United States Department of Labor
Employees' Compensation Appeals Board

D.S., Appellant	)	
and	)	**Docket No. 09-881**
	)	**Issued: January 4, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Lodi, CA, Employer	)	

Appearances:
Greg Dixon, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 17, 2009 appellant filed a timely appeal from February 26, 2008 and January 9, 2009 merit decisions of the Office of Workers' Compensation Programs dated that denied his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty causally related to factors of his federal employment.

On appeal, appellant's representative contends that the statement of accepted facts was sparse and inaccurate which diminished the probative value of the medical evidence that relied upon it, and that the opinion of the impartial medical referee was not rationalized and insufficient to be given special weight.

FACTUAL HISTORY

On February 18, 2004 appellant, then a 47-year-old city letter carrier, filed an occupational disease claim alleging work-related stress caused by intentional administrative errors and abuse of authority by employing establishment management and retaliation by Boyd Lambertsen, the postmaster, who had stopped work on November 25, 2003. Beginning on September 7, 2002, appellant was harassed, intimidated, discriminated against, singled out, falsely accused of inappropriate acts, unfairly disciplined, denied pay, benefits and contractual rights and was subjected to a hostile work environment. Appellant noted that he had filed Equal Employment Opportunity (EEO) Commission complaints and grievances and was under a physician's care. He specifically alleged that he was harassed by Mr. Denton beginning on September 7, 2002, that the employing establishment erred in handling a traumatic injury claim for a March 19, 2003 knee injury and in failing to timely obtain medical care on March 22, 2003 such that his condition worsened, that Mr. Castenada humiliated him in front of coworkers on April 1, 2003, that Ms. Hammitt cursed at him on April 4, 2003 and would not provide a form so that he could file an occupational disease claim for stress, and that he was improperly removed on November 25, 2003 when he was told no light duty was available for a nonwork-related condition and was improperly denied leave.

Appellant enclosed a journal beginning on Saturday, September 2, 2002, ending on Friday, November 28, 2003 in which he recorded that Mr. Denton began to harass him in September 2002 because of his relationship with Ms. Perkins, that he was micromanaged by Mr. Denton and Mr. Castenada, and that beginning on October 7, 2002 Mr. Denton ordered him to perform additional work, which was impossible to complete in the time allotted. He stated that on October 31, 2002 Mr. Denton inappropriately criticized him for wearing a baseball cap; Mr. Denton's continuous harassment on November 1, 2002 culminated in an altercation when he criticized appellant's performance and appellant cursed at him, after which he went to see Mr. Lambertsen, Mr. Denton was already there. Appellant stated that, using profanity, he asked to see a doctor and that Mr. Lambertsen committed administrative error by ordering him off the clock instead and denying medical leave. He then went to see his physician, Dr. James Grady, and upon his return to work on November 6, 2002, Mr. Denton continued his pattern of harassment. Appellant stated that he was called to a surprise meeting with Mike Hopper regarding an investigation into appellant's allegations about Mr. Denton on December 13, 2002, catching him off guard. He contended that the investigation was a sham, and he heard nothing further. Appellant stated that, after filing an EEO complaint, he was left alone for three months, but that the threats, bullying, intimidation and retaliation began anew in February 2003 when he voluntarily withdrew his EEO complaints. He specifically stated that he was intentionally harassed by Mr. Castenada who had an arrogant, retaliatory managerial style and targeted appellant by inappropriately summoning him over the loudspeaker, and questioning him about how he performed his work, and that Mr. Lambertsen authorized his supervisors to retaliate against him for filing an EEO complaint, inappropriately observed appellant's street duties on February 13, 2003, and accused him of having lunch in an unauthorized area, using unauthorized mileage for lunch, and for not wearing a satchel; that on February 27 and March 17, 2003 he was inappropriately counseled by Mr. Castenada without union representation, and that on March 13, 2003 he was given a letter of warning about his failure to carry a satchel and having lunch in an unauthorized area, and that on March 15, 2003 he and Ms. Perkins met with Mr. Lambertsen and discussed Mr. Denton's harassment and other disciplinary matters. Appellant again described

