

realized that his generalized anxiety with panic attacks, severe and recurrent major depression without psychotic features and somatoform disorder were caused by harassment from Ralph Gray, a manager of distribution operations, who gave him dirty looks, postal inspectors who were sent to his home and the failure of Michael V. Thompson, a manager of post office operations, and Don Stewart, a supervisor, to ensure that Mr. Gray properly managed him. He submitted medical evidence dated July 22 and August 19, 2002 which addressed his emotional condition.

By letter dated May 7, 2003, the Office granted appellant's May 5, 2003 request to withdraw his claim.

In a July 13, 2003 letter, appellant's mother advised the Office that she helped appellant complete claim forms because his depression and panic attacks prevented him from doing it alone. Appellant submitted medical evidence dated July 5, 2002 to June 1, 2006 which addressed his emotional condition.

In a July 2, 2007 letter, appellant contended that, following a May 1999 employment injury,¹ and being placed on permanent restrictions and found to have six percent whole person impairment by Dr. Gregory T. Snider, an attending Board-certified family practitioner, he was harassed by the employing establishment. He was questioned about being a drug dealer and alcoholic. Appellant stated that witnesses could verify this harassment. He submitted medical evidence dated August 10, 2002 which addressed his emotional condition.

On October 11, 2007 appellant filed another Form CA-2 assigned Office File No. xxxxxx195, the current claim, reiterating his prior allegations regarding the actions of Mr. Gray, postal inspectors, Mr. Thompson and Mr. Stewart. In an October 11, 2007 letter, he alleged that when he returned to work on May 5, 1999 after receiving medical treatment for an injury, Mr. Gray held his legs up and made a sexually explicit comment regarding the cause of injury. Appellant stated that this incident was witnessed by Tony Williams, an employee. He contended that, following the May 5, 1999 incident, management became hostile towards him. Appellant received dirty looks from Mr. Gray who always checked with appellant's supervisors to make sure he was in the proper place. Mr. Gray instructed Mrs. Durham, a supervisor, to keep appellant off the floor public address system. Appellant contended that in January 2001 Mr. Stewart, Mr. Thompson and Mr. Gray refused to provide him with permanent modified work duties based on his 1999 work-related injury and Dr. Snider's recommendation, while other injured employees were provided with such work. He described his psychological and physical symptoms and medical treatment. Appellant retired on disability from the employing establishment as of March 20, 2003. He was investigated by postal inspectors for allegedly selling pain medication.

By decision dated November 8, 2007, the Office denied appellant's claim, finding that it was not timely filed under the three-year time limitation of section 8122 of the Federal Employees' Compensation Act. In a January 31, 2008 decision, an Office hearing representative

¹ Appellant filed a traumatic injury claim (Form CA-1) assigned File No. xxxxxx077 for a back injury he sustained at work on May 2, 1999.

set aside the November 8, 2007 decision and remanded the case to the Office for further development regarding the timeliness of appellant's occupational disease claim.

In a February 19, 2008 letter, Deborah E. Miller, an employing establishment health and resource manager, controverted appellant's claim on the grounds that the evidence failed to establish that he sustained an emotional condition in the performance of duty. The evidence of record failed to establish that the employing establishment committed error or abuse with regard to appellant's allegations. Ms. Miller contended that the medical evidence failed to establish that his emotional condition was causally related to the alleged employment factors.

By decision dated May 1, 2008, the Office denied appellant's claim, finding that it was not timely filed pursuant to section 8122 of the Act. In an August 14, 2008 decision, an Office hearing representative reversed the May 1, 2008 decision, finding that appellant's claim was timely filed. The hearing representative remanded the case to the Office for further development to determine whether appellant sustained an emotional condition in the performance of duty.²

Medical records dated July 22, 1997 to June 24, 2008 addressed appellant's back and emotional conditions.

