United States Department of Labor
Employees' Compensation Appeals Board

ROBERT K. OJA, Appellant	)	
and	)	**Docket No. 04-1406**
	)	**Issued: March 8, 2005**
DEPARTMENT OF THE ARMY, U.S. ARMY ENGINEER DISTRIST -- ALASKA, Anchorage, AK, Employer	)	

Appearances:
Robert K. Oja, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On May 4, 2004 appellant filed a timely appeal of a merit decision of the Office of Workers' Compensation Programs dated February 25, 2004, which denied his claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this emotional condition claim.

ISSUE

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On February 17, 1998 appellant, then a 48-year-old manager, filed an occupational disease claim alleging that he sustained an emotional condition due to harassment, reprisals and discrimination for whistle-blowing testimony he gave in 1990 and for reporting unsafe and unhealthy work environment conditions. Appellant had served as a section chief of the

regulatory branch from June 1985 until July 1997 and was temporarily reassigned as an assistant chief in the construction-operation division on August 4, 1997. He stopped work on October 23, 1998 after an extended medical leave and retired effective November 30, 1999.

Appellant alleged several incidents as causing his emotional condition. He stated that, after he reported his depressive disorder to his employer in 1992, the following incidents arose:

> 1. Health and personal reactions to the regulatory building's problems of heat, cold, flooding and noise which were associated with faulty heating from 1989-1995. Appellant alleged he was verbally reprimanded for contacting health and safety;
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> 2. Reaction to the employing establishment's handling of the investigation of the Inspector General (IG) office into the rescission of British Petroleum's permit and his reaction to the handling of Equal Employment Opportunity Commission (EEO) complaints;
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> 3. Being called "the devil incarnate" by Colonel Peter Topp during a gathering of senior officials;
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> 4. Threats of violence from Ed Martin, a private citizen;[1]
>
> 5. Slander, malignment and threats of violence by Paul Felthauser, an employee of the employing establishment.[2]
>
> 6. The employing establishment's indiscriminate release of his employment and medical information; and
>
> 7. Being placed on involuntary administrative leave on July 15, 1997, followed by being placed into a formerly nonexistent job; and subsequently receiving a March 11, 1998 letter proposing his removal.

Appellant provided medical evidence which documented the colds and respiratory conditions he had while working at the employing establishment. These medical reports, however, did not provide any opinion on causal relation. The reports from Dr. Greg McCarthy, a psychiatrist, from whom appellant sought treatment in 1997, documented a history of recurrent, intrusive thoughts, and job stress and diagnosed obsessive compulsive disorder or an adjustment disorder with depressed mood. Dr. McCarthy opined that appellant's employment had caused and accelerated his disability.

[1] The record reflects that Mr. Martin was known for his impatience and quick temper and was often openly belligerent to the regulatory staff.

[2] Mr. Felthauser came under appellant's supervision in 1992. In September 1996, appellant notified management that Mr. Felthauser made statements perceived by coworkers as threatening. Mr. Felthauser was relieved of his duties during an investigation and was eventually returned to work in a different location. In April 1997, Mr. Felthauser's EEO complaint against the employing establishment and appellant was settled. Another EEO complaint filed by Mr. Felthauser was withdrawn.

In a July 6, 1998 decision, the employing establishment's office of EEO advised that appellant's November 17, 1997 EEO complaint had been dismissed regarding his allegations relating to age, mental disability, physical disability and reprisal for testifying before an oversight hearing on May 3, 1990 and his affiliation with several IG investigations in 1988. The EEO subsequently dismissed appellant's appeal.