the events surrounding the March 19, 2003 knee injury, and stated that on April 1, 2003 Mr. Castenada humiliated him in front of coworkers by informing him he needed to submit a duty status report before being allowing to work. He noted that on April 2, 2003 the letter of warning was deleted from his record and that, due to the hostile work environment, his health had deteriorated, and he contacted the employee assistance program (EAP) and informed the employing establishment that he was considering filing a stress claim. Appellant stated that on April 4, 2003 he was cursed at by Ms. Hammitt regarding filing a stress claim and that on August 23, 2003 he was singled out for a route inspection, although noting that four routes were inspected. He stated that on August 25, 2003 he was confronted by Mr. Denton, Mr. Castaneda and Mr. Lambertsen who scrutinized his every move, and that on September 20, 2003 he was inappropriately denied leave requests, that on November 10, 2003 Mr. Castaneda made a false statement about him to Mr. Giles regarding removal of third class mail. Appellant noted that on November 20, 2003 he was diagnosed with epididymitis, and requested light duty. He described the events of November 25, 2003 when he was ordered off the clock by Mr. Castaneda, who stated that he had no light duty available. Appellant concluded that the stress he had been subjected to since September 7, 2002 caused a severe emotional reaction, making sleeping and eating difficult, and that he had filed EEO complaints, asking that Mr. Lambertsen, Mr. Denton and Mr. Castaneda be removed. He also described his medical condition, treatment, and medications for the period December 3, 2003 through March 28, 2004, stating that he was hospitalized for stress from December 23, 2003 through January 4, 2004. Appellant submitted a graph of his weight from September 7, 2002 to February 2004, and voluminous documentation including employing establishment policies, clock ring documentation, street observations, route inspections, leave forms, medication receipts, evidence regarding his knee claim, that was accepted for septic supra patellar cellulitis, due to acute injury.

In a February 18, 2004 Step B grievance resolution decision, a dispute resolution team determined that management violated the employing establishment national agreement when appellant was not allowed to work light duty on November 24, 2003, finding that he was to be compensated for all hours of leave without pay during the period November 25 to December 8, 2003.

In statements dated January 12 to 28, 2004, Diana Perkins, a letter carrier and union official who was then appellant's girlfriend and is now his wife, stated that Mr. Denton began harassing appellant when he realized appellant and Ms. Perkins were seeing each other, noting that in July 2002 and February 2003 she saw Mr. Denton drive past her house and peer down her driveway; that while she was talking with appellant on the workroom floor on September 18, 2002, Mr. Denton approached and listened in on their conversation; that on September 30, 2002 Mr. Castenada called appellant a "slug"; that she witnessed Mr. Denton micromanage appellant's performance on October 15, 2002 by standing in close proximity and scowling; that on October 16, 2002 Mr. Denton inappropriately stood too close to her while giving her work instructions; that on October 19, 2002, Mr. Denton inappropriately changed carriers' routes; that sometime in October 2002 Mr. Lambertsen asked her if he should fire appellant because he had too many accidents. She also described a February 21, 2003 meeting in which she requested help regarding Mr. Denton's actions in stalking her and harassing appellant, and stated that while delivering mail on February 23, 2003, Mr. Castenada reproached her for not using her mail satchel and that, while she was not disciplined for this offense, she knew that appellant was. Ms. Perkins reported that on March 15, 2003 a meeting was held with Mr. Lambertsen, in which

she and appellant described Mr. Denton's harassment and stalking and asked that Mr. Lambertsen stop it. She related that appellant told her on March 19, 2003 that he had bumped his knee; that on September 6, 2003 she observed Mr. Denton in a grocery store and felt that he had followed her from work; that on November 24, 2003 she and appellant discussed his light-duty situation at work, and described a telephone call with appellant on November 25, 2003.

In a January 15, 2004 statement, Mike Twitty, a letter carrier and union trustee, advised that on August 25, 2003, he saw three managers observing appellant case his route. In a January 26, 2004 statement, Bill Campbell, a letter carrier, advised that a meeting was set up in March 2003 with the postmaster, Ms. Perkins and appellant. In a January 26, 2004 statement, Jack E. Lopez, a letter carrier, advised that on November 1, 2003 he noticed a confrontation between appellant, hearing appellant question Mr. Denton, and Mr. Denton replying that he did not know what appellant was talking about, and that appellant appeared shaken up. David Haro, union president, described meetings with Mr. Lambertsen, acknowledging that route inspections for about eight routes were discussed, and a telephone conversation with Mr. Castaneda about the events of November 2003 when appellant requested light duty. In January 27, 2004 statements, Gerald Giles, a letter carrier and union steward, advised that on February 7, 2003 Mr. Castenada called appellant's name over the intercom; that on September 7, 2003 Mr. Denton asked him if appellant and Ms. Perkins were seeing each other, and stated that she could do better than him; that on November 20, 2003 Mr. Castenada discussed an investigative interview with appellant regarding why he removed third class and bulk flats from his case; and that during a meeting held on November 24, 2003, appellant told Mr. Castenada that he was not be able to carry his route due to a medical condition and needed permission to call his physician immediately, and that Mr. Castenada granted the request. Mr. Giles stated that on December 8, 2003 he witnessed appellant turn in leave and illness slips, that he and appellant met with Mr. Castenada where the type of medical documentation needed to support continued leave was discussed, and that appellant would have to be medically cleared before he could return to work. On February 15, 2004 Mr. Giles related that on December 9, 2003 Ms. Hammitt refused to make copies of appellant's leave slips and other material, stating that he would have to copy it himself. In statements dated January 12 and February 4, 2004, Kelly Comporato, a letter carrier, advised that on August 25, 2003 she witnessed three management personnel observing appellant's work. Appellant submitted other statements by coworkers who described employing establishment policies and procedures.

In a November 1, 2002 report, Dr. James Grady, Board-certified in family medicine, advised that appellant had a stress disorder that he believed was related to work and would need to be off work for several days. On November 24, 2003 he diagnosed epididymitis and provided restrictions to appellant's physical activity for one to two weeks. In reports dated December 2 and 8, 2003, Dr. Grady advised that appellant was being treated for a significant medical condition and would need to be off work for two weeks. In a January 21, 2004 report, he advised that he had treated appellant for stress and agitation on November 1, 2002 following a confrontation at work. Dawn R. Haavisto, M.S., provided progress notes dating from April 7, 2003 to February 12, 2004 describing appellant's stress condition. Dr. Sahar Elezabi, a Board-certified psychiatrist, provided a discharge summary dated January 12, 2004, noting that appellant was hospitalized from December 23, 2003 to January 5, 2004 for complaints of a one-year history of harassment by a supervisor at work. She diagnosed major depression, severe,

with psychosis, single. On March 3, 2004 Dr. Elezabi advised that appellant should be off work to continue his treatment for approximately 60 additional days.

In statements dated March 1 and 30, 2004, Ms. Hammitt advised that she had never denied appellant pay, benefits or contractual rights, had never subjected him to a hostile work environment, and did not recall him asking for a claim form. She contradicted his statement that she cursed at him, stating that she merely told him about situations with which she had been involved.

In statements both undated and dated April 12, 2004, Mr. Lambertsen stated that he had not retaliated against appellant for filing an EEO or harassment complaint, or for speaking with upper management, had not been aggressive toward him, and did not instruct anyone to harass appellant or closely observe him, noting that the supervisors' primary workstation was adjacent to appellant's work station. He contradicted appellant's allegations and stated that it was employing establishment policy to put employees off the clock when they were stressed, that they needed a medical release before they could return to duty, and that, if an employee was off for stress, he or she was to use the leave of choice until the claim was accepted. Mr. Lambertsen advised that it was employing establishment policy to carry a satchel while delivering mail, and that appellant was observed going to an unauthorized place for lunch, and that in August 2003 he conducted four route counts. He concluded that he had never retaliated again appellant or ordered anyone else to do so and had not intimidated other employees regarding the claim.

In statements dated March 8 and April 15, 2004, Mr. Denton advised that appellant was transferred to the Lodi facility because of a personal situation that led to workplace violence. He denied that he had been stalking Ms. Perkins but traveled by her house to attend activities at his son's nearby school, and that in September 2002 he advised appellant, who was wearing headphones, that this was a safety violation. Mr. Denton stated that appellant became increasingly difficult to deal with when asked to fill out required forms, and that he unsuccessfully tried to work with appellant, that appellant was aware that he should only put up as much mail as he could deliver in a regular 10-hour day but that all carriers would occasionally be asked to work overtime as needed, noting that appellant had signed the overtime list. He contended that he had never discriminated against or harassed appellant, and that he assigned work for the best interest of the employing establishment, never singling out appellant to overwork but merely assigning him work as he did other carriers. Mr. Denton stated that, when appellant verbally assaulted him on November 1, 2002, he had no idea what appellant was talking about, and that after the altercation, he discussed it with Mr. Lambertsen and when appellant claimed stress and needed to go to the doctor, Mr. Lambertsen told him to clock off and go. He stated that he was then detailed as station manager in Modesto and was asked to return to Lodi on August 25, 2003 to replace Mr. Lambertsen when he was away on vacation, and on that day discussed the assignment with Mr. Lambertsen and Mr. Castaneda and did not harass appellant.

In an April 15, 2004 statement, Mr. Castaneda contradicted appellant's allegations, advising that it was common practice to call employees by name over the intercom, stating that appellant was not singled out, that he had never threatened appellant, and that he would question appellant when he was not following established procedures. He stated that Mr. Lambertsen had never instructed him to retaliate against any employee and that appellant was not overly

scrutinized or threatened, and that he followed proper procedures regarding a letter of warning and when scheduling medical care for appellant. Mr. Castaneda stated that on November 25, 2003 appellant was sent home for being insubordinate and for violating his light-duty status, and concluded that at no time had he discriminated against or harassed appellant.

On September 8, 2004 appellant provided rebuttal remarks, stating that Mr. Lambertsen, Mr. Denton, Ms. Hammitt and Mr. Castaneda lied and that he was not on the overtime list but on the "work assignment" list.[1] He reiterated his allegations of harassment and retaliation and charged Mr. Denton with inappropriately bringing appellant's private life into the claim, noting again that he was harassed by Mr. Denton due to his jealousy of appellant's relationship with Ms. Perkins.

In a statement of accepted facts dated September 27, 2004, the Office found that appellant established as compensable that on November 25, 2003 the employing establishment erred in terminating his light-duty position and sending him home, as found by an employing establishment dispute resolution team. It found as factual that appellant suffered an employment-related knee injury on March 19, 2003, that the employing establishment did not err in sending him home on April 1, 2003, and that his additional claims of retaliation, sexual harassment and discrimination were unsubstantiated.

On October 1, 2004 the Office referred appellant to Jillian Daly, Ph.D., for psychological testing, and to Dr. Bradley Daigle, a Board-certified psychiatrist, for a second opinion evaluation. In an October 21, 2008 report, Dr. Daly provided results of psychological testing that indicated much psychological distress with a significant degree of depression. She advised that suicidal ideation should be ruled out. By report dated October 26, 2004, Dr. Daigle noted that appellant presented a very detailed account of problems at work and his medical condition. He provided results of mental status examination, reviewed the psychological testing performed by Dr. Daly, and diagnosed major depression, single episode, without psychotic features, treated and improved; the presence of maladaptive obsessive-compulsive, passive aggressive and narcissistic personality characteristics; and psychosocial stressors during the past year. Dr. Daigle advised that, if appellant's description of work problems was confirmed, his condition would be employment related, but if his allegations were imaginary or falsified, the depression would not be attributable to employment factors, and that appellant was totally disabled for the period November 25, 2003 through the date of his examination on October 18, 2004.

In reports dated October 22 and November 11, 2004, Dr. Glenn G. Hakanson, Board-certified in psychiatry, noted that appellant was seen for psychological testing and clinical interviews and diagnosed major depressive disorder, single episode, moderate; generalized anxiety disorder; occupational problem; and obsessive-compulsive personality traits without evidence of personality disorder. He advised that it was medically probable that appellant's psychiatric conditions and associated psychiatric disability were caused by his "honest perception of the specific and cumulative alleged industrial stressors" summarized by appellant and concluded that he was totally disabled for the period November 1 through 5, 2002 and November 25, 2003 through November 8, 2004, could return to work with accommodations, and

[1] This is apparently a list for overtime on specific routes.

would need additional medication and psychotherapy. Dr. Hakanson's reports included statements by appellant regarding the alleged employment factors, the duties he could perform, and requests for accommodations.

By decision dated January 20, 2005, the Office accepted that the employing establishment improperly terminated appellant's light-duty position on November 25, 2003 and denied the claim on the grounds that the medical evidence did not support that appellant's emotional condition was causally related to the accepted employment factor. On February 3, 2005 appellant requested a hearing, and by decision dated June 17, 2005, an Office hearing representative remanded the case to the Office on the grounds that the statement of accepted facts was inadequate. On remand the Office was to prepare an amended statement of accepted facts and refer it with the medical record to Dr. Daigle for a supplementary report. In a December 23, 2005 statement of accepted facts, it again accepted that on November 25, 2003 the employing establishment erred in terminating appellant's light-duty position for a nonwork-related condition, as found by an employing establishment dispute resolution team. The Office found the events surrounding appellant's March 19, 2003 knee injury and his perception of harassment, discrimination and retaliation by Mr. Denton were not compensable factors of employment.

On March 7, 2006 the Office referred appellant to Dr. Robert A. McAuley, Board-certified in physiatry and psychiatry, for a second opinion evaluation.[2] By report dated March 27, 2006, Dr. McAuley noted the history of the claim as described by appellant, and his review of the statement of accepted facts. He noted mental status examination findings and diagnosed, major depressive disorder without psychotic features in full remission and advised that appellant did not sustain an emotional condition in the performance of his federal duties. On April 12, 2006 the Office again referred appellant to Dr. Daly for psychological testing, and in an April 20, 2006 report, she advised that appellant's testing scores indicated a significant degree of depression and that he felt mistreated and misunderstood. In a May 2, 2006 report, Dr. McAuley noted his review of the psychological testing results and advised that, while he agreed with the diagnosis of major depressive disorder, it was his opinion that appellant was not experiencing a significant degree of residual symptoms at the time of his evaluation but would now revise his diagnosis to major depressive disorder without psychotic features in substantial remission with mild residual features.

By decision dated September 21, 2006, the Office denied the claim on the grounds that the medical evidence did not support that appellant's emotional condition was caused by the single accepted factor. On October 3, 2006 appellant requested a hearing, held on April 24, 2007. At the hearing appellant described his work duties, noting that he was back at work. He argued that the statement of accepted facts was incomplete because it did not discuss all the alleged factors and stated that five EEO claims had been denied and one was still active. Appellant submitted an April 16, 2007 report in which Dr. Hakanson noted that appellant reported considerable improvement in his psychiatric condition, and advised that testing revealed that he was in the mild depression range. He opined that, although the November 25, 2003

[2] Appellant was initially scheduled for an appointment with Dr. Daigle, and then with Dr. Benjamin Kaufman. There is no indication in the record as to why these appointments were not kept.

accepted incident was not the only causal factor in the development of appellant's major depressive disorder, it was a contributing factor. Appellant also submitted evidence regarding his EEO claims and regarding events that occurred after his return to work in November 2004.

The record includes EEO decisions dated May 24, 2004 and February 4, June 2, August 29, and August 30, 2005 that were either dismissed or found in favor of the defendant employing establishment.

