

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANIEL M. DIFRANCESCO and DEPARTMENT OF THE TREASURY,
BUREAU OF THE MINT, Philadelphia, PA

*Docket No. 03-1216; Submitted on the Record;
Issued August 12, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

On March 31, 2000 appellant, a 53-year-old machinist, filed an occupational disease claim alleging that his anxiety and panic disorder were employment related.¹ In an attached statement, he attributed his condition to harassment by Sam Lucci, a supervisor. Appellant alleged that the harassment began 10 years ago in response to appellant having filed a grievance against his supervisor. Due to the stress and panic caused by this harassment, he stopped working in May 2000.

In support of his claim, appellant submitted a report by Ann Tusznski, a licensed social worker, medical evidence regarding his back and neck problems and a September 26, 2001 letter from the Office of Personnel Management.

In a December 3, 2001 letter, the Office of Workers' Compensation Programs advised appellant of the additional factual and medical evidence needed to establish his claim. He was allotted 30 days to submit the requested evidence. No evidence was submitted.

In a February 13, 2002 decision, the Office denied appellant's claim on the grounds that he had failed to establish that he sustained a personal injury in the performance of his duties.

¹ The Office of Personnel Management approved appellant's disability retirement in a September 26, 2001 letter.

Appellant's counsel requested an oral hearing by letter dated March 12, 2002. An oral hearing was held on November 25, 2002 at which appellant was represented by counsel and provided testimony.² Subsequent to the hearing, appellant submitted additional factual and medical information.

By decision dated February 14, 2003, the hearing representative affirmed the denial of appellant's claim.

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty.

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.³ To establish appellant's claim that he sustained an emotional condition in the performance of duty, appellant 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.⁴

On appeal appellant's counsel argues that, since a Social Security administrative law judge found appellant disabled, he has established that he is totally disabled. The Board notes that the December 23, 2002 decision of an administrative law judge finding that appellant was disabled under the Social Security Act has little evidentiary value in this case because, as the Board has held previously, entitlement to benefits under another act does not establish entitlement to benefits under the Federal Employees' Compensation Act.⁵ In determining whether an employee is disabled under the Federal Employees' Compensation Act, the findings of the Social Security Administration are not determinative of disability under the Federal Employees' Compensation Act.⁶

The Social Security Act and the Federal Employees' Compensation Act have different standards of medical proof on the question of disability. The administrative law judge's determination was based on the regulations under the Social Security Act, which provide that an individual is disabled if his impairments prevent him from performing his past relevant work and from performing other jobs available in significant numbers in the national economy. This determination is not relevant to the findings in the Office's decision that appellant had failed to

² At the hearing, appellant's counsel noted appellant had filed two claims which the Office declined to consolidate. One claim was for physical disability and the other was for an emotional condition.

³ *Edward C. Heinz*, 51 ECAB ____ (Docket No. 99-992, issued September 12, 2000); *Martha L. Street*, 48 ECAB 641, 644 (1997).

⁴ *Ray E. Shotwell, Jr.*, 51 ECAB 656 (2000); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁵ *Dona M. Mahurin*, 54 ECAB ____ (Docket No. 01-1032, issued January 6, 2003); *Freddie Mosley*, 54 ECAB ____ (Docket No. 02-1915, issued December 19, 2002).

⁶ *Daniel Deparini*, 44 ECAB 657 (1993).

establish that his panic disorder was due to factors of his employment. Thus, the December 23, 2002 decision by the Social Security administrative law judge has no relevance to the issue of whether appellant's panic disorder was sustained in the performance of duty.

To the extent that disputes and incidents alleged as constituting harassment by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.⁷ However, for harassment to give rise to a compensable disability under the Federal Employees' Compensation Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Federal Employees' Compensation Act.⁸ Appellant has not submitted sufficient evidence to support his claim of harassment. The evidence submitted by appellant shows that he filed grievances, but there is no finding that his grievances were sustained or that the employing establishment agreed with him regarding his grievances. A copy of a settlement of one grievance states that both appellant and Mr. Lucci agreed to work together and try to cooperate. The remaining factual evidence consists of statements by appellant describing his harassment by the employing establishment. He submitted no witness statements or other factual evidence such as, determinations that there was harassment or that he was subjected to the ill treatment by Mr. Lucci as he alleged. Thus, the Office properly found that appellant had not established a compensable employment factor under the Federal Employees' Compensation Act with respect to the claimed harassment.

Appellant has alleged verbal abuse and harassment by Mr. Lucci, a manager. He stated that Mr. Lucci yelled at him in front of coworkers, swore at him and blocked a door so he could not leave a room.⁹ Regarding Mr. Lucci's use of profanity and threatening appellant, appellant submitted a statement by Charles R. Frohlich, who, in a March 10, 1998 statement, indicated that he heard Mr. Lucci say to appellant "[d]o [not] fuck up the wheel. I will get you on safety." The Board has recognized the compensability of verbal altercations or abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Federal Employees' Compensation Act.¹⁰ While appellant alleged that Mr. Lucci yelled at him and swore at him the Board finds that the evidence does not establish harassment or verbal abuse. Appellant has not explained how such an isolated comment would rise to the level of harassment or verbal abuse.¹¹ Even accepting the existence of a personality conflict arising between appellant and his supervisor, the evidence of record does not establish verbal abuse or harassment of appellant.¹²

⁷ *Clara T. Noga*, 46 ECAB 473, 481 (1995); *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

⁸ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

⁹ *David W. Shirley*, *supra* note 7.

¹⁰ *Harriet J. Landry*, 47 ECAB 543 (1996); *Mary A. Sisneros*, 46 ECAB 155 (1994).

¹¹ *Christophe Jolicoeur*, 49 ECAB 553 (1998).

¹² *Ernest J. Malagrida*, 51 ECAB 287 (2000).

The February 14, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 12, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member