In an October 29, 1998 letter, the employing establishment noted that, in September 1996, it offered appellant a temporary detail with the same grade as the position he held, to temporarily remove him from a situation that seemed to be upsetting him, but he had declined. In June 1998, appellant also declined an offer of administrative leave to be used in combination with scheduled annual leave. In July 1998, appellant was put on involuntary paid leave and was directed to undergo a mental health evaluation due to concern about suicidal ideation. Thereafter, appellant was asked to return to work in a three-to-six month detail as a special assistant to an assistant chief. The employing establishment advised that this was not a demotion and that it did not foreclose appellant from returning to his prior position. The employing establishment denied any connection between appellant's illness and the congressional testimony that occurred in May 1990 and provided examples of instances where appellant did not recognize legitimate management decisions when they conflicted with his own views. It was noted that appellant's job was inherently stressful and that interacting with elected officials was an essential part of his job. The employing establishment denied any reprisal for whistle-blowing. Regarding allegations of heat and noise problems in the office where appellant worked, the employing establishment advised that maintenance personnel eventually resolved the problems. The employing establishment stated that appellant's concerns about a potential violent reaction from Mr. Martin were taken seriously and acted upon. The employing establishment detailed how it addressed the situation with Mr. Martin, noting that he was limited to dealing with the employing establishment through written correspondence. The employing establishment noted that Colonel Topp, district engineer from July 1994 to July 1997, had forwarded a request to the flood plain management office to assist Mr. Martin on flood plain issues. In September 1996, Colonel Topp issued a policy letter limiting circumstances under which employees should provide testimony. The employing establishment further noted that appellant's sick leave began October 23, 1997 but that, despite extensive correspondence, he never provided satisfactory medical documentation for his absence. The employing establishment submitted numerous documents refuting appellant's contentions.

By decision dated November 17, 1998, the Office denied appellant's claim finding that the evidence did not establish that he developed an emotional condition causally related to factors of federal employment. The Office found that the stressors alleged by appellant were not compensable factors of employment.

By letter dated December 9, 1998, appellant requested an oral hearing. A hearing was held on April 26, 1999, at which appellant testified that he was undermined by his supervisor on the Northslope project due to "undue command influence;" that he initiated an IG investigation and was identified as a "whistle[-]blower"; his testimony before a House subcommittee had not been refuted, and a "management study" was in retaliation for his testimony; he was constantly threatened with job loss by virtually all of his supervisors; and in attempting to administer the Clean Water Act, he and his staff were coerced and intimidated. Appellant alleged being threatened with "personal consequences" if he did not go along with a White House wetlands

initiative; being the target of inferred threats of workplace violence; and that management created an environment that encouraged aberrant behavior. He alleged that management personnel stole a draft report he prepared for the Office of Special Counsel (OSC); he verbally advised George Zeiler, a construction operations chief, that he was clinically depressed; he was placed on administrative leave, referred for psychiatric evaluation, not allowed to consult with his personal physician or attorney, and directed to withhold evidence from an EEO investigator. After returning to work, he was sent on an involuntary detail in violation of employing establishment personnel regulations; the employing establishment refused him reasonable accommodation; and the Office improperly handled his claim.

In response to the hearing transcripts, the employing establishment provided a narrative statement and supporting exhibits refuting appellant's allegations.

In a December 16, 1996 report, the OSC found that appellant had not been subject to reprisal for whistle-blowing. It found that the statements perceived by appellant as threats were not oral threats as the statements by Colonel Pierce prior to 1994 and Colonel Topp in 1994 that "others had recommended that [appellant] be fired" were never acted upon and that he received high performance ratings. The OSC found no factual basis for appellant's allegation that he was denied promotional opportunities due to whistle-blowing, and that regulatory deficiencies by appellant's managers regarding personal management had no harmful effect on appellant.

In a May 18, 1999 statement, Colonel Topp stated that he had never been instructed to fire appellant. He noted stating that the Congressional delegation probably viewed appellant as the "devil incarnate" since he administered a program which they did not appreciate, but that such words were intended to be a compliment and that he did not detect any congressional antipathy directed towards appellant. He also stated that Mr. Zeiler notified him in 1996 that appellant drafted a complaint to the OSC, that Mr. Zeiler had obtained a copy of the draft from the local area network (LAN), and that he agreed that it was inappropriate for such material to be placed on the LAN.

By decision dated October 4, 1999, the hearing representative affirmed the November 17, 1998 decision. The hearing representative found that the employing establishment submitted evidence that refuted appellant's allegations and that appellant failed to substantiate his other allegations. The hearing representative found no evidence that the employing establishment had erred or acted abusively in administrative and personnel functions.

By letter dated April 5, 2000, appellant requested reconsideration. He submitted a 48-page discussion of his responses to the employing establishment's statements, an 11-page discussion pertaining to the Office's handling of his claim and several hundred of pages of documents previously of record and reviewed by the Office. Statements from coworkers Deborah Fletcher, Don Kohler, Jeffrey Towner and Richard Gutlebar were also submitted.

In an April 24, 2000 statement, Ms. Fletcher discussed the situation surrounding the threatening comments made by Mr. Felthauser in 1996, how she approached appellant with the information and how she felt she was "blown off" during an early 1997 meeting with the OSC. She stated that appellant had taken necessary steps to reasonably accommodate Mr. Felthauser's vision problems.

