

history” of his department head, Robert Knowles; the handling of a prior Equal Employment Opportunity (EEO) claim he filed against a female supervisor he feared; and “the lack of management skills of (sic) the part of my supervisor which resulted in a previous incident in which a staff member shot her.”¹ He asserted that, when he requested a transfer in May 2002 to avoid supervisory abuse, Mr. Knowles made assumptions about his medical condition during the transfer application process that were not valid.

Appellant claimed that a Navy Inