

**United States Department of Labor
Employees' Compensation Appeals Board**

C.B., Appellant

and

**DEPARTMENT OF THE ARMY, ANNISTON
ARMY DEPOT, Anniston, AL, Employer**

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**Docket No. 10-533
Issued: September 20, 2010**

Appearances:
Patricia A. Gill, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 17, 2009 appellant filed a timely appeal from an August 28, 2009 merit decision of the Office of Workers' Compensation Programs. 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 sustained an emotional condition causally related to compensable work factors.

FACTUAL HISTORY

On July 22, 2008 appellant, then a 28-year-old heavy mobile equipment repairer, filed an occupational disease claim (Form CA-2) alleging he sustained an emotional condition as a result of his federal employment. Appellant stated that he was threatened and called racial names in a stressful environment while working in Iraq. In a narrative statement received on August 11, 2008, he stated that he began work in Iraq on January 21, 2008 and Doug Turner, the supervisor,

avored other employees. According to appellant some of the employees called the African American employees “DANS” which he believed stood for “dumb ass niggers.”

Appellant submitted an undated statement on September 9, 2008 in which he reiterated that African American employees were subject to racial comments. He reiterated that his supervisor showed favoritism and that his team had to work in the dark. Appellant alleged that false statements were made about his job performance and he was unfairly disciplined. In an August 18, 2008 statement, a coworker noted she had witnessed “all of the threats, harassment and racist statements” made to appellant. The coworker did not provide any specific details and noted overhearing some racist comments while appellant was not present.

The record indicates that appellant filed a complaint of racial discrimination with the Equal Employment Opportunity Commission (EEOC). A November 18, 2008 report of investigation referred to appellant’s allegations and noted that he was asked to leave Iraq in February 2008 before the end of his tour. With regard to the alleged “DANS” comments, the report stated appellant indicated the comments were not directed at him, he did not know what the term meant when he heard it and he did not identify who was speaking. The report noted appellant alleged he suffered a leg injury on February 15, 2008 but his injury was ignored, with Mr. Turner testifying that no injury was reported. As to appellant being disciplined and forced to leave Iraq, Mr. Turner stated he was an unproductive worker who sometimes left work early. The investigator noted the employing establishment submitted nine witness statements from coworkers and a statement from an officer that were consistent in describing appellant as not productive, a disruptive influence and there were problems with his attendance while he worked in Iraq.¹ According to the investigator, there was insufficient evidence to establish a hostile work environment.

In a February 9, 2009 decision, the Office denied the claim for compensation. It found appellant did not establish any compensable work factors.

Appellant requested a telephonic hearing before an Office hearing representative, which was held on June 17, 2009. He testified that his EEO complaint was currently on appeal. Appellant also described an altercation with a coworker, who used a racial epithet.

In a decision dated August 28, 2009, an Office hearing representative affirmed the February 9, 2009 decision. He found no compensable work factors had been established.

LEGAL PRECEDENT

Appellant 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.² This burden includes the submission of a detailed

¹ The Board notes the record contains the witness statements, a February 17, 2008 memorandum from Mr. Turner detailing the reasons for appellant’s dismissal and an April 11, 2008 statement from Major David Centeno. There is also a June 2, 2008 proposed 60-day suspension for conduct unbecoming a federal employee, insubordination, loafing and creating a disturbance.

² *Pamela R. Rice*, 38 ECAB 838 (1987).

description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.³ A claimant must also submit rationalized medical opinion evidence establishing a causal relationship between the claimed condition and the established, compensable work factors.⁴

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 illness has some connection with the employment, but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it, but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position or secure a promotion. On the other hand where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁵

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.⁶ Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.⁷

With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁸ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.⁹

ANALYSIS

Appellant's primary allegation is that he was subject to racial discrimination and harassment while working in Iraq from January to February 2008. He contends that disciplinary

³ *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

⁴ *See Bonnie Goodman*, 50 ECAB 139, 141 (1998).

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *See Brian H. Derrick*, 51 ECAB 417, 421 (2000); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁷ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

⁸ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁹ *Helen P. Allen*, 47 ECAB 141 (1995).

actions were taken based on race and he was subject to a hostile environment and racist comments. Appellant must, however, support his allegations with probative and reliable evidence. The record does not contain sufficient evidence to establish a compensable work factor.

With respect to appellant's being disciplined and sent home from Iraq, no evidence of discrimination or error was presented. The employing establishment submitted numerous statements documenting the reasons for appellant's dismissal based on his work performance and conduct. As to the alleged racist comments, the Board notes that the EEO investigator's report found that the comments were not directed at appellant. Appellant did not believe any comments were racial epithets and he could not identify individuals who had made such comments to him. At the telephonic hearing appellant referred to an incident with another coworker where a racial epithet was used; however, he did not provide a detailed description as to the time, place and manner of the incident or provide any corroborating evidence. The record does not contain sufficient evidence to establish a compensable work factor based on harassment, discrimination or verbal abuse. Appellant filed an EEO discrimination claim, but the record does not contain any findings to support a claim based on discrimination.¹⁰ The witness statement submitted by appellant was general in nature and did not address any specific incidents involving appellant.¹¹ In addition, the November 18, 2008 investigator's report found no evidence of a hostile work environment.

On appeal appellant contends that he submitted sufficient evidence of a hostile work environment and disparate treatment. As noted, the Board finds that appellant did not establish a compensable work factor with respect to his claim. Since appellant has not established a compensable work factor, the Board need not address the medical evidence.¹²

CONCLUSION

The Board finds that appellant did not establish an emotional condition causally related to a compensable work factor.

¹⁰ The issue is not whether the claimant has established discrimination under EEO standards, but whether sufficient evidence has been submitted to factually support the claimant's allegations. *Peter D. Butt, Jr.*, 56 ECAB 117, 123 (2004).

¹¹ See *Robert Breeden*, 57 ECAB 622 (2006).

¹² See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 28, 2009 is affirmed.

Issued: September 20, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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