In an April 13, 2000 statement, Mr. Kohler discussed the Felthauser situation, appellant's conduct during that time and noted that Mr. Felthauser may have received economic gain due to his actions. He stated that appellant had a personal document removed from what was thought to be a secure source and was troubled that management knew who took the records but took no action. Mr. Kohler believed that Mr. Zeiler sought to have appellant removed from his job. He criticized a management study/exercise, asserting that it was filled with inaccuracies directed at regulatory managers. With regard to an "IG Climate of Command Survey," he related that he had responded to questions from two investigators which seemed to be derogatory toward appellant and Mr. Towner. He related that he never saw the report which came out of those proceedings, but knew that Mr. Towner was given an assignment outside of the regulatory division. Regarding abusive treatment by Colonel Pierce and Colonel Topp, he noted that appellant had told him of a verbal attack by Colonel Pierce where vulgar language was used. The next day, John Killoran, a coworker, had remarked to the effect that appellant "got the most horrendous tongue lashing last night that I ever heard." He stated that appellant had requested that Colonel Pierce consider removing "regulatory" from the construction-operation division and speculated that the "Regulatory Retreat" was called off by Mr. Zeiler due to a presumed breach of confidentiality by Colonel Pierce and an act of retaliation by Mr. Zeiler. Mr. Kohler further related that appellant called him into his office and stated that he had just been given a letter directing him to leave immediately on administrative leave for an indefinite period and he believed this action had been initiated by Colonel Topp.

In an April 20, 2000 statement, Mr. Towner stated that Colonel Topp had informed him that he was being reassigned and that his comments and those of appellant pertaining to the reassignment were ignored. He mentioned that Mr. Zeiler, in an early 1996 meeting, had advised appellant and himself of an upcoming audit and instructed them to withhold negative information. Mr. Towner also related an instance whereby appellant and he had agreed that a particular employee had warranted a downgrade, but that Mr. Zeiler withdrew his support when it became known that the employee was pursing an EEO complaint. He stated that this employee subsequently "trumped his victory," which lessened appellant's credibility.

In a May 1, 2000 statement, Richard J. Gutlebar advised that he worked with appellant through the Alaska Wetland's Initiative in 1993 to 1994. He stated that Mike Davis, the employer representative, had instructed appellant that the decisions were final, not for public release, and that appellant was to act consistent with those decisions. Mr. Gutlebar opined that Mr. Davis became increasingly agitated with appellant's concerns that the decisions made were preemptive and contrary to guidance and that Mr. Davis had indicated to appellant that he could be removed if he was not willing to conduct himself in a manner consistent with his position. He commented on two incidents pertaining to Clean Water Act violations and advised that those incidents were examples of Mr. Zeiler's disregard of environmental protection.

By decision dated June 2, 2000, the Office denied appellant's request for reconsideration without conducting a merit review.

In a September 30, 2000 letter, appellant appealed the Office's June 2, 2000 decision to the Board. By decision dated June 26, 2002, the Board set aside the Office's August 13, 1999

decision finding that the Office had erred in not conducting a merit review as appellant had submitted new and relevant evidence.[3]

By decision dated July 25, 2002, the Office denied modification of its prior decision. The Office found that appellant did not establish any compensable work factors.

In a July 24, 2003 letter, appellant requested reconsideration. He alleged that the employing establishment improperly released his employment and medical information that it attempted to coerce him into dropping his EEO complaint during a September/October 1997 meeting with Michael Rogers, the construction chief; that the employing establishment had refused to process his claims for over $15,000.00 in out-of-pocket expenses which were approved for reimbursement prior to his relocation and that had retroactively nullified his authenticated travel orders in 2000.

In a June 11, 2003 statement, Mr. Towner stated that, in late July 1997, he attended a meeting at which Colonel Jahn informed him of appellant's medical information following his examination by a psychiatrist and other personnel actions taken against appellant by the employing establishment. He stated that numerous environmental law violations were identified on Mr. Zeiler's construction projects and that Mr. Zeiler ordered appellant and himself to abandon established policies. Appellant was specifically ordered not to gather required evidence relevant to Mr. Zeiler's violations. He also stated that he had attended meetings in late 1997 and 1998 where Mr. Rogers discussed personal information about appellant and personnel actions taken against appellant.

