

In a February 25, 2005 certification of health care, Dr. Timothy Howell, a treating Board-certified psychiatrist, indicated that appellant's condition began in "early February 2005" and that appellant would be totally disabled until the work stressors resolved. He noted appellant's symptoms which included hopelessness, fatigue, severe irritability, low mood, fatigue, poor appetite, insomnia and attributed these to work stress.

On April 25, 2005 the Office advised appellant that the evidence he submitted was not sufficient to determine whether he was eligible for compensation because it did not include evidence of a medical condition sustained in the performance of duty. The Office informed appellant regarding the medical and factual evidence required to support his claim.

On May 13, 2005 the Office received a March 21, 2005 notice of proposed removal. The employing establishment noted the reasons for the removal proposal were actions by appellant which included threatening Tim Kick, lead mechanic, on February 14, 2005, failing to follow instructions, being absent without official leave and supplying misleading or false information during an investigation of the February 14, 2005 incident.

By decision dated May 27, 2005, the Office denied appellant's claim on the grounds that he failed to establish that the work incidents occurred as alleged or to supply any medical opinion diagnosing a condition causally related to the employment incidents.

On June 29, 2005 appellant requested reconsideration.

On July 5, 2005 the Office received a copy of appellant's information for precomplaint counseling, personal notes for a grievance dated May 6, 2005 for the period December 2004 to February 15, 2005, a step 1 grievance form filed by appellant regarding subcontracting of the vehicle maintenance work; a step 2 grievance appeal form regarding the proposal to remove appellant; a June 28, 2005 statement; progress notes for the period February 16 to April 22, 2005; and a March 21, 2005 notice of propose removal. Appellant also submitted a June 9, 2005 letter regarding a second opinion evaluation to determine his entitlement to leave under the Family Medical Leave Act (FMLA) and a March 17, 2005 physician's statement by Dr. Howell.

Dr. Howell diagnosed depression and chronic post-traumatic stress disorder in a March 17, 2005 physician's statement. He indicated that appellant was indefinitely totally disabled from February 15, 2005 due to this condition and noted the disability developed in early February 2005. Dr. Howell noted that appellant's depression was due to his post-traumatic stress disorder and a severe work-related stressor.

In a statement dated June 28, 2005, appellant alleged that he had been continuously discriminated against and harassed by management and that he had won an Equal Employment Opportunity (EEO) complaint. Appellant alleged that Mike McFarland harassed him in January and February while appellant was trying to perform his union duties. He alleged that the harassment included questions regarding performing the duties he was not responsible for, including the fueling of vehicles and emptying of recycle bins. Appellant alleged that Mr. McFarland harassed him in February in retaliation for filing an EEO complaint. Appellant stated that once he won the EEO complaint "the overtime stopped for everyone," which led to the contracting out of maintenance work.

In his precomplaint counseling form, appellant alleged retaliation for his EEO activity on June 19, 2001 and February 15, 2005 and discrimination based upon color, age, being a union representative and disabled Vietnam veteran. The persons responsible for the harassment and discrimination were; identified as Mr. McFarland, district manager; Jeff Huntley, Mr. McFarland's boss; Diane Klein, manager operations support; and Robert Schneider, manager.

In progress notes signed February 16, 2005, Drs. Richard H. Hsu, a treating physician, and Marsha M. Renier, a treating Board-certified internist, noted that appellant was evaluated for anxiety and homicidal ideation. The physicians related the cause of appellant's anxiety and homicidal ideation, as follows:

“States that two days ago was at work and shuttling vehicles at the post office South Side station. Was errantly blamed that a car was not in the correct location by a mechanic. The mechanic told the district manager and p[a]t[ient] felt the anxiety come on. Had a big meeting with the district manager yesterday (his supervisor had the day off) who is ‘changing things around and trying to control me and only me, and I don’t know why.’ District manager apparently told other workers that[,] if p[a]t[ient] did not do certain things, he was to be reported. Confrontation with district manager was yesterday that was inciting incident.”

Appellant also alleged that he has been harassed by Mr. McFarland for the past several months and that he was given “‘a brutal verbal beating’ yesterday during a meeting. The physicians determined that appellant “should not go to work nor confront his boss.”

