

was disregarded and that retaliation by management caused stress. Appellant stopped work on April 27, 2005.

In a May 4, 2005 report, Daniel E. Williams, Ph.D., a clinical psychologist, opined that appellant's emotional state was the direct result of an oppressive work environment. On May 12, 2005 Dr. Williams diagnosed appellant with chronic post-traumatic stress disorder. He indicated that she could return to work on July 5, 2005.

In a May 13, 2005 letter, Ms. Malecki controverted the claim. She indicated that an issue regarding employees break time was resolved on February 24, 2005 by management and a shop steward. On April 27, 2005 appellant went on an unscheduled break and filed an EEO complaint against Ms. Malecki, which ended up in a settlement agreement. Ms. Malecki denied any retaliation and noted that appellant had no discipline brought against her. She stated that breaks in appellant's work area were only 15 minutes and that appellant was able to bid on other job functions that would provide her a 30 minute break. Copies of statements from other supervisors regarding the break policy were submitted. A copy of the December 7, 2004 settlement agreement between appellant and Ms. Malecki indicated that any disputes would be resolved off the workroom floor, that the parties would treat each other respectfully and that appellant would take directions from her assigned supervisor.

By letter dated June 16, 2005, the Office advised appellant of the factual and medical information needed to establish her claim.

In a June 21, 2005 letter, appellant advised that she was an 18-year employee of the employing establishment and never had a problem with a supervisor until she worked under Ms. Malecki in May 2004. Since that time, she was subjected to ongoing harassment and discrimination. Appellant stated that she worked under Ms. Malecki from 3:30 p.m. until 9:00 p.m. and then went to her back-up operation until midnight. She alleged that Ms. Malecki followed her to her back area and harassed her through her backup supervisor, Anthony Brullo. On August 8, 2004 appellant indicated that Mr. Brullo approved her request for three hours of annual leave. However, on the following workday (a Monday), Ms. Malecki advised that her leave would be recorded as emergency leave. Appellant stated that it violated her leave status to have it approved by one supervisor and then changed by another supervisor. On August 25, 2004 she had worked for supervisor Rose Murphy on the flat sorting machine and was told to take a break at 11:30. Ms. Malecki stopped her in the middle of the aisle and questioned her whereabouts, which was embarrassing. Ms. Malecki then went to Ms. Murphy, who explained that since appellant had forfeited her first break, it was combined with her last break. On September 16, 2004 appellant alleged that Ms. Malecki accused her of stealing time with her clock punches. She alleged that Ms. Malecki would not allow her to operate the computer and selected a junior mail handler to drive the pallet jack, although appellant was senior and had a valid jack license. On September 22, 2004 appellant was informed by her backup supervisor that she was missing eight hours of pay. She alleged that this was a deliberate act by Ms. Malecki. Appellant had to wait one month before getting her money.

Appellant asserted that Ms. Malecki put a badge control only on her, while other employees carried their badges. This caused her clock rings to go from perfect to inconsistent because Ms. Malecki was not in the area to give the badge to her. Appellant asserted that

Ms. Malecki called her backup supervisor regularly to find out what time she arrived. She claimed that Ms. Malecki yelled and pointed fingers at her on the workroom floor and told her that appellant had no right to question the whereabouts of other employees. Appellant alleged that this disparate treatment prompted her to request the EEO to reopen her case. Although a settlement agreement was reached, Ms. Malecki breached the agreement several times. On February 22, 2005 she followed appellant into the swing room and questioned her break. Appellant stated that Ms. Malecki embarrassed her by yelling at her and when she asked to discuss the matter in the office, Ms. Malecki yelled “no!” She alleged that Ms. Malecki tried to get a written statement from a coworker stating that she took unauthorized breaks. On April 27, 2005 upon return from a break, appellant’s back-up supervisor advised her that Ms. Malecki wanted to discuss her break in the office. She did not want to go as it violated her EEO settlement, but reluctantly went and left in a state of total distress and anxiety. Appellant alleged that Ms. Malecki refused to take her documentation, refused to give her an occupational claim form and told her to see another supervisor. She asserted that Ms. Malecki micromanaged her work life and told her that she monitored appellant on the hidden cameras.

In an accompanying May 19, 2005 letter, appellant alleged that, when she called in sick and used the Family Medical Leave Act, Ms. Malecki said that she would “pay me over her dead body.” She submitted letters about her work situation and pay problems, pay stubs containing notations about time questions, a May 23, 2005 statement about being out sick on May 3, 2005 under the Family Medical Leave Act and material pertaining to her EEO claim. Progress notes from Dr. Williams dated May 4 to June 30, 2005 were also submitted.

By decision dated August 4, 2005, the Office denied appellant’s emotional condition claim finding that no compensable work factors were established.

On August 29, 2005 appellant requested a review of the written record before an Office hearing representative. By decision dated January 19, 2006, an Office hearing representative affirmed the denial of appellant’s claim.

LEGAL PRECEDENT

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers’ compensation. Where the disability results from an employee’s emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees’ Compensation Act.¹ On the other hand, the disability is not covered where it results from such factors as an employee’s fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.²

¹ 5 U.S.C. §§ 8101-8193.

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

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

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁵ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of harassment by Ms. Malecki. The Office found that she did not establish any of the alleged incidents as compensable factors of employment. The Board must review whether the alleged incidents and conditions of employment are compensable under the Act.

