

work. He first became aware of his emotional condition on September 9, 2001 and first realized that it was work related on the same date.

In a letter dated May 31, 2005, the Office advised appellant that additional factual and medical evidence was needed. In a letter of the same date, the Office requested that the employing establishment submit additional information regarding appellant's claim.

In an undated statement, appellant alleged that he sustained severe depression because he was wronged by his supervisors, Fanny Rivera and Carolyn Blum. He alleged that Ms. Rivera was found guilty of discrimination by the Equal Employment Opportunity (EEO) Commission. Appellant also alleged that his managers targeted him and engaged in numerous discriminatory activities after he filed a complaint. He was unable to defend himself against these actions and perform his work. Appellant further alleged that he was unable to work, sleep or concentrate on anything and that he had no energy for even basic tasks. He alleged that he requested a detail away from the employing establishment but that it was not helpful. Appellant noted that his request to telecommute was denied.

Accompanying the claim were personnel records and medical records. The medical reports diagnosed appellant with major depressive disorder and indicated that he attributed his depression to his former job.¹ He submitted a disability retirement application and an undated letter from Ms. Rivera describing appellant's awards and accomplishments during his employment with the employing establishment. An EEO decision dated June 29, 2004 found that Ira Bruce McMillan, a coworker, had been discriminated against in the workplace on the basis of race. An attorney advised that he was in the process of pursuing a class action law suit against the employing establishment.

Appellant submitted several witness statements in support of his claim. Karriem Davenport, a coworker, alleged that appellant was threatened because he complained about discrimination at work. In an August 30, 2004 statement, Jackson Smith, a security manager, denied knowledge of any specific instances of discrimination or of witnessing any verbal or physical confrontations. Mr. Smith noted that, in February 2003, the acting director, Betty Crook, had referred to appellant as a "trouble maker." He noted that he asked her to refrain from such comments. Appellant did not indicate that these comments were disabling and continued to perform his normally assigned duties. Michael Foran, an emergency operations manager, denied awareness of any verbal or physical abuse by the acting director. However, he noted that Ms. Crook indicated that appellant should be denied access to the administrator. In an August 27, 2004 statement, Marcus Smith, a labor relations manager, alleged that his experiences at the employing establishment were similar to those of appellant. In an August 23, 2004 statement, Harla Major, an air traffic controller, alleged that she worked in a hostile work environment and that discrimination was rampant at the employing establishment. In an

¹ They included a March 7, 2005 report, in which Richard R. Mouzon, Ph.D., noted that appellant was completely disabled from work and that his disability was related to his "on-the-job experiences while working for the [employing establishment]." Dr. Mouzon diagnosed appellant with major depression without psychotic features. They also included a March 9, 2005 report in which Dr. Douglas E. Webb, Jr., a licensed psychologist, opined that appellant experienced disabling depression and anxiety, for as many as five years, and that returning to work was not a viable option at the present time. Dr. Webb diagnosed severe major depression without psychotic features.

August 23, 2004 statement, Roosevelt Lenard, a supervisory air traffic controller, indicated that he, along with appellant and others, were discriminated against by Ms. Rivera and Ms. Blum. An email from Alexis Powell, a coworker, indicated that she was subjected to humiliation and pain at the employing establishment. An email and letter from Joe Beasely, a director, alleged that bigots worked at the employing establishment. In a June 4, 2004 email, Mr. McMillan alleged that both he and appellant had been discriminated against. In an April 25, 2003 letter, William Lindsey, a manager, congratulated appellant for helping to facilitate the structured assessment process for managerial vacancies. In an August 4, 2004 statement, Dorothy Famber, an attorney who had previously worked for the employing establishment, alleged that she had experienced relentless discrimination and had to “flee.”

In an undated statement received by the Office on June 24, 2005, the employing establishment noted that during the past four years appellant had filed four formal complaints of discrimination, one EEO appeal, and one Merit Systems Protection Board (MSPB) appeal. Each of these actions alleged a hostile work environment, which was caused in part by the front-line supervisor and/or regional administrator at the employing establishment. In each case, appellant sought compensatory damages and employing establishment personnel had denied the allegations. In the MSPB appeal, appellant challenged his removal from the employing establishment for acts of misconduct which the employer maintained was appropriate. As to all of these actions, there was never a finding of harassment or discrimination against the employing establishment.

In a letter dated June 20, 2005, John H. Sullivan, a task force leader, noted that appellant’s allegations were vague and unsubstantiated regarding discrimination and harassment. He noted that the employing establishment controverted appellant’s allegations.

