

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EMIL A. WALKER and DEPARTMENT OF JUSTICE,
FEDERAL PRISON SYSTEMS, Miami, FL

*Docket No. 02-509; Submitted on the Record;
Issued January 23, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

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

On July 12, 2000 appellant, a 35-year-old corrections officer, filed a claim for benefits based on occupational disease, alleging that he had developed an emotional condition caused by factors of his employment. In a statement dated June 11, 2000, appellant alleged that on June 5, 2000 he was exiting the prison grounds where he worked to take his lunch break when he was abruptly summoned to a locked inner office, detained and held for questioning by his superiors and by agents of the Federal Bureau of Investigation (FBI) for approximately one hour. Subsequent to this interview, appellant's vehicle was searched in the prison parking lot. On June 7, 2000 appellant was summoned to his captain's office at the prison, where he was told he was being taken to the FBI office in Homestead, Florida. Upon arriving at the FBI office, appellant was interviewed for approximately 40 minutes and then returned to the employing establishment.

By decision dated October 27, 2000, the Office of Workers' Compensation Programs found that fact of injury was not established, as the evidence of record did not establish that an emotional condition was sustained in the performance of duty.

By letter dated November 18, 2000, appellant requested an oral hearing, which was held on May 24, 2001. Appellant testified that on June 5, 2000 an inmate at the prison to which he was assigned was found to be in possession of marijuana. The inmate alleged to prison authorities that appellant had given him the marijuana and appellant was subsequently detained and investigated by the employing establishment and the FBI. Appellant stated that he, along with his vehicle, were searched in the presence of inmates, causing him professional humiliation and loss of credibility. He alleged that he was forced to submit an affidavit regarding the episode, which caused him additional stress. Appellant claimed that investigators made accusatory and derogatory remarks against him, detained him without being charged and deprived him of his right to an attorney. Although he was formally exonerated following the

investigation, appellant claimed this incident caused him great stress, anxiety and depression, resulting in an emotional condition.

Following the hearing, appellant's attorney submitted a facsimile to the Office, which it received on June 20, 2000.¹ This letter claimed that appellant:

"(1) Was wrongfully accused of improper conduct in November 1997, when the employing establishment investigated an allegation that he had brought illegal contraband into the prison.

"(2) Was the target of an investigative plan whereby the employing establishment had an inmate wear a "wire" in an attempt to extract incriminating information from him.

"(3) Was disciplined and suspended and ordered to leave the premises for not properly securing a weapon while entering a corrections facility in February 2000, when he began working at the Federal Prison camp. Appellant claimed he was wearing civilian clothes and forgot that he was carrying his privately owned handgun underneath his jacket."

By decision dated October 24, 2001, an Office hearing representative affirmed the October 27, 2000 Office decision. The hearing representative found that appellant was acting in the performance of his federal duties when he was forced to submit an affidavit in regard to the June 2000 incident. Nevertheless, the hearing representative considered the medical evidence and found that appellant failed to submit sufficient medical evidence to establish that this incident caused or contributed to his emotional condition.

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

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.² There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.³

The first issue to be addressed is whether appellant has established factors of employment that contributed to his alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed

¹ This facsimile is not in the case file; however, the hearing representative quoted the relevant exhibits from the letter into the decision and the case record.

² See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

³ See *Ruth C. Borden*, 43 ECAB 146 (1991).

by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁴ On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.⁵

The Board notes that error or abuse by the employing agency in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage.⁶ However, appellant has submitted no evidence indicating that the employing establishment committed error or abuse or that its actions in this instance were unreasonable.

The Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regularly or specially assigned employment duties are not considered to be employment factors.⁷ However, the Board has also 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.⁸ A review of the evidence establishes that appellant has not shown that the employing establishment's actions in connection with its investigation of him were unreasonable. Although appellant has made allegations that the employing establishment erred and acted abusively in conducting its investigation, appellant has not provided sufficient evidence to support such allegations. Appellant alleged that employing establishment investigators made abusive statements during the course of the investigation, but he provided no supporting evidence, such as witness statements, to establish that the statements were actually made.⁹

Further, the Board finds that the hearing representative erred in finding that appellant was acting "in the performance of his federal duties" when he was required to provide an affidavit in regard to the investigation of the June 2000 incident. The affidavit was requested pursuant to a formal investigation of criminal conduct, in the course of which the employing establishment did not commit error or abuse in exercising its administrative authority. Thus, appellant's submission of the affidavit was not compensable. Appellant has, therefore, not established a

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Id.*

⁶ *Margreate Lublin*, 44 ECAB 945 (1993).