In a June 6, 1999 narrative statement, appellant contended that management failed to complete its portion of a recurrence of disability claim (Form CA-2a) that he filed on June 2, 1999. He stated that Judy Dean, an injury compensation specialist, became mad at him when he asked her for the Form CA-2a on June 1, 1999. Appellant contended that on May 4, 1999 Mr. Gray denied his request for sick leave and to seek treatment from an employing establishment physician for a hip injury he sustained three days earlier. Mr. Gray ordered him to go to a hospital instead. Appellant alleged that, despite being instructed by an emergency room physician to seek medical treatment from an employing establishment physician in one to two days, management did not allow him to do so until eight days later. Appellant further contended that Mr. Gray failed to advise him to complete a new traumatic injury claim for the injury.

In narrative statements dated September 6, 2008, appellant alleged that, from 2001 to 2003, Mr. Gray required him to lift tubs weighing nearly 50 pounds which exceeded the 25-pound lifting restriction related to his 1999 employment injury. He was only given six hours per day to complete the same work that other employees were allowed to perform in eight hours. Management jumped on appellant when he fell behind in his work performance. He was forced to use his own personal time to undergo six months of physical therapy from Dr. Snider which prevented him from getting sufficient sleep to work on the night shift. Appellant stated that employees on the day shift were given administrative leave to undergo medical treatment. Peter A. Popichak, a supervisor, refused to file a report regarding the emotional condition he sustained as a result of nearly falling 30 feet in 1997. Appellant sustained an emotional condition while taking a class in Norman, Oklahoma.³ He was questioned by postal inspectors at

² On August 28, 2008 the Office combined the claim assigned File No. xxxxxx201 and the claim assigned File No. xxxxxx195 into a master claim assigned File No. xxxxxx195.

³ On October 26, 1997 appellant filed a Form CA-1 assigned File No. xxxxxx726 for the emotional condition he attributed to the training class.

his home on May 22, 2001. On January 28, 2001 appellant requested that Lanny Miller, chief inspector, charge Mr. Thompson and Mr. Gray with workers' compensation fraud for failing to provide him with eight hours of work within his restrictions. Mr. Miller responded by jumping in his face and cursing at him. On August 25, 1999 Mr. Gray physically threatened appellant when he refused to follow his instructions which required him to work outside his restrictions. Appellant stated that this incident was witnessed by employees including, Byron Weddle. By letter dated September 6, 2008, he provided a list of current and ex-employees who witnessed the alleged incidents.

In undated narrative statements, Clarence E. Harp, a union representative, stated that he attended a meeting with appellant, Mark A. Williams, a supervisor, Mr. Stewart, an unidentified injury compensation specialist and Dr. Snider regarding appellant's ability to work full time. He and appellant were informed by Mr. Williams that Mr. Thompson, Mr. Stewart and Mr. Gray were mistreating appellant. Mr. Williams also stated that management refused to allow appellant to work in eight-hour positions that were available and within his restrictions. Mr. Harp stated that on May 19, 1999 a city supervisor, related to him that Mr. Gray directed the alleged sexual comment towards appellant but he thought Mr. Gray was joking.

In a June 3, 1999 routing slip, Ms. Dean stated that appellant's request for continuation of pay was denied on May 31, 1999 due to his refusal to return to work despite Dr. Snider's medical opinion that he could perform limited-duty work, eight hours per day. She related that he was not required to stand the entire eight-hour work shift. Appellant could sit. Ms. Dean denied instructing him not to file a Form CA-2a on June 1, 1999. She advised appellant that, since his claim was still open, as he was receiving medical treatment, he did not need to file a Form CA-2a. Ms. Dean offered to give him a Form CA-2a anyway but he declined to file one.

In a September 22, 2008 narrative statement, Mr. Thompson related that appellant was removed from the 235 operation, which required mail handlers to lift heavy bags and boxes throughout their shift. This operation was the most physically demanding position for a mail handler on Tour 1. Appellant was moved to driving a tow motor/forklift which required almost no lifting or pushing. He worked the 111 walk-off which required lifting items weighing only a couple of pounds. Appellant also worked as a dock expeditor which required almost no lifting, pushing or pulling. In a September 23, 2008 narrative statement, Mr. Thompson related that he interviewed Mr. Gray and Tony Williams who denied that the incidents alleged by appellant occurred. He was unable to locate any witnesses to corroborate appellant's allegations.

