equipment after she was discharged from employment. There is no evidence that the request of the employing establishment was abusive or in error.

Appellant complained that she was unfairly disciplined for her encounter with Mr. Mann, her supervisor. Mr. Mann and Mr. Grode stated that appellant was screaming at Mr. Mann after he asked appellant to speak louder. Appellant submitted a statement from a witness who indicated that both appellant and Mr. Mann were yelling at each other. Although there are differing accounts of the actions of that day, a verbal confrontation is not necessarily a compensable factor of employment. The Board has recognized the compensability of verbal abuse under certain circumstances. This does not imply, however, that every statement uttered in the workplace would give rise to coverage under the Act.[8] In this incident, the evidence suggests that appellant was mocking her supervisor's hearing loss. There is no indication that the encounter was abusive to appellant.

Appellant claimed that on August 30, 1993 Mr. Daubert threatened her with disciplinary action based on anything he could find, whether it was accurate or false. She also claimed that Mr. Daubert was yelling at her and pounding on her desk. Appellant stated that Mr. Daubert was angry at here while they were conducting an inspection of a garlic shipment. Mr. Daubert, in response, denied that the incident happened as appellant described it. He indicated that he was instructed to perform a full inspection while appellant stated that she was instructed only to check the origin of the shipment. Mr. Daubert complained that appellant was constantly cursing him and used abusive language toward him. The evidence therefore is inconclusive on whether appellant was abused by Mr. Daubert on August 30, 1993. Appellant therefore failed to show that the actions of the employing establishment were in error or abusive.

In her request for reconsideration, appellant contended that another supervisor, Mr. Stull threatened to hit her and intimated that he could kill her. She submitted a contemporary memorandum to Mr. Merrill complaining of Mr. Stull's actions. But the evidence submitted by appellant is lacking any support or collaboration to establish that the events occurred as she alleged.

Appellant claimed that she was discriminated against when she was denied a promotion. The Board held in *Cutler* that promotions were not related to an employee's work duties and therefore was not a compensable factor of employment. Appellant has not shown that the denial of the promotion was in error or an incident of abuse by the employing establishment.

Mr. Vollmerhausen informed appellant that he needed to meet with her in an investigation. Appellant refused to meet with him but a meeting was scheduled for

[8] *Frank B. Gwozdz*, 50 ECAB 434, 438 (1999).

October 7, 1993. On the day of the meeting, she called in and requested sick leave. The employing establishment instructed appellant to submit medical evidence to substantiate that she was sick on October 7, 1993. Appellant refused. The employing establishment thereupon found that appellant was AWOL on that date. The employing establishment acted within its discretion in an administrative action. The employing establishment had the right to request that appellant establish that she was actually sick on the day in question, based on appellant's earlier refusals to meet with the employing establishment official.

Appellant claimed that the employing establishment refused to send her on international assignments due to a poor evaluation given by a New Zealand official. The evidence of record, however, contains statements that appellant performed the technical aspects of her job very well. There were conflicting comments on whether appellant would be invited back. The evidence did show appellant had a personality conflict with another plant inspector. But when the other plant inspector was sent to a different duty station, appellant was able to work efficiently. There is no evidence that appellant was being blackballed from receiving future international assignments.

There are incidents, however, that were in error or abusive. The employing establishment admitted that it made an error in not changing appellant's preferences on locations for work, resulting in a job offer from Detroit which appellant did not want. The error therefore would be a compensable factor of employment. Appellant also complained that her office mail was deliberately delayed or not delivered. Ms. Stanley stated that Ms. Jackson deliberately would not distribute mail to appellant and that Mr. Reeves was aware that appellant was not receiving her office mail. Therefore, there is some collaboration of appellant's complaint that her mail was deliberately delayed or not delivered at all. The action of deliberately delaying or failing to delivery office mail to appellant was abusive and therefore was a compensable factor of employment.

