

from June 2 through August 4, 2000.¹ In a June 20, 2000 letter, he wrote that the following factors caused his condition. On June 23 and 24, 1999 appellant was told by Rebecca Harris, the acting postmaster to stay off the floor without saying why. On June 25, 1999 he was told by a Jeffery Taylor, the manager of delivery programs that he was going to be “rehabilitated” and that he “did his job but now he was going to be the scapegoat.” According to appellant, Mr. Taylor directed him to work for a Level 16 supervisor when he was a Level 21 supervisor. On June 29, 1999 appellant alleges that he was told to open aviation envelopes, work normally done by a Level 1 secretary. According to appellant, when other managers saw him opening envelopes they laughed at him. In December 1999 appellant wrote that he was told by Richard Martino, head of the improvement team, that he was to do what Mr. Martino said and he did not care if it caused appellant a problem. Also in December 1999 appellant alleged that members of the improvement team said things that made him look bad in front of the letter carriers and was told by his supervisor, Debra Mitchell, to follow her instructions or he would be written up.

On January 10, 2000 appellant alleged that he was told by Tony Dompkowski, the acting delivery programs manager, to be prepared to defend himself, though he was not told from what. He further alleged that, on January 11, 2000, he was told by a member of the improvement team to do what they said and when they said it or it was his “ass.” On January 18, 2000 appellant stated that he was told that he would have to compete for a job that he expected to be given through a lateral move. On January 19, 2000 Peter Isler and Deb Dinkle, both members of the improvement team, allegedly raised their middle finger to him. On January 20, 2000 appellant wrote that he was told by Mike Benson, the district manager, to leave the employing establishment premises because there could be an explosive situation. According to appellant, on January 21 and February 3, 2000, he was given contradicting instructions by Ms. Mitchell, Mr. Martino, Mr. Taylor and Mr. Devlin, the manager of customer service and Ms. Mitchell yelled at him in front of employees. According to appellant on February 22, 2000 Mike Kline, a letter carrier said to him that there were “only [six] more days” in reference to the [seven]-day waiting period to purchase a gun.

According to appellant on April 3, 2000 Mark Jobes, a carrier, told Mr. Taylor that appellant was a punk and that he should put a guard on the back door. On May 10, 2000 appellant stated that he was told by the improvement team that his unit went from the best to the worst.

Appellant also said that he was consistently recognized for outstanding accomplishments, yet he was harassed and humiliated and that, though he had never been disciplined, he was removed from his postmaster position when other managers who had been disciplined were not removed. Appellant further alleged that he has to deal with problems that were purposely caused by the district Office and that, prior to the arrival of the improvement team, there were no union grievance files, while after their arrival there were ten grievances. The record also contains copies of letters of recognition he received.

¹ Appellant had previously filed an emotional claim in October 1998 that was accepted. He filed a recurrence claim on June 8, 2000 that was denied.

The record also contains a February 2, 2000 letter to Ms. Mitchell, with copies to Mr. Taylor and Mr. Benson, in which appellant complained of contradictory instructions and states that they are causing the carriers to be angry at him. In a March 19, 2000 unsigned letter to a congressional representative, the writer indicated that the employing establishment has not had a postmaster for months and has had a series of officers in charge (OIC). The current OIC does little to protect the carriers from an improvement team that makes unilateral changes that are viewed as ineffective and counter productive. In an April 19, 2000 letter to a congressional representative, Mr. Benson stated that appellant was removed from the employing establishment premises as part of a standard investigation into threats of violence.

In a July 21, 2000 letter, Ms. Mitchell wrote that she and appellant received from the improvement team leader, Mr. Martino, a list of deficiencies that needed to be corrected before an inspection was completed. Appellant said that he would accomplish them but failed to do so. The record also includes an email from Mr. Martino with a list of deficiencies at the employing establishment.

In an August 3, 2000 fitness-for-duty report Dr. Perry Berman, a Board-certified psychiatrist, wrote that appellant presented himself as a productive worker who angered his supervisors because he took four weeks to fulfill his National Guard responsibilities.² Appellant said that he was stressed because the improvement team required that he make changes that were not productive. He also indicated that he could work effectively as a Major in the military because in the military his orders were clear and consistent.

Dr. Berman stated that tests showed that appellant did not perform well under stress and that he appeared confused because he feels he does a very good job, yet he is not perceived that way. He added that appellant does not appear to tolerate review or criticism well and does not hear when he is told negatives. Dr. Berman diagnosed obsessive compulsive personality disorder and mild anxiety. He indicated that appellant was fit to return to work because his problems were an inherent part of his character, not work related. Dr. Berman added that, as he believes appellant's major diagnosis is personality and character in origin, there is little that will change without a significant effort on appellant's part.