In a September 23, 2008 letter, Mark Williams stated that appellant was not required to work outside his restrictions. The employing establishment strictly complied with the rules and regulations governing work-related injuries. It continuously updated appellant's limited-duty job requirements as his restrictions were updated. Mr. Williams stated that management was unable to provide him with eight hours of work due to his restrictions and the type of work that needed to be completed. Appellant was paid compensation for the two hours he did not work. Mr. Williams found it hard to believe that he was ever jumped on for failing to perform his normal work duties. He stated that no employee was ever authorized administrative time to attend therapy or any other appointments. Mr. Williams helped appellant complete the necessary paperwork for compensation when he had therapy appointments and was unable to work due to lack of sleep. He stated that appellant was investigated because Dr. Snider advised the

employing establishment that he was using much more medication than deemed necessary. Dr. Snider advised management that appellant had reached maximum medical improvement and that further treatment was terminated. Mr. Williams stated that, as the injury compensation specialist assigned to appellant's case during his prior injuries, his well being was not taken lightly. He personally kept close contact with the supervisors of all injured employees to ensure strict compliance with all rules and regulations. Appellant had many complaints about his case and came to Mr. Williams' office almost daily. On several occasions he became irate and almost uncontrollable. When Mr. Williams felt threatened, he had appellant's supervisors preschedule his appointments.

In a September 23, 2008 letter, Deborah E. Miller, a health and resource manager, contended that the medical evidence did not establish that appellant sustained an emotional condition. She contended that he was not required to work outside his restrictions. Appellant's job was adjusted to accommodate changes in his restrictions. He worked six hours per day based on his medical restrictions and availability of work within the given restrictions. Ms. Miller stated that the mail processing operation was a 24-hour operation in which mail flowed continuously. There was no requirement that a mail processing employee complete a certain level of mail processing within a given shift. Whatever mail was not processed on a shift was processed by the next shift. This occurred whether an employee worked six or eight hours. Ms. Miller contended that there was no evidence establishing that appellant was required to accomplish more work than any other employee. She stated that no employees received administrative pay for physical therapy or any other medical appointments. Ms. Miller stated that appellant's six-hour work shift allowed him to undergo physical therapy without loss of sleep. She stated that contrary to appellant's contention that he sustained a breakdown in 2003, he was last paid for work during the period June 29 to July 5, 2002. According to postal inspectors, there was no official investigation of appellant. There was no evidence of a confrontation between him and Mr. Miller or his January 28, 2001 request for an investigation of Mr. Thompson and Mr. Gray. Ms. Miller stated that Mr. Stewart advised appellant to file a claim regarding his near fall in 1997 which was accepted by the Office in 1999. She denied that he was not permitted to seek medical attention in June 1999. The Office paid for appellant's numerous medical appointments. Ms. Miller related that the employing establishment would not prevent an employee from seeking medical treatment and could not prevent an employee from doing so while off duty. She stated that appellant was not prevented from working within his restrictions. The need to accommodate an employee was made on a case-by-case basis and was not subject to comparison.

By decision dated October 23, 2008, the Office denied appellant's claim, finding that he did not sustain an emotional condition in the performance of duty. Appellant failed to submit sufficient evidence to establish any compensable employment factors. On October 31, 2008 he requested an oral hearing before an Office hearing representative.

In a March 24, 2009 decision, an Office hearing representative affirmed the October 23, 2008 decision, finding that the evidence failed to establish a compensable factor of employment.

LEGAL PRECEDENT

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 factors of his federal employment.⁴ To establish that he sustained an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) 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.⁵

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 or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁶ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁷

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.⁸ However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.⁹ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.¹⁰

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

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

⁵ *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁶ 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁸ *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

⁹ *See William H. Fortner*, 49 ECAB 324 (1998).