By decision dated August 8, 2007, an Office hearing representative remanded the case to the Office, finding that a conflict in medical evidence was created between the opinions of Dr. McAuley, an Office referral physician, and Dr. Hakanson, an attending psychiatrist, regarding whether the accepted employment factor caused appellant's emotional condition. On September 26, 2007 the Office referred appellant to Dr. Andrea Bates, a Board-certified psychiatrist, for an impartial evaluation. In a report dated February 15, 2007, [sic] Dr. Bates noted that she had evaluated appellant on October 22, 2007. She advised that she had reviewed the medical record, the statement of accepted facts, and the history of events as appellant understood them. Dr. Bates diagnosed major depressive episode, single episode, in full remission, rule out major depressive episode, recurrent episode, in full remission; and rule-out obsessive compulsive personality disorder. She advised that, while appellant had a major depressive disorder in the past, this had resolved, and that he continued to show personality dysfunction symptoms that rendered him vulnerable to a plethora of psychiatric troubles such that he did not process certain types of information or situations well and became overly focused on details, with paranoid and wooden thinking. Dr. Bates concluded that following her careful evaluation of the record, the statement of accepted facts, and information gleaned from her clinical evaluation, appellant's emotional condition was not due to the accepted employment factor, stating that his psychological problems resulted in problems at work, not the other way around.

By decision dated February 26, 2008, the Office credited the opinion of Dr. Bates and denied the claim. On March 12, 2008 appellant requested a hearing that was held on October 29, 2008. At the hearing he argued that the statement of accepted facts was inaccurate and vague and that there were many more factors that should have been accepted. Appellant testified regarding the events he considered compensable and that had caused his emotional condition and related events that occurred after his return to work in November 2004. The hearing representative advised appellant of the evidence needed to support his claim, gave him 30 days to submit new evidence, and noted that he would carefully review the entire record.

On December 2, 2008 the employing establishment submitted a January 9, 2008 EEO Commission appellate division decision finding that the employing establishment properly dismissed appellant's claims and that he failed to state a claim under EEO Commission regulations regarding events from February 7 to December 3, 2003. By decision dated January 9, 2009, an Office hearing representative found that appellant did not establish harassment or abuse regarding his many complaints but found that, as confirmed through the grievance process, the employing establishment erred in terminating his light-duty assignment on November 25, 2003. The hearing representative affirmed the February 26, 2008 decision on the grounds that the weight of the medical evidence established that appellant's psychiatric condition was unrelated to the single accepted factor.

LEGAL PRECEDENT

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his stress-related condition.[3] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.[4] 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.[5]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,[6] the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.[7] There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.[8] When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.[9] Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[10] Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.[11] Personal perceptions alone are insufficient to establish an employment-related emotional condition.[12]

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[3] *Leslie C. Moore*, 52 ECAB 132 (2000).

[4] *Dennis J. Balogh*, 52 ECAB 232 (2001).

[5] *Id.*

[6] 28 ECAB 125 (1976).

[7] 5 U.S.C. §§ 8101-8193.

[8] *See Robert W. Johns*, 51 ECAB 137 (1999).

[9] *Lillian Cutler*, *supra* note 6.

[10] *J.F.*, 59 ECAB ____ (Docket No. 07-308, issued January 25, 2008).

[11] *M.D.*, 59 ECAB ____ (Docket No. 07-908, issued November 19, 2007).

[12] *Roger Williams*, 52 ECAB 468 (2001).

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.[13] Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.[14]

For harassment or discrimination to give rise to a compensable disability, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations that the harassment occurred with probative and reliable evidence.[15] 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 Commission, 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 co-employees or workers. Mere perceptions and feelings of harassment will not support an award of compensation.[16]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[17] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[18] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[19]

Section 8123(a) of the Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary

[13] *Charles D. Edwards*, 55 ECAB 258 (2004).

[14] *Kim Nguyen*, 53 ECAB 127 (2001).

[15] *James E. Norris*, 52 ECAB 93 (2000).

[16] *Beverly R. Jones*, 55 ECAB 411 (2004).

[17] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[18] *Leslie C. Moore*, *supra* note 3; *Gary L. Fowler*, 45 ECAB 365 (1994).

[19] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

shall appoint a third physician who shall make an examination.[20] When the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[21]

ANALYSIS

The Board finds that appellant established a compensable factor of employment because the employing establishment committed administrative error by withdrawing appellant's light duty on November 25, 2003. Appellant, however, failed to establish an additional compensable employment factor.