In an October 19, 2001 report, Dr. Louis Kleiman, an osteopath, wrote that appellant suffers from depression and anxiety since at least 1998 caused by a distrusting relationship at work, some of which appeared justified and some self-imposed by appellant's rigid style that tends to lack critical self-evaluation. In a November 1, 2001 addendum, Dr. Kleiman wrote that, after reviewing the material that appellant provided, his opinion is that appellant's work-related issues were certainly the cause of his ongoing depression and anxiety. In a December 17, 2001 report, Dr. Kleiman wrote that appellant's depression, anxiety and insomnia are causally related to a tense and hostile work environment where he is under unrealistic demands.

In a December 5, 2001 letter to the Office, appellant wrote that he was given unrealistic deadlines that could not be met and that caused a hostile environment. He felt that there were demands placed on him that were not placed on others. Appellant added that he worked

² Appellant is a Major in the National Guard.

excessive hours and took work home to meet the demands and changes in part because he was not provided a maintenance man and because one of his supervisors had very little experience. The improvement team also created grievances that affected him. Appellant stated that he would think about work all day and night preventing him from sleeping. He stated that he arrived at work shaking and his heart would race all day because he felt nervous and panicky. Appellant added that there were often members of management present in his office and they would swear at and belittle him. He said that Ms. Mitchell never offered help and would also swear at and belittle him.

In a January 28, 2002 decision, the Office denied the claim finding that appellant had not established employment factors that caused his emotional condition. Appellant requested a hearing and submitted a list of union grievances. In an undated letter Tom Hayden, the union vice president, wrote that when he worked with appellant's issues and that they were resolved amicably and there was good morale, but the improvement team seemed determined to foster an adversarial and confrontational relationship with workers. He wrote that the improvement team would present demands then make it appear that it was appellant's doing. Mr. Hayden stated that he overheard one improvement team member tell appellant that it was his "ass if he did not do what he was told" and the employing establishment went from the best to worst performer due to the changes the improvement team required. According to Mr. Hayden, the last straw was when the improvement team required employees to ask permission to go the bathroom. He noted that since the improvement team left high morale has returned.

At the October 24, 2002 hearing, appellant testified that lower level managers on the improvement team made changes so fast that employees were upset, crying and yelling a lot. When he complained to his supervisors, appellant was told that he was to both take orders and still be responsible. Appellant stated that some of the changes were illegal, such as walking through "do not walk" signs. They were also required to wear ties and to not wear t-shirts under their uniform. Appellant also said that Ms. Mitchell would say publicly to him to do what the improvement team said but privately told him not to.

The record contains a witness statement from Dale Haupt who stated that the employing establishment was unsafe and a hazard to physical and mental health and it is inevitable that something bad will happen. In a January 31, 2000 letter, Sandy Stearns wrote that the last few months morale was at an all time low and tempers flared often. In an undated letter Jane Wolf wrote that the morale was low because the budget was more important than people to management. Dennis Hughes wrote that the employing establishment was stressful and volatile with several changes in management over the last 25 years.

In a January 9, 2003 decision, the hearing representative affirmed but modified the January 28, 2002 decision finding that appellant alleged three compensable factors, that appellant's carriers were upset with management changes, numerous grievances were filed and the threat of a gun did occur. However, the hearing representative further found that the medical evidence submitted was insufficient to meet appellant's burden of proof.

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.³ 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 frustration from not being permitted to work in a particular environment or to hold a particular position.⁴

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 employment factors.⁵ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁶

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.⁷ 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.⁸

ANALYSIS

In the present case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. In a January 9, 2003 decision, the hearing representative affirmed but modified the January 28, 2002 decision finding that appellant alleged three compensable factors; that appellant's carriers were upset with management changes,

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁶ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁷ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁸ *Id.*

numerous grievances were filed and the threat of a gun did occur. However, the hearing representative did not find the medical evidence sufficient to meet appellant's burden of proof.

The Board must initially review whether the alleged incidents and conditions of employment are covered employment factors under the terms of the Act. Regarding appellant's allegations that the employing establishment improperly assigned work duties such as changing appellant's work site several times, requiring that he open envelopes and monitoring his work closely, 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.⁹ Although the assignment of work duties 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.¹⁰ 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.¹¹ However, appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters. The witness statements from employees Mr. Haupt, Ms. Stearns, Mr. Wolf and Mr. Hughes establish that there was tension in the employing establishment, but they do not establish error or abuse by management that caused the tension. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant has also alleged that harassment on the part of his supervisors and coworkers, in the form of profane or harsh words and gestures, by laughing at appellant and by making him look bad in front of other employees, contributed to his claimed stress-related condition. To the extent that 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.¹² 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.¹³ In the present case, the employing establishment denied that appellant was subjected to harassment and appellant has not submitted sufficient evidence, such as witness statements, to establish that the statements, gestures or actions, actually occurred.¹⁴

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 *Id.*

¹¹ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹² *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹³ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁴ See *William P. George*, 43 ECAB 1159, 1167 (1992).

Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

The Board has recognized the compensability of physical threats in some circumstances. As the Office recognized, appellant has established as a compensable factor that a physical threat existed; specifically that a gun was allegedly brought to the building and a potentially explosive situation existed.

The Board has held that emotional reactions to situations in which an employee is trying to meet his position requirements are compensable.¹⁵ In *Antal*, a tax examiner filed a claim alleging that his emotional condition was caused by the pressures of trying to meet the production standards of his job and the Board, citing the principles of *Cutler*, found that the claimant was entitled to compensation. In *Kennedy*, the Board, also citing the principles of *Cutler*, listed employment factors which would be covered under the Act, including an unusually heavy work load and imposition of unreasonable deadlines. In the present case, appellant has alleged that he was required to work excessive hours because he had an inexperienced supervisor under him and because his facility lacked a maintenance man. But appellant did not provide any corroborating evidence, such as the name of the inexperienced supervisor, what added work he performed because of the inexperienced supervisor or specific examples of long hours and days he worked.

Regarding appellant's allegation of denial of promotions or a lateral move to another postmaster position, the Board has previously held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform his regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.¹⁶ Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's allegation that he developed stress due to insecurity about maintaining his position after the improvement team or his supervisors threatened to write him up, the Board has previously held that a claimant's job insecurity, including fear of a reduction-in-force, is not a compensable factor of employment under the Act.¹⁷ The Board has held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment as they do not involve the employee's ability to perform his or her regular or specially assigned work duties but rather constitute his or her desire to work in a different position.¹⁸ The Board has held that an employee's dissatisfaction with perceived poor management, such as appellant's allegations that the changes the improvement team

¹⁵ See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

¹⁶ *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

¹⁷ See *Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

¹⁸ *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

required were ineffective 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.¹⁹

Appellant alleged that he was required to open aviation envelopes and work for a Level 16 when he was at Level 21 and he was required to work in a tense environment where he was told to do things he objected to do. But the Board has held that an employee's dissatisfaction with holding a position in which he feels underutilized, performing duties for he which he feels overqualified or holding a position which he feels to be unchallenging or uninteresting is not compensable under the Act.²⁰ The Board notes that appellant's reaction to such conditions and incidents at work must be considered self-generated in that it resulted from his frustration in not being permitted to work in a particular environment or to hold a particular position.²¹

The Board has adhered to the general principle that union activities are personal in nature and are not considered to be within an employee's course of employment or performance of duty.²² But in the present case, the Office properly found that the union activities in question are considered employment factors because, as a member of management, appellant was required to participate in the adjudication of the union grievances.

The Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if such activity was substantiated by the record.²³ Appellant alleged that he was overworked but he failed to provide any corroborating evidence such as listing specific dates or tasks he was required to perform, so he has not established overwork as a compensable factor.

As the Office found in its January 3, 2003 decision, appellant has identified compensable factors of employment: namely that employees he was responsible for managing were upset with numerous changes imposed on them, that there were numerous grievances as a result of these changes and that there was a perceived threat related to a gun in the building. However, appellant's burden of proof is not discharged by the fact that he has established an employment factor which may give rise to a compensable disability under the Act. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.²⁴

¹⁹ See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

²⁰ See *Purvis Nettles*, 44 ECAB 623, 628 (1993).

²¹ *Tanya A. Gaines*, 44 ECAB 923, 934-35 (1993).

²² See *Larry D. Passalacqua*, 32 ECAB 1859, 1862 (1981).

²³ *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

²⁴ See *William P. George*, *supra* note 14.

The medical evidence submitted consisted of an August 3, 2000 report from Dr. Berman, a Board-certified psychiatrist, who diagnosed appellant with obsessive compulsive anxiety, but also indicated that appellant was fit to return to work because his problems were part of his character, not work related. Dr. Kleiman also submitted three reports. In his October 19, 2001 report, Dr. Kleiman wrote that appellant's emotional conditions were the result of bad relationships at work, but he does not identify one of the accepted factors as a causal factor. In his November 1, 2001 report, Dr. Kleiman wrote that appellant's work has definitely caused his conditions, but again he fails to identify a specific accepted factor. And in his December 17, 2001 report, Dr. Kleiman wrote that appellant was under his care for anxiety and depression that was related to a hostile work environment and unrealistic demands but these are not accepted factors. Additionally, Dr. Kleiman is an osteopath not a psychiatrist of clinical psychologist and, therefore, his opinions on appellant's psychological condition have diminished probative value.

CONCLUSION

For these reasons appellant has not met his burden of proof to establish that he sustained an emotional condition in the performance of his federal duties.

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2003 decision by the Office of Workers' Compensation Programs is affirmed.

Issued: January 22, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member