In a June 30, 2003 statement, Mr. Kohler stated that Colonel Jahn, district engineer, told him that the employing establishment ordered appellant to be examined by a psychologist. He further related a September/October 1997 meeting with appellant and Mr. Rogers, appellant's supervisor, whereby he was asked how paying a $200,000.00 EEO settlement would affect the office's operation. Appellant told Mr. Rogers it was inappropriate to raise that question and walked out of the meeting.

By letter dated November 4, 2003, the employing establishment denied appellant's allegations. Additional evidence was submitted, including decisions from the Merits Systems Protection Board (MSPB), the Board of Contract Appeals (BCA) and an October 22, 2003 order from a federal district court[4] that refuted appellant's contentions. A March 25, 1999 MSPB settlement agreement noted no finding of agency error. In a January 15, 2002 decision, the MSPB found that the employing establishment had not breached a settlement agreement. A November 22, 2002 MSBP order denied appellant's motion for reconsideration.[5] In a May 10, 2002 decision, the BCA found against appellant regarding reimbursement of travel and

[3] Docket No. 01-194 (issued June 26, 2002).

[4] The order granted the employing establishment's motion to dismiss appellant's claim regarding breach of the settlement as the case was transferred to the Court of Appeals for the Federal Circuit. Appellant's discrimination claim was dismissed without prejudice.

[5] In a March 6, 2003 decision, the EEOC denied appellant's request for reconsideration regarding the MSPB final decision on his case as it had no jurisdiction over his petition.

relocation expenses. In a September 6, 2002 decision, the BCA denied appellant's motion for reconsideration.

In a December 27, 2003 letter, appellant submitted a December 23, 2003 statement from Mr. Kohler noting his disagreement with statements by Colonel Jahn and Mr. Rogers.

By decision dated February 25, 2004, the Office denied modification of the July 25, 2002 decision. The Office found that his allegations either did not occur as alleged; he did not prove that the incidents were in the performance of his duties, or that the employing establishment erred in its administrative actions.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[6]

To establish appellant's occupational disease claim that he sustained an emotional condition in the performance of duty, he must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.[7]

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to a claimant's employment with the federal government. When an employee experiences emotional stress in carrying out his employment duties or has fear and anxiety regarding his ability to carry out his duties, and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. The same result is reached when the emotional disability resulted from the employee's emotional reaction to a special assignment or requirement imposed by the employment or by the nature of the work.[8] The disability is not covered when it results from such factors as an employee's frustration from not being permitted to work in a particular environment or to hold a particular position. Disability resulting from an employee's feelings of job insecurity or the desire for a different position, promotion, or job transfer does not constitute personal injury sustained in the performance of duty within the meaning of the Act.[9]

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[6] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

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

[9] *Id.; see also Anthony A. Zarcone*, 44 ECAB 751 (1993).

Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act.[10] However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.[11] Where appellant alleges compensable factors of employment, he must substantiate such allegations with probative and reliable evidence.[12]

Actions of a claimant's supervisors or coworkers, which are characterized as discrimination or harassment may constitute a compensable factor of employment. However, for discrimination or harassment to give rise to a compensable disability under the Act, there must be evidence that the harassment or discrimination alleged did, in fact, occur.[13] Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.[14] An employee's allegation that he was harassed or discriminated against is not determinative of whether or not the alleged incident of harassment or discrimination occurred.[15] To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his allegations with probative and reliable evidence.[16]

ANALYSIS

Appellant has alleged that incidents at work has caused or aggravated his emotional condition and he attributed his emotional condition to actions he characterized as reprisal, harassment or discrimination. He has, in general, alleged that the noise and heating problems in his building, various management decisions, and unfair personnel actions taken against him before, during, and after he was placed on administrative leave, while he was detailed as a special assistant, and the events which transpired after he retired caused his condition.

The record establishes that the building where appellant worked had heating and noise problems that were eventually rectified. Because appellant encountered these conditions in the performance of his regular or specially assigned duties, these would constitute employment factors under the Act.[17] However, although the Board finds that appellant has established a compensable employment factor, there is no medical evidence of record which relates these conditions within appellant's building as causing or contributing to appellant's condition. Appellant has not established that his condition arose within the performance of his duties with

[10] *Michael L. Malone*, 46 ECAB 957 (1995); *Gregory N. Waite*, 46 ECAB 662 (1995).