⁷ *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

⁸ *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

⁹ *See Larry J. Thomas*, 44 ECAB 291, 300 (1992).

compensable employment factor under the Act with regard to any aspect of the employing establishment's investigation of his conduct.¹⁰

The hearing representative properly found that the administrative and personnel actions taken by management in this case contained no evidence of agency error and are, therefore, not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.¹¹ In the instant case, appellant has presented no evidence that the employing establishment acted unreasonably or committed error with regard to the incidents of alleged unreasonable actions involving personnel matters on the part of the employing establishment. In addition, the evidence of record indicates that the employing establishment was not acting in an unreasonable manner by suspending appellant for not properly securing his weapon and for ordering appellant to leave the premises, as appellant's improper conduct required the employing establishment to exercise its disciplinary authority. Appellant has produced no evidence that the employing establishment acted unreasonably or committed error in discharging his administrative duties during this incident. Regarding appellant's allegation that he developed stress due to the uncertainty of his job duties and his insecurity about maintaining his position, the Board has previously held that a claimant's job insecurity is not a compensable factor of employment under the Act.¹² Accordingly, a reaction to such factors did not constitute an injury arising within performance of duty. The Office properly concluded that in the absence of agency error such personnel matters were not compensable factors of employment.

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions and unreasonably monitored his activities at work, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.¹³ Although the handling of disciplinary actions and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹⁴ However, the Board has also 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.¹⁵ Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters. Additionally, the mere fact that appellant was

¹⁰ *Id.*

¹¹ *See Alfred Arts*, 45 ECAB 530 (1994).

¹² *See Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

¹³ *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).

¹⁴ *Id.*

¹⁵ *See Richard J. Dube*, *supra* note 8.

ultimately exonerated and that certain personnel actions were later modified or rescinded does not in and of itself establish error or abuse.¹⁶

Appellant has also alleged that harassment and discrimination on the part of his supervisors and coworkers contributed to his claimed stress-related condition. 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.¹⁷ 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.¹⁸ In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination.

The Board finds that appellant has failed to submit sufficient corroborating evidence to establish his allegations that he was harassed or discriminated against by his supervisors or coworkers.¹⁹ These included appellant's allegations that the employing establishment intentionally harassed him by providing an inmate with a listening device in an attempt to implicate him in criminal activity. Appellant has also alleged, in general terms, harassment of the employing establishment, but has not provided a description of specific incidents or sufficient supporting evidence to substantiate the allegations.²⁰ Appellant has not submitted any factual evidence to support his allegations that he was harassed, mistreated or treated in a discriminatory manner by his supervisors. He has failed to provide support for his allegations that investigators made derogatory and accusatory remarks toward him. To that end, appellant failed to establish that the employing establishment or employees acting on behalf of the employing establishment threatened or verbally abused appellant or otherwise ridiculed him during the periods and dates he alleged these episodes to have occurred. The Office properly found that the allegations made by appellant concerning the alleged derogatory and accusatory remarks made about him were not established as factual by the weight of evidence of record. Appellant failed to provide factual support for his allegations that his supervisors created a hostile work environment.²¹

The Office reviewed all of appellant's specific allegations of harassment, abuse and mistreatment and found that they were not substantiated. As such, appellant's allegations constitute mere perceptions or generally stated assertions of dissatisfaction with individuals at work which do not support his claim for an emotional disability.²² For this reason, the Office

¹⁶ *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

¹⁷ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁸ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁹ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

²⁰ *Id.*

²¹ *Merriett J. Kauffmann*, 45 ECAB 696 (1994).

²² See *Debbie J. Hobbs*, *supra* note 2.

properly determined that these incidents constituted mere perceptions of appellant and were not factually established. Appellant alleged that supervisors and coworkers made statements and engaged in actions, which he believed constituted harassment and discrimination, but he provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.²³ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination. Accordingly, as appellant failed to submit factual evidence in support of his claim that factors of his federal employment caused an emotional condition, the Board affirms the October 24, 2001 decision of the Office hearing representative, which affirmed the October 27, 2000 Office decision.

The October 24, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 23, 2003

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

²³ See *William P. George*, 43 ECAB 1159, 1167 (1992).