Appellant claimed that she was harassed by her supervisors, particularly Mr. Merrill and Mr. Reeves. Ms. Stanley stated that the withholding of appellant's office mail was part of a larger harassment of appellant. Ms. Roberson stated that, when she began work at the employing establishment, she overheard other employees state that appellant was paranoid. She assumed that Mr. Merrill and Mr. Reeves were encouraging the coworkers to not get along with appellant. Ms. Roberson stated that a coworker was asked by Mr. Merrill to give her version of an argument but appellant was not asked to give her version of the incident. She also indicated that she overheard Mr. Reeves and Mr. Merrill making derogatory remarks about appellant. The statements given by these coworkers are general in nature and did not contain the specific details necessary for a finding of harassment or discrimination. The evidence that Mr. Reeves and Mr. Merrill made derogatory comments about appellant does not establish that these comments reflected intent to harass or discriminate against appellant.

Appellant, therefore had several compensable factors of employment; the findings of the arbitrator that the employing establishment had improperly imposed a 14-day suspension; her work on overtime; her contact with hostile people when she confiscated or imposed a fine on them; the error in not correcting appellant's preferences on workstations, which led to a job offer from Detroit; and the deliberate failure to give appellant her office mail in a timely manner or to not give it to her at all.

The reports of Dr. James established that appellant had depression, anxiety and periodic panic attacks. The evidence of record shows several compensable factors of employment. The case therefore turns on whether the medical evidence shows that appellant's emotional condition was causally related to these employment factors.

Dr. James, in his medical reports, concluded that appellant's emotional condition was causally related to her employment. Dr. Schulman stated that appellant had recurrent depression and anxiety with an underlying obsessive/compulsive complexion to her personality. He indicated that appellant's underlying obsessive-compulsive behaviors and personality ideations were components of her psychiatric disorder and contributed to her total disability. Dr. Schulman declared that appellant's psychiatric illness was substantially unrelated to the conditions of her unemployment. He stated that persistence of appellant's symptoms three years after leaving her employment suggested that her mental condition was related to an underlying disease process which had a chronic and recurrent element rather than a reaction to specific stressful events. Dr. Schulman concluded that there was no probability that experiences of overtime work or negative public contact would produce a permanent psychiatric illness. His opinion rests on his conclusion that the evidence "suggested" that appellant had an underlying disease process. The statement that the evidence suggested a certain result is speculative. As Dr. Schulman's opinion rests on a speculative premise, his report has limited probative value.

In his June 11, 1999 report, Dr. James disagreed with the statement of accepted facts restricting the compensable factors. He stated that these events were part of other events which could have caused distress and mental anguish. Dr. James commented that time duration over which the incidents occurred, even though the Office had found that the incidents were not fully proven, could have contributed to significant emotional problems because of the daily stress in appellant's life. Dr. James noted that appellant did not have any symptoms of depression and anxiety prior to the onset of work-related stressors. He declared that appellant's symptoms were directly related to stressors at work that occurred over a period of time.

The reports of Dr. Schulman and Dr. James are in conflict on the cause of appellant's emotional condition, including the dispute on whether appellant had an underlying emotional condition that caused her disability or whether appellant's emotional condition was directly related to factors of her employment. Since the Board has found that there existed compensable factors of employment that the Office had not included in its statement of accepted facts, the Office must prepare a new statement of accepted facts. The Office should then refer appellant, together with the statement and the case record, to an appropriate impartial medical specialist for an examination. The specialist should be asked to give a diagnosis of appellant's condition, to state whether the listed compensable factors of employment caused or contributed to appellant's emotional condition, and to provide a reasoned explanation of his conclusions. After further development as it may find necessary, the Office should issue a *de novo* decision.

CONCLUSION

The case is not in posture for decision due to the failure of the Office to identify several compensable factors of employment in the statement of accepted facts, and due to the conflict in the medical evidence between Dr. Schulman and Dr. James.

ORDER

IT IS HEREBY ORDERED THAT the merit decision of the Office of Workers' Compensation Programs, dated March 12, 2004, be set aside and the case remanded for further development as set forth in this decision.

Issued: February 17, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member