On August 28, 2005 appellant alleged that his employer blacklisted him, banned him from the workplace and from all workplaces across the country and made him unemployable. He alleged that his employer declared him a “national threat” and he was unable to work and became destitute. In a March 2, 2004 report, Dr. Stephen H. Goodman, a Board-certified internist and a regional flight surgeon, referenced “disturbing” emails sent by appellant at the employing establishment that contained threats. He opined that appellant was mentally unstable and should be restricted from entering the employing establishment until his mental state had stabilized.

By decision dated November 3, 2005, the Office denied appellant’s claim. It found that the evidence was not sufficient to support that the incidents alleged were factual or sustained in the performance of duty. The Office found that being banned from the workplace was an administrative matter and not in the performance of duty. It found that appellant had not supplied sufficient evidence to support that he was harassed or discriminated against at work. The Office noted that the witness statements in support of the claim were vague and unresponsive of any specific allegations.

On November 15, 2005 requested a hearing, which was held on March 28, 2006. Appellant testified that, in 2001, he discovered that his agency was not following proper rules and procedures and that Ms. Rivera and Ms. Blum, improperly undermined him and mistreated his staff. He alleged that he recommended his staff for an award, but his managers tore up the

recommendation and threw it in the trash. Appellant noted that he had requested a detail but that his managers spread rumors about him. The person acting in his position while he was detailed, Sheryl Williams, lied and made false allegations. Appellant alleged that, when he confronted her, she came to his office and hit him twice and pushed him against a wall. He stated that this was sanctioned by management. Appellant alleged that people approached him to say that he was bad news and that they were not allowed to talk to him. He worked at home for a period and the employing establishment tried to persuade him not to return his regular job. Appellant advised that an unknown person “chopped off the head of a rabbit and put a dead rabbit right on my porch.” He also alleged that the employing establishment, in delivering a letter to his home, broke his garage door and was accompanied by three police cars. Appellant denied that he was a threat. He noted filing six EEO complaints, the first of which was resolved immediately while the latter five were rolled into a class action law suit which was still pending. Appellant alleged that he had filed several security reports and that the head of security verified that he had been slandered by Ms. Crook. He stated that he was undermined at work, sabotaged and blocked from achieving “mission successor accomplishment.” Appellant alleged that he was called names by his supervisors, disrespected and that he stopped receiving performance evaluations.

Mr. McMillan appeared at the hearing noting that appellant had hired him. He believed that appellant’s problems began when appellant testified on his behalf at an EEO hearing regarding the denial of a promotion and that appellant was punished for doing his job. Mr. McMillan noted that appellant was barred from the building, placed on a detail, denied a return to his regular job, told not to have contact with his prior staff and undermined in his duties. He also alleged that the employing establishment was retaliating against appellant. Mr. McMillan stated that appellant was unfairly accused of email threats against management and that he had prevailed in his own suit against Ms. Rivera.

In a May 22, 2006 memorandum, Wayne Tonkins, an attorney with the employing establishment, denied appellant’s allegations. He noted that appellant did not prevail in any complaints of discrimination that he had filed. Furthermore, Mr. Tonkins noted that appellant did not provide details of specific incidents that he characterized as harassment or discrimination.

In a June 21, 2006 decision, the Office hearing representative affirmed the October 21, 2005 decision.

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 his 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.² On the other hand, the disability is not covered where it results from such factors as an

² 5 U.S.C. §§ 8101-8193.

employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.³

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.⁴ This burden includes the submission of a detailed description of the employment factors or conditions which the employee believes caused or adversely affected the condition or conditions for which compensation is claimed.⁵

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.⁶ If appellant 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.⁷

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of a number of employment incidents he characterized as discrimination and harassment. The Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that he was not allowed to return to work after his detail was over, denied the opportunity to telecommute, restricted from the employing establishment after being determined to be a possible threat. The Board finds that these allegations relate to administrative or personnel matters, unrelated to his regular or specially assigned work duties and do not fall within the coverage of the Act.⁸ Although the handling of work details, telecommuting issues, and being restricted from the employing establishment, are generally related to the employment,

³ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁵ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁶ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁷ *Id.*

⁸ An employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. *Sandra Davis*, 50 ECAB 450 (1999).

they are administrative functions of the employer, and not duties of the employee.⁹ The Board has found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁰ The employing establishment denied any error or abuse. It also submitted a March 2, 2004 memorandum from Dr. Goodman, the regional flight surgeon, explaining why it barred appellant from the employing establishment. Dr. Goodman, upon reviewing a series of threatening email messages sent by appellant, recommended that appellant be barred from the employing establishment until he was emotionally stable. While Mr. McMillan testified on behalf of appellant, he did not cite to any specific instances that would constitute error or abuse with regard to these administrative matters. He confirmed that appellant was banned from the building, as noted. The employing establishment supported its action based upon the recommendation of a physician. Appellant has not provided sufficient evidence to support his allegations that the actions of the employing establishment were unreasonable. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant alleged that harassment and discrimination on the part of his supervisors and coworkers contributed to his emotional condition. His allegations included that his supervisors and coworkers made statements and engaged in actions which he believed constituted harassment and discrimination. Appellant alleged that he was blacklisted, made unemployable, declared a national threat and subjected to retaliation.

