

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

L.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE
Nashville, TN, Employer**

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**Docket No. 06-1974
Issued: March 16, 2007**

Appearances:
Appellant, pro se
Catherine P. Carter, Esq., for the Director

Oral Argument February 22, 2007

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 23, 2006 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated May 25, 2006, which denied his claim. 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 met his burden of proof to establish that he sustained an emotional condition in the performance of duty causally related to his federal employment.

FACTUAL HISTORY

This case has previously been before the Board. By decision dated May 23, 2003, the Board affirmed a January 15, 2002 merit decision in which the Office denied that appellant sustained an emotional condition in the performance of duty. The Board also found that, in a May 8, 2002 decision, the Office properly denied appellant's request for reconsideration. On July 3, 2003 appellant requested reconsideration of the Board's May 23, 2003 decision and by

order dated September 30, 2003, the Board denied his request as untimely.¹ The law and the facts of the previous Board decisions are incorporated herein by reference.

On December 7, 2003 appellant requested reconsideration with the Office and reiterated his contentions that he was harassed and discriminated against by employing establishment management, specifically alleging that Dwayne Davis did not follow postal hiring policies and procedures. In support of his reconsideration request, appellant submitted a May 9, 2001 statement in which Mary L. Jordan discussed a leave request and claim form. In a January 29, 2002 statement, Francesca Munoz advised that she was assigned to the examination unit on June 26, 1998 and did not undergo a desk audit. In a February 20, 2002 statement, Annette Patterson advised that she was detailed to the unit in June 1998 and did not undergo a desk audit. In an email dated September 27, 2002, Robert Fortson generally alleged improper hiring practices at the employing establishment and questioned why he was not hired for a permanent position. An October 17, 2002 statement from Jacqueline Waters described a 1997 meeting with appellant regarding hiring. In an October 20, 2002 statement, H. Lee made a general complaint about Mr. Davis and employing establishment hiring practices. In a November 17, 2002 affidavit, Walter Frierson discussed his hiring at the employing establishment. In deposition testimony dated December 12, 2002, Jack Burns addressed appellant's Equal Employment Opportunity Commission (EEOC) claim. In a February 4, 2003 statement, Sandra F. Rueff disagreed with several statements made by Mr. Davis in an EEOC affidavit. In a February 14, 2003 affidavit, Cynthia W. Fitzgerald, an attorney representing appellant before the EEOC, discussed his claim. In an April 15, 2003 statement, Harry L. Vaughn, an EEOC manager at the employing establishment, discussed an August 1998 meeting in which appellant was not coherent. In an April 16, 2005 statement, appellant argued that the statements, he submitted corroborated his allegations. He also submitted an October 19, 1998 fitness-for-duty medical examination report from Dr. Gilbert W. Raulston, a Board-certified psychiatrist, who diagnosed major depression. In an October 30, 1998 memorandum, an employing establishment nurse advised to an employing establishment physician regarding appellant's request for Family Medical Leave.

In a merit decision dated May 25, 2006, the Office denied modification of its prior decision. It found that, as appellant failed to establish a compensable factor of employment, he failed to establish that he sustained an emotional condition in the performance of duty.

LEGAL PRECEDENT

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his stress-related condition.² If a claimant does implicate a factor of employment, the

¹ The Board also inadvertently assigned this request a separate docket number, 03-1847 and by order dated March 21, 2005, the Board dismissed 03-1847 for lack of jurisdiction.

² *Leslie C. Moore*, 52 ECAB 132 (2000).

Office should then determine whether the evidence of record substantiates that factor.³ 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.⁴

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁵ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁶ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁷ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁸ A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.⁹

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.¹⁰ Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹¹

For harassment or discrimination to give rise to a compensable disability, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of

³ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁴ *Id.*

⁵ 28 ECAB 125 (1976).

⁶ 5 U.S.C. §§ 8101-8193.

⁷ See *Robert W. Johns*, 51 ECAB 137 (1999).

⁸ *Lillian Cutler*, *supra* note 5.

⁹ *Roger Williams*, 52 ECAB 468 (2001).