Appellant disagreed with certain actions and decisions made by Ms. Malecki. These pertained to being monitored, having a badge control, disagreement about time matters, not being allowed to participate in or selected for certain tasks, being called into a meeting with her supervisor on April 27, 2005 and having a leave request changed. The Board notes that these actions generally relate to actions taken by the supervisor in an administrative capacity. Generally, an employee's emotional reaction to administrative or personnel actions taken by the employing establishment is not covered because such matters pertain to procedures and requirements of the employer and are not directly related to the work required of the employee.⁷ The Board has held that an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the supervisor. In determining

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

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

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

⁶ *Id.*

⁷ *Ronald K. Jablanski*, 56 ECAB ____ (Docket No. 05-482, issued July 13, 2005).

whether the employing establishment erred or acted abusively, the Board has examined whether the supervisor acted reasonably.⁸

The evidence of record is not sufficient to establish error or abuse by Ms. Malecki in these matters. She denied any improper action and noted the reasons for her decisions. The Board has held that an employee's complaints concerning the manner in which a supervisor performs his or her duties as a supervisor or the manner in which a supervisor exercises his or her supervisory discretion fall, as a rule, outside the scope of coverage of the Act. This principle recognizes that a supervisor or manager, in general, must be allowed to perform their duties, which employees will at times dislike the actions taken.⁹ Mere disagreement or dislike of a supervisory or management action will not be compensable without a showing through supporting evidence that the incidents or actions complained of were unreasonable.¹⁰ The fact that Ms. Malecki talked to appellant about her breaks (whether authorized or unauthorized) and exercised supervisory control does not, in and of itself, establish error or abuse by her in her administrative duties.¹¹ Additionally, the record indicates that a safety talk was given on February 24, 2005 informing all employees that they would be given two 15-minute breaks and a 30-minute lunch. Later that same day, a meeting was held to resolve the issue of how the last break would be handled for the mail handlers who work for different supervisors. There is no evidence of error or abuse in this regard,¹² nor is there any evidence that Ms. Malecki committed error in respect to changing the type of leave requested. Appellant has not submitted evidence to establish error or abuse with regard to any break time. The record contains a statement of Tommy Haynes, a union steward. He noted that the union investigated appellant's complaint concerning 25 hours of leave without pay and that she had requested erroneous hours for certain days. Mr. Haynes noted that, due to her mistake there was no grievance to be filed.

Appellant contended that she was harassed by Ms. Malecki. With regard to emotional claims arising under the Act, the term harassment as applied by the Board is not the equivalent of harassment as defined or implemented by other agencies, such as the EEO claim, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers compensation under the Act, the term harassment is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by coemployees or workers. Mere perceptions of harassment or discrimination are not compensable under the Federal Employees' Compensation Act.¹³ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or

⁸ *Peter D. Butt Jr.*, 56 ECAB ____ (Docket No. 04-1255, issued October 13, 2004); *see also Lori A. Facey*, 55 ECAB ____ (Docket No. 03-2015, issued January 6, 2004) (although the handling of disciplinary actions, evaluations and leave requests, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee).

⁹ *Judy L. Kahn*, 53 ECAB 321 (2002).

¹⁰ *Id.*

¹¹ *See e.g. Peter D. Butt*, 56 ECAB ____ (Docket No. 04-1255, issued October 13, 2004).

¹² *See Felix Flecha*, 52 ECAB 268 (2001).

¹³ *Beverly R. Jones*, 55 ECAB ____ (Docket No. 03-1210, issued March 26, 2004).

discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.¹⁴ Appellant described Ms. Malecki's alleged treatment of her but did not submit sufficient evidence from any witness to establish that Ms. Malecki acted unreasonably or harassed her.¹⁵ The Board finds that her allegations constitute her perceptions. As appellant did not establish as factual a basis for her perceptions of discrimination or harassment, they do not establish compensable factors.¹⁶ Ms. Malecki denied any unfair or disparate treatment. Appellant alleged that her supervisor disregarded the EEO settlement agreement. She filed a complaint against her supervisor, which the record indicates was mediated. In assessing the evidence, the Board has held that grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.¹⁷ She alleged that Ms. Malecki followed her into the swing room on February 22, 2005 and started yelling at her; that she followed her into the backup area to harass her; and that Ms. Malecki exercised power and influence over her backup supervisor. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.¹⁸ Neither the EEO settlement agreement, nor the EEO mediation found any evidence of wrongdoing on the part of Ms. Malecki. The evidence does not establish a compensable employment factor. The Board finds that appellant has not established a compensable factor under the Act with respect to the claimed harassment by her supervisor.

The Board finds that appellant has not established any compensable employment factors under the Act. Therefore, she has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹⁹

CONCLUSION

Appellant has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.

¹⁴ *James E. Norris*, 52 ECAB 93 (2000).

¹⁵ *See Ernest J. Malagrida*, 51 ECAB 287 (2000).

¹⁶ *James E. Norris*, *supra* note 14.

¹⁷ *Michael L. Deas*, 53 ECAB 208 (2001).

¹⁸ *Katherine A. Berg*, 54 ECAB 262 (2002).

¹⁹ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *Karen K. Levene*, 54 ECAB 671 (2003); *see also Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the January 19, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 6, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board