In progress notes signed February 17 and 23, 2005, Randall J. Chipman, a social worker, stated it was unsafe for appellant to return to work due to stress and homicidal ideations. Mr. Chipman diagnosed depression, work stress, family stress and noted that appellant was “[h]aving homicidal ideation towards district manager.” He indicated that appellant's preexisting chronic post-traumatic stress disorder had been aggravated “by acute job stress.” With regard to the cause of the condition, Mr. Chipman attributed it to problems at work for the past 1½ months and an altercation which occurred 2 days prior. Financial and work stress were also noted as current stressors for appellant.

In progress notes signed on February 17, 2005, Dr. Timothy Howell, a treating Board-certified psychiatrist, diagnosed depression and aggravation of post-traumatic stress disorder “in context of severe work stressor, mod[erate] fam[ily] stressor.” The physician noted that appellant had concerns regarding perceived harassment at work including homicidal ideation of snapping his manager's neck if provoked. In an addendum signed on March 10, 2004, Dr. Howell noted that appellant continued to have symptoms of depression and homicidal ideation.

By decision dated July 18, 2005, the Office denied modification of the May 27, 2005 decision. The Office found that appellant failed to establish his allegations of harassment or that his managers had acted abusively or erroneously in the proposed notice of removal.

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.¹ 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.²

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 employment factors.³ This burden includes the submission of a detailed description of the employment factors or conditions which the employee believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

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.⁵ 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.⁶

¹ 5 U.S.C. §§ 8101-8193.

² See *Janice I. Moore*, 53 ECAB 777 (2002); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Marlon Vera*, 54 ECAB ____ (Docket No. 03-907, issued September 29, 2003); *Pamela R. Rice*, 38 ECAB 838 (1987).

⁴ *Linda K. Mitchell*, 54 ECAB ____ (Docket No. 03-1281, issued August 12, 2003); *Effie O. Morris*, 44 ECAB 470 (1993).

⁵ *Penelope C. Owens*, 54 ECAB ____ (Docket No. 03-1078, issued July 7, 2003); *Norma L. Blank*, 43 ECAB 384 (1992).

⁶ *Debora L. Hanna*, 54 ECAB ____ (Docket No. 03-555, issued April 23, 2003); *Alice F. Harrell*, 53 ECAB 713 (2002).

ANALYSIS

Appellant alleged an aggravation of his post-traumatic stress disorder due to stress from being harassed at work. In a June 28, 2005 statement, appellant attributed his stress to harassment by both coworkers and his supervisor, Mr. McFarland. By decisions dated May 27 and July 18, 2005, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant claimed he was harassed by Mr. McFarland at work. The Board notes, however, that the record contains no witness statements supporting appellant's allegations regarding harassment by Mr. McFarland. Moreover, the employing establishment submitted a copy of a notice of proposed removal based upon appellant's threatening behavior toward Mr. Kick on February 14, 2005. The evidence with regard to the alleged harassment are a step 1 grievance filed by appellant regarding subcontracting of the vehicle maintenance work and a step 2 grievance appeal form regarding the proposed removal. The Board has held that grievances in and of themselves do not establish that workplace harassment or unfair treatment occurred.⁷ With regard to the proposed removal, the employing establishment noted that the removal was based on actions taken by appellant which included threatening Mr. Kick on February 14, 2005, failing to follow instructions, being absent without official leave and supplying misleading or false information during an investigation of the February 14, 2005 incident. There is no other evidence of record to support appellant's allegations of harassment by Mr. McFarland. Appellant has not established that Mr. McFarland harassed or discriminated against him. The Board finds that appellant has not established harassment or discrimination by employing establishment personnel.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.⁸

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

⁷ *David C. Lindsey, Jr.*, 56 ECAB ____ (Docket No. 04-1828, issued January 19, 2005). (The issue is whether the claimant has submitted sufficient evidence under the Act to establish a factual basis for the claim by supporting her allegations with probative and reliable evidence. The primary reason for requiring factual evidence from the claimant in support of her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board).

⁸ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. See *Peter D. Butt Jr.*, 56 ECAB ____ (Docket No. 04-1255, issued October 13, 2004); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 18 and May 27, 2005 are affirmed.

Issued: January 4, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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