Regarding his contention that he was singled out or micromanaged by employing establishment management including Mr. Lambertsen, Mr. Denton, Mr. Castenada and Ms. Hammitt by having to undergo route inspections, for being disciplined for wearing unauthorized clothing, writing on a sidewalk, not carrying a satchel, and taking lunch at an unauthorized location, the manner in which a supervisor exercises his or her discretion falls outside the coverage of the Act. This principal recognizes that a supervisor or manager must be allowed to perform his or her duties and that employees will at times disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.[22] Mr. Lambertsen and the supervisors explained that appellant was disciplined for ignoring safety regulations and employing establishment policy and denied that he was singled out or micromanaged by noting that other carriers underwent route inspections, which Mr. Haro, the union president, also recognized. While appellant submitted statements from coworkers and union officials, the statements do not describe any instance of administrative error or abuse and merely note witnessing appellant being observed by employing establishment management. Appellant's reaction to these matters would be considered self-generated, as it resulted from his perception regarding his work environment and is not a compensable employment factor.[23]

Regarding the letter of warning and other disciplinary discussions regarding the matters discussed above, reactions to disciplinary matters pertain to actions taken in an administrative capacity and are not compensable unless it is established that the employing establishment erred or acted abusively in such capacity.[24] In this case, while the letter of warning was withdrawn, the mere fact that personnel actions were later modified or rescinded, does not, in and of itself, establish error or abuse.[25] Mr. Denton and Mr. Castenada advised that their discussions with appellant regarding unsuitable attire, writing on the sidewalk, failure to wear a satchel, and

[20] 5 U.S.C. § 8123(a); *see Geraldine Foster*, 54 ECAB 435 (2003).

[21] *Manuel Gill*, 52 ECAB 282 (2001).

[22] *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

[23] *See David S. Lee*, 56 ECAB 602 (2005).

[24] *Joe M. Hagewood*, 56 ECAB 479 (2005).

[25] *Dennis J. Balogh*, *supra* note 4.

taking lunch in an unauthorized location were in regard to safety or policy violations. Appellant did not establish a compensable factor of employment in this regard. Likewise, his contentions regarding the March 2003 injury would not be compensable as the development of any condition related to such matters would not arise in the performance of duty as the processing of compensation claims bears no relation to an employee's day-to-day or specially assigned duties.[26] Regarding appellant's contention that he was wrongly denied leave, this relates to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and, absent error and abuse, does not fall within the coverage of the Act.[27] In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably,[28] and there is no evidence to substantiate any type of error or abuse in the instant case. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant also alleged that employing establishment management humiliated him and cursed at him. A verbal altercation, when sufficiently detailed by the claimant and supported by the evidence, may constitute a compensable employment factor.[29] This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.[30] By his own admission, appellant used profanity in talking with both Mr. Denton and Mr. Lambertsen on November 1, 2002, and none of the coworker statements support appellant's contention that he was verbally abused. Mr. Lopez merely noticed a confrontation between appellant and Mr. Denton and that appellant appeared shaken up, and Mr. Giles noted that on December 8, 2003 he witnessed appellant have a discussion with Mr. Castenada. The Board has generally held that being spoken to in a raised or harsh voice does not of itself constitute verbal abuse or harassment.[31] As appellant submitted no evidence corroborating his claim that Ms. Hammitt cursed at him or that other members of employing establishment management improperly spoke with him, he did not establish a factual basis for his allegation of verbal abuse.[32]

Appellant also alleged that he was given too much work to complete in the time allotted. While the assignment of a work schedule or deadline is an administrative function and not a work factor and is not compensable absent a showing of error or abuse,[33] alleged stress in meeting a deadline for mail delivery could be a compensable factor of employment.[34] Mr. Denton, however, advised that appellant was aware that he should only put up as much work

[26] *Matilda R. Wyatt*, 52 ECAB 421 (2001).

[27] *Charles D. Edwards, supra* note 13.

[28] *Kim Nguyen, supra* note 14.

[29] *C.S.*, 58 ECAB ____ (Docket No. 06-1583, issued November 6, 2006).

[30] *J.C.*, 58 ECAB ____ (Docket No. 07-530, issued July 9, 2007).