[11] *Elizabeth Pinero*, 46 ECAB 123 (1994); *Michael Thomas Plante*, 44 ECAB 510 (1993).

[12] *Joel Parker, Sr.*, 43 ECAB 220 (1991).

[13] *Shelia Arbour (Vincent E. Arbour)*, 43 ECAB 779 (1992).

[14] *See Lorraine E. Schroeder*, 44 ECAB 323 (1992).

[15] *See William P. George*, 43 ECAB 1159 (1992).

[16] *See Frank A. McDowell*, 44 ECAB 522 (1993).

[17] *Kathleen D. Walker*, 42 ECAB 603 (1991).

respect to these factors. From an administrative perspective, there is no evidence that appellant was reprimanded or disciplined for contacting the Health and Safety unit about problems in the building. Although appellant may have been frustrated over the employing establishment's handling of the building's problems, complaints about the manner in which a supervisor performs his or her duties or the manner in which a supervisor exercises his or her discretion fall, as a rule, outside the scope of coverage provided by the Act.[18] Moreover, there is no finding that the employing establishment erred or was abusive with regard to its administrative decision on how to effectively resolve the building's heating and noise problems.[19]

Appellant has also alleged that various management decisions pertaining to personnel issues and the administration and management of various programs caused or contributed to his emotional condition. These include situations pertaining to individuals both inside and outside of the employing establishment and the employing establishment's administration and management of various programs.

Appellant alleged that he was subject to indirect threats of violence by Mr. Martin, a private citizen, and violence by Mr. Felthauser. The Board has recognized the compensability of physical threats and verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act. When sufficiently detailed and supported by the record, verbal abuse may constitute a compensable factor of employment.[20] With respect to Mr. Martin, appellant alleged that he made a verbal threat over the telephone to one of the enforcement staff and that his receptionist broke out in hives when Mr. Martin arrived at the regulatory office and had to be escorted out. With respect to Mr. Felthauser, appellant expressed concern over his behavior and his subsequent EEO complaints. Although appellant had acted within his job duties as a supervisor in advising the employing establishment about Mr. Martin and Mr. Felthauser, there is no showing that any comments by Mr. Martin or Mr. Felthauser were directed at him. Appellant described "indirect" threats by Mr. Martin and, with respect to Mr. Felthauser, Ms. Fletcher cited statements of a general nature. There is no evidence that appellant had to deal with any substantiated threat in performing his duties. Appellant may have been personally concerned for his safety and that of his staff with respect to these individuals, his feelings concerning these matters would be considered self-generated and not within the performance of duty.[21]

Appellant has also alleged that Mr. Felthauser had slandered and maligned him. The Board, however, finds that this allegation is unsubstantiated. Although Mr. Kohler discussed the Felthauser situation, he offered no evidence on the issue of how Mr. Felthauser had slandered, maligned or threatened appellant. Although appellant did not like the employing establishment's manner in which it dealt with Mr. Felthauser, particularly with respect to the handling of Mr. Felthauser's EEO complaint, the Board has held that complaints about the manner in which a supervisor performs his or her duties or the manner in which a supervisor exercises his or her

[18] *Marguerite J. Toland*, 52 ECAB 294, 298 (2001).

[19] *Id.*

[20] *Dennis J. Balogh*, 53 ECAB 232, 236-37 (2001).

[21] *Id.*

discretion fall are outside the scope of coverage provided by the Act.[22] This also holds true with regards to appellant's dislike of the employing establishment's decisions concerning the initiation of management studies and the administration of its programs and policies. Thus, appellant has not established a compensable employment factor with respect to these allegations.

Appellant also alleged that various managers harassed, abused and discriminated against him as reprisal for his testimony before a congressional committee and being seen as a whistle-blower. There is no evidence, beyond general allegations, to support that appellant was harassed, discriminated against or the subject of any reprisal activity with regard to such policy and procedure decisions. In fact, the record supports that the employing establishment's EEO and OSC offices found that appellant had not been subject to reprisal for whistle-blowing. Although the record reflects that several management studies were untaken with respect to the regulatory branch where appellant worked, the OSC found that appellant received high performance ratings and recommendations that appellant be fired were never acted upon. Appellant alleged that management stole a draft of a report he prepared for the OSC, but the evidence reflects that a copy of the draft was inappropriately on the LAN and it was removed. There is no showing that appellant was disciplined for this matter. Appellant has not substantiated his allegations of harassment with respect to these allegations.