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹¹ However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹²

The employing establishment denied that appellant was subjected to harassment or discrimination. Mr. Tonkins noted that, during the previous four years, appellant had filed four complaints of discrimination and two appeals. However, there was never a finding of harassment or discrimination against the employing establishment. He stated that the EEO Commission findings did not support appellant's allegations of a hostile work environment. The employing establishment submitted two letters, one from Ms. Rivera, supporting appellant's accomplishments and an April 25, 2003 letter from Mr. Lindsey, congratulating appellant for his help facilitating a structured assessment process for managerial vacancies.

⁹ See *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate* 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹⁰ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹¹ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹² *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

Appellant submitted numerous witness statements to support his allegations of harassment and discrimination. They included statements from Mr. Smith, Ms. Major, Mr. Lenard, Ms. Powell, Mr. Beasley, Ms. Famber and Mr. McMillan. However, the statements are general in nature and not addressed to specific allegations raised by appellant. For example, none of the witnesses gave specific details about the events related to appellant's allegations with regard to time, place and location. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.¹³ Mr. McMillan testified that he believed that appellant's problems began when he testified at an EEO hearing. He also alleged that the employing establishment was retaliating against appellant. However, these allegations are too general and vague and do not relate any specific instances of harassment or discrimination towards appellant.¹⁴ While Mr. McMillan alleged that he had prevailed in an action against Ms. Rivera, the decision in his case did not apply to appellant's allegations in this claim. Appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors or coworkers. He has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Appellant also alleged that he was called a trouble maker behind his back. He generally alleged that people would come up to him and say that he was "bad news" or that they were not allowed to talk to him. However, the Board has held that an employee's perception of gossip and rumors was a personal frustration, which was not established by the evidence of record, nor related to his job duties or requirements and thus not compensable.¹⁵ Again, no evidence of the coworkers address any specific instances as alleged.

To the extent that appellant alleged that he was dissatisfied with the actions of the employing establishment, 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.¹⁶

Appellant also alleged that the person acting in his position while he was detailed, Ms. Williams, lied about him and acted unprofessionally. He further alleged that she confronted and attacked him, which was sanctioned by management. The Board has recognized the compensability of physical threats or 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.¹⁷ As noted, appellant has not provided any specific details pertaining to when the alleged attack

¹³ *David C. Lindsey, Jr.*, 56 ECAB___ (Docket No. 04-1828, issued January 19, 2005).

¹⁴ *Id.*

¹⁵ See *Gracie A. Richardson*, 42 ECAB 850 (1991) (fear of gossip is a personal frustration which is clearly not related to job duties or requirements and is not compensable).

¹⁶ See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

¹⁷ *Charles D. Edwards*, 55 ECAB 258 (2004).

occurred or whether it was observed by others. In these circumstances there is insufficient evidence to support appellant's allegation.¹⁸

Appellant also alleged that an animal was killed and placed on his door step at home and that his garage door was broken by management when the employing establishment delivered a letter. However, appellant has not submitted evidence establishing that incident involving the rabbit had any connection with his employment. Similarly, appellant has not submitted sufficient evidence to establish the specific details of the letter delivery incident such as how it pertained to specific employment duties or how it could be established as error or abuse by the employing establishment in an administrative manner. As appellant has not established a compensable employment factor, it is not necessary to address the medical evidence.¹⁹

On appeal, appellant alleged that he was denied due process when he was not served with a copy of the employing establishment's comments following the hearing. While he is correct that the Office is required to furnish a copy of any comments made by the employing establishment to the employee and allot him an additional 20 days to comment under 20 C.F.R. § 10.617(e), the Board notes that this is harmless error. In addressing violations of procedural due process under the Act, the Board has held that the opportunity for a hearing or reconsideration by the Office, together with the Board's review on appeal, constitutes meaningful post-deprivation processes whereby the government can address procedural errors.²⁰

CONCLUSION

For the foregoing reasons, as appellant has not established any compensable employment factors under the Act, he has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.

¹⁸ See *Denise Y. McCollum*, 53 ECAB 647 (2002) (an unsupported allegation that a supervisor "thumped" the employee on the arm was not established as a compensable employment factor).

¹⁹ *Garry M. Carlo*, 47 ECAB 299 (1996); see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

²⁰ See *Lan Thi Do*, 46 ECAB 366 (1994).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 21, 2006 is affirmed.

Issued: February 22, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board