[31] *T.G.*, 58 ECAB ____ (Docket No. 06-1411, issued November 28, 2006).

[32] *C.S., supra* note 29.

[33] *Barbara J. Latham*, 53 ECAB, 316 (2002).

[34] *Helen Casillas*, 46 ECAB 1044 (1995).

as he could deliver in a regular 10-hour day and that appellant was on a type of overtime list, and appellant submitted no evidence to document the amount of mail he was required to delivery, that there was, in fact, a deadline for mail delivery, or sufficiently explain how he had difficulty meeting the deadline. Consequently, this allegation too was not established by the evidence,[35] and would not be a compensable employment factor.

The Board also finds that appellant did not establish that he was harassed by Mr. Denton due to his relationship with Ms. Perkins, who is now appellant's wife. Mr. Denton contradicted the assertion and provided a reasonable explanation for any perceived actions, and the incidents reported by appellant and Ms. Perkins do not rise to the level of harassment under the act, *i.e.* persistent disturbance, torment or persecution.[36] Likewise, appellant did not establish that he was harassed in any way by employing establishment management as his allegations do not establish as factual a basis for his perceptions of discrimination or harassment. Although he submitted a number of statements, none provided probative evidence that he was harassed. Mr. Twitty and Ms. Comporato merely noted witnessing appellant being observed working; Mr. Giles related that he heard appellant's name called over the intercom and discussed meetings held with management regarding appellant's medical leave requests; and Mr. Campbell described a meeting. While the record supports that appellant filed a number of EEO claims and grievances, 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,[37] and in this case all EEO complaints were either dismissed or resolved against appellant, and his grievance resulted in the accepted employment factor. As appellant did not establish as factual a basis for his additional perceptions of discrimination or harassment by the employing establishment, he did not establish that harassment and/or discrimination occurred.[38] The evidence instead suggests that the employee's feelings were self-generated and thus not compensable under the Act.[39]

Nonetheless, as appellant established a compensable factor of employment, that his light duty was improperly withdrawn on November 25, 2003, the medical evidence must be analyzed.[40] The Office determined that a conflict in medical evidence had been created regarding whether appellant's emotional condition was caused by the accepted employment factor and referred him to Dr. Bates for an impartial evaluation. In her February 15, 2008 report, Dr. Bates advised that she had reviewed the medical record, statement of accepted facts, and the history of events as appellant understood them. She diagnosed a major depressive episode that had resolved and advised that appellant continued to show personality dysfunction symptoms that rendered him vulnerable to a plethora of psychiatric troubles such that he did not process

[35] *Bonnie Goodman*, 50 ECAB 139 (1998).

[36] *Beverly R. Jones*, *supra* note 16.

[37] *Michael L. Deas*, 53 ECAB 208 (2001).

[38] *Id.*.

[39] *See Gregorio E. Conde*, 52 ECAB 410 (2001).

[40] *See Dennis J. Balogh*, *supra* note 4.

certain types of information or situations well and became overly focused on details, with paranoid and wooden thinking. Dr. Bates concluded that, following her careful evaluation of the records, the statement of accepted facts, and information gleaned from her clinical evaluation, appellant's emotional condition was not due to the accepted employment factor, stating that his psychological condition caused problems at work, not the other way around.

The Board therefore finds that, contrary to appellant's assertion on appeal, the statement of accepted facts provided a clear explanation of the accepted employment factor. Dr. Bates reviewed appellant's record including the statement of accepted facts and listened to his recital of claimed events. She provided a comprehensive, well rationalized opinion in which she clearly advised that appellant's emotional condition was not caused by the November 25, 2003 employment factor. Dr. Bates' report is therefore entitled to the special weight accorded an impartial examiner and constitutes the weight of the medical evidence,[41] and the Office properly denied the claim.

CONCLUSION

The Board finds that appellant failed to establish that he sustained an employment-related stress-related condition causally related to the accepted employment factor.

[41] *See Sharyn D. Bannick*, 54 ECAB 537 (2003).

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2009 and February 26, 2008 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: January 4, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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