With regard to being called a "devil incarnate" by Colonel Topp during a gathering of senior officials, the Board, as noted above, has commented that verbal altercations, name calling or difficult relationships with supervisors or coworkers may be compensable if there is objective factual evidence supporting such allegations of mistreatment in relationships at work or of conduct or language, which is otherwise unusual or not encountered as a norm of the employment.[23] In his May 18, 1999 declaration, Colonel Topp acknowledges that he had used the firm, noting that appellant administered a program which the Congressional delegate did not appreciate. The evidence indicates that Colonel Topp was merely describing his view of how appellant may have been perceived by a Congressional delegation and that he saw this as complimentary. The record reflects that appellant's job involved the administration of some controversial programs. Appellant has not established verbal abuse as a compensable factor of employment in this regard.

Appellant alleged that personnel matters such as being placed on involuntary leave,[24] being detailed to a formerly nonexistent position,[25] and having his personal and personnel matters discussed at the employing establishment. He alleged not being reimbursed for real estate travel expenses or paid a relocation income tax allowance and the breach of his settlement agreement

[22] *See Toland*, *supra* note 19.

[23] *See Paul Trotman-Hall*, 45 ECAB 229 (1993).

[24] *James P. Guinan*, 51 ECAB 604, 607 (2000); *John Polito*, 50 ECAB 347, 349 (1999). The usage of leave is purely an administrative matter unrelated to a claimant's regular or specially assigned duties and is only compensable if management acts unreasonably or abusively.

[25] *Peggy R. Lee*, 46 ECAB 521 (1995) (the assignment of a work schedule or tour of duty is an administrative function of the employing establishment and absent evidence of error or abuse does not constitute a compensable factor of employment).

by talking to reporters and posting information about him on the internet, after he retired.[26] Appellant discussed sources of reprisals for whistle-blowing testimony he gave in 1990 and for reporting unsafe and unhealthy work environment conditions. Appellant, however, did not submitted sufficient evidence to establish that the employing establishment's dealings in these personnel matters constituted error or abuse.

The employing establishment specifically denied any reprisal for appellant's whistle-blowing activities, which was supported by the OSC's investigation into the matter. There is no evidence that he was ever penalized for placing a draft of his OSC complaint on the local area network. With respect to his placement on involuntary paid leave, the employing establishment noted previous attempts to temporarily remove him from a situation which seemed to be upsetting him were unsuccessful and, when he started to have suicidal thoughts, he was placed on leave and directed to undergo a mental health evaluation. There is no evidence that appellant was placed on leave inappropriately or as reprisal for past actions. Therefore, no administrative error or abuse was demonstrated with appellant's leave restrictions. Appellant has not submitted sufficient evidence of error or abuse to substantiate that his detail to a formerly "nonexistent" job was unreasonable. The employing establishment determined that appellant's position of regulatory chief was too upsetting for him and specifically stated that his new position was not a demotion and did not foreclose the possibility of his return to the regulatory chief's position. Therefore, no administrative error or abuse was demonstrated with respect to appellant's temporary new position. The decisions from the MSPB and BCA found no error with respect to the employing establishment's actions in responding to a reporter, its internet postings, the denial of real estate transaction costs or denial of a relocation tax allowance. Thus, there is no probative evidence showing that the employing establishment had erred or abused its discretion in discussing appellant's personal and personnel matters. The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.[27] Appellant has, therefore, failed to establish that the employing establishment committed administrative error or abuse in any of these allegations. Accordingly, appellant has not established a compensable work factor with respect to these matters.

As appellant's remaining allegations are not substantiated with evidence from the record, they are not established as occurring as alleged.

CONCLUSION

The Board finds that, although appellant has established a compensable factor with respect to the building where he worked, he has failed to meet his burden of proof to establish that these conditions caused an illness. With respect to appellant's other allegations, the Board finds that he has not met his burden of proof in establishing that he sustained an emotional

[26] *See Toland*, *supra* note 18 (complaints about the manner in which a supervisor performs his or her duties or the manner in which a supervisor exercises his or her discretion fall, as a rule, is outside the scope of coverage provided by the Act unless error or abuse is shown).

[27] *See Michael Thomas Plante*, 44 ECAB 510 (1993).

condition in the performance of duty as the allegations were either not compensable factors of employment or were unsubstantiated by the evidence of record.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 25, 2004 is affirmed, as modified.

Issued: March 8, 2005
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member