¹⁰ *Ruth S. Johnson*, 46 ECAB 237 (1994).

providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.¹¹ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.¹²

ANALYSIS

Appellant did not attribute his emotional condition to his regular or specially assigned duties of being a mail handler. Rather, he attributes his emotional condition to several actions taken by employing establishment management. Appellant contended that he was investigated for allegedly selling pain medication and being an alcoholic. He further contended that his work performance was monitored by Mr. Gray and Mrs. Durham. Appellant alleged that his recurrence of disability and traumatic injury claims were not properly processed. He further alleged that his requests for sick and administrative leave to primarily attend physical therapy sessions were denied. Appellant also alleged that he was not provided with permanent modified work based on his 1999 25-pound lifting restriction as he was required to lift tubs weighing 50 pounds. He contended that he was given six-hour work assignments while other employees were given eight-hour work assignments. Appellant stated that on January 28, 2001 Lanny Miller, chief inspector, denied his request to charge Mr. Thompson and Mr. Gray with workers' compensation fraud for failing to provide him with eight hours of work within his restrictions.

The Board notes that appellant's allegations pertain largely to the administrative actions taken by management personnel at the employing establishment. It is well established that an investigation,¹³ the monitoring of work,¹⁴ the processing of claims for compensation,¹⁵ the denial of leave requests¹⁶ and assignment of work¹⁷ by the employing establishment relate to an administrative function of the employer and are not compensable unless the employee establishes error or abuse. Appellant submitted no evidence to support his allegation that Mr. Gray and Mrs. Durham and other managers acted unreasonable in monitoring his work and processing his recurrence of disability and traumatic injury claims. Mr. Gray denied that the incidents alleged

¹¹ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹² *Id.*

¹³ *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

¹⁴ *See Brian H. Derrick*, 51 ECAB 417 (2000).

¹⁵ *See David C. Lindsey*, 56 ECAB 263 (2005) (although the handling of a compensation claim is generally related to the employment, it is an administrative function of the employer and not a duty of the employee and thus, not compensable absent evidence of error or abuse by the employer).

¹⁶ *T.G.*, 58 ECAB 189 (2006) (actions of the employing establishment in matters involving the use of leave are generally not considered compensable factors of employment as they are administrative functions of the employer and not duties of the employee).

¹⁷ *James W. Griffin*, 45 ECAB 774 (1994).

by appellant actually occurred. Mr. Thompson was unable to locate any witnesses to corroborate appellant's allegations. Mark Williams stated that the investigation of appellant's alleged sale of pain medication was initiated because Dr. Snider informed management that appellant was using too much medication. He and Ms. Miller denied appellant's allegations that other employees were given administrative leave to attend medical appointments. Mr. Williams stated that appellant was not given an eight-hour work assignment due to his restrictions and the type of work that required completion at that time. He related that appellant was paid compensation for the two hours he did not work. Mr. Williams helped appellant complete the necessary paperwork to receive compensation when he attended his physical therapy appointments and when he did not work due to lack of sleep. When he handled his case as an injury compensation specialist, he considered his well being. Mr. Williams stated that appellant became irate and almost uncontrollable when he came to his office on a daily basis to complain about his case. When he felt threatened, he prescheduled appellant's appointments. Ms. Miller stated that postal inspectors advised her that there was no official investigation of appellant. She denied that appellant was not allowed to seek medical attention noting, that the employing establishment paid for his numerous medical appointments. Ms. Miller stated that appellant's six-hour work shift allowed him to undergo physical therapy without the loss of sleep. She further stated that the employing establishment could not prevent any employee from seeking medical treatment on and off duty. Ms. Dean denied advising appellant not to file a Form CA-2a on June 1, 1999 as she offered the form to him which he refused.

Based on the statements of Mr. Gray, Mr. Thompson, Mark Williams, Ms. Miller and Ms. Dean, the Board finds that appellant has failed to establish that the employing establishment committed error or abuse in handling the above-noted administrative functions. Therefore, appellant has failed to establish a compensable factor of employment.