¹⁰ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹¹ *Kim Nguyen*, 53 ECAB 127 (2001).

whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations that the harassment occurred with probative and reliable evidence.¹²

ANALYSIS

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an injury in the performance of duty. He alleged that he was harassed and suffered retaliation by Mr. Davis for his refusal to engage in illegal hiring practices and improperly underwent unannounced desk audits and investigations. Appellant submitted a number of statements from coworkers and job applicants. The Board, however, finds these statements insufficient to establish his claim because they are of a general nature and do not refer to the specific incidents relating to appellant.

In her statement, Ms. Jordan merely referred to a leave request and appellant's claim. Generally, actions of the employing establishment in matters involving the use of leave are not considered compensable factors of employment as they are administrative functions of the employer and not duties of the employee.¹³ Likewise, the processing of compensation claims bears no relation to appellant's day-to-day or specially-assigned duties.¹⁴

Regarding appellant's contention that he was improperly investigated and underwent an improper desk audit, mere disagreement with or dislike of actions taken by a supervisor or manager or frustration with the policies and procedures of the employing establishment,¹⁵ will not be compensable absent evidence establishing error or abuse as they relate to administrative or personnel matters.¹⁶ While appellant provided statements from Ms. Munoz and Ms. Patterson who advised that they did not undergo desk audits in June 1998, this fact alone does not demonstrate that the employing establishment committed error or abuse in conducting appellant's desk audit. He, therefore, did not submit sufficient evidence to establish that the audit was unwarranted or handled unreasonably. Appellant provided no corroborative evidence to support that he was improperly investigated. Thus, he did not establish error or abuse on the part of the employing establishment in these administrative matters.¹⁷

Appellant also alleged harassment by management when he expressed disagreement with hiring practices at the employing establishment. He, however, submitted no substantive evidence to support this contention. The statements of Mr. Burns, Ms. Rueff, Mr. Vaughn and Ms. Fitzgerald were in regard to appellant's EEOC claim and not his claim under the Act where the issue is whether the claimant has submitted sufficient evidence under the requirements of the Act to establish a factual basis for the claim by supporting his or her allegations with probative

¹² *James E. Norris*, 52 ECAB 93 (2000).

¹³ *David C. Lindsey, Jr.*, 56 ECAB ____ (Docket No. 04-1828, issued January 19, 2005).

¹⁴ *Phillip L. Barnes*, 55 ECAB 426 (2004).

¹⁵ *Robert Breeden*, 57 ECAB ____ (Docket No. 06-734, issued June 16, 2006).

¹⁶ *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

¹⁷ *See Ana D. Pizarro*, 54 ECAB 430 (2003).

and reliable evidence.¹⁸ With regard to emotional claims arising under the Act, the term “harassment” as applied by the Board is not the equivalent of “harassment” as defined or implemented by other agencies, such as the EEOC, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers’ compensation under the Act, the term “harassment” is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by coemployees or workers.¹⁹ Thus, the statements of Mr. Burns, Ms. Rueff, Mr. Vaughn and Ms. Fitzgerald do not substantiate appellant’s allegations.

In their statements, Mr. Fortson, Ms. Waters, H. Lee and Mr. Frierson questioned the hiring practices at the employing establishment. These statements, however, do not describe any specific incidents in which appellant was harassed. The Board, therefore, finds that their statements were too general in nature and do not rise to a level that indicates that the employing establishment acted in an abusive manner or that appellant was harassed. Appellant did not establish a compensable employment factor with respect to the claimed harassment. Moreover, in its previous decision, the Board reviewed a number of statements submitted by the employing establishment that countered appellant’s contentions in this regard. The employing establishment denied that appellant was subjected to harassment or discrimination and the EEOC made a finding of no discrimination or retaliation.²⁰ The Board, therefore, finds that appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by employing establishment management²¹ and did not establish that he sustained an emotional condition in the performance of duty as alleged.²²

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an emotional condition causally related to his federal employment.

¹⁸ See *David C. Lindsey, Jr.*, 56 ECAB ____ (Docket No. 04-1828, issued January 19, 2005).

¹⁹ *Ronald K. Jablanski*, 56 ECAB ____ (Docket No. 05-482, issued July 13, 2005).

²⁰ While appellant testified at oral argument that a settlement had been made regarding his EEOC claim, a final court decision is not contained in the case record.

²¹ See *James E. Norris*, *supra* note 12.

²² As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record; see *Katherine A. Berg*, 54 ECAB 262 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 25, 2006 be affirmed.

Issued: March 16, 2007
Washington, DC

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

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

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