Regarding appellant's contention that he was made to work outside his restrictions, the Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if the record substantiated such activity.¹⁸ However, Ms. Dean, Mr. Thompson, Mr. Williams and Ms. Miller denied that he worked outside his limitations. Ms. Dean stated that appellant's position not only allowed him to sit but also to stand during an eight-hour work shift. Mr. Thompson related that appellant was assigned work based on his physical restrictions. He was moved from the physically demanding 235 operation to less physically demanding tow motor/forklift driver and dock expeditor positions. Mr. Williams stated that the employing establishment strictly complied with rules and regulations governing work-related injuries. He and Ms. Miller both stated that his limited-duty job requirements were updated when his restrictions changed. They and Ms. Miller stated that he worked six hours per day based on his restrictions and in positions available within those restrictions. Ms. Miller noted that appellant was not required to process more mail than an employee on an eight-hour shift. She explained that the mail processing operation was a 24-hour operation and that any unprocessed mail on a shift was processed by the next shift. Although Mr. Harp stated that Mr. Williams advised him and appellant, that Mr. Thompson, Mr. Stewart and Mr. Gray refused to allow appellant to work in positions that were eight hours per day and within his restrictions, the record does not contain a statement from Mr. Williams corroborating Mr. Harp's allegation.

¹⁸ *David C. Lindsey, Jr., supra* note 15; *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

The Board finds that based on the statements of Ms. Dean, Mr. Thompson, Mr. Williams and Ms. Miller, appellant has not established a factual basis for his allegation. Because appellant failed to establish a compensable employment factor, the Office properly denied his occupational disease claim.¹⁹

Appellant attributed his emotional condition to being harassed and verbally abused by supervisors and postal inspectors. The Board notes that harassment or verbal abuse may give rise to coverage under the Act. However, there must be evidence that harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.²⁰ The Board notes that appellant's allegations of harassment and verbal abuse by the employing establishment primarily involve the above noted administrative matters. He contended that Mr. Gray and Mrs. Durham harassed him by monitoring his work activities. Appellant further contended that Mr. Thompson and Mr. Stewart failed to ensure that Mr. Gray properly managed him. He stated that management reprimanded him when he fell behind in his work performance. Appellant alleged that on June 1, 1999 Ms. Dean became angry with him when he asked her for a Form CA-2a. He also alleged that on January 28, 2001 Mr. Miller used profane language towards him in response to his request for an investigation of Mr. Thompson and Mr. Gray for workers' compensation fraud. Appellant contended that on August 25, 1999 Mr. Gray physically threatened him when he refused to work outside his restrictions. As stated, the monitoring of work,²¹ the assignment of work,²² the processing of claims for compensation²³ and an investigation²⁴ by the employing establishment relate to administrative matters and appellant has not demonstrated error or abuse in these instances. Further, as stated, appellant did not establish that he was required to work outside his restrictions. The Board finds, therefore, that he has not established a compensable employment factor.

Appellant contended that on May 5, 1999 he was harassed by Mr. Gray who made a sexually explicit gesture with his legs and comment regarding the cause of his May 1999 employment injury and gave him dirty looks following the incident. Although he stated that Tony Williams witnessed the May 5, 1999 incident, he did not submit a witness statement from him establishing that the incident occurred as alleged. Moreover, the Board finds that Mr. Harp's statement that a city supervisor related to him that he heard Mr. Gray direct the

¹⁹ As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record. *Marlon Vera*, 54 ECAB 834 (2003).

²⁰ *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, *supra* note 5 (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, *supra* note 4 (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

²¹ See *Brian H. Derrick*, *supra* note 14.

²² *James W. Griffin*, *supra* note 17.

²³ See *David C. Lindsey*, *supra* note 15.

²⁴ *Jimmy B. Copeland*, *supra* note 13.

sexual comment towards appellant is insufficient to establish harassment on the part of Mr. Gray. Mr. Harp did not state that he heard Mr. Gray make the sexual comment. The Board finds that appellant has not established a factual basis for his allegations that he was harassed and verbally abused by the employing establishment. Therefore, he has failed to establish a compensable factor of employment.²⁵

Appellant failed to establish that his emotional condition was causally related to a compensable factor of employment. Therefore, the Office properly denied his emotional condition claim.²⁶

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the March 24, 2009 and October 23, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 10, 2010
Washington, DC

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

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

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

²⁵ *James E. Norris*, 52 ECAB 93 (2000).

²⁶ *See supra* note 20 (in the absence of compensable factors of employment, there is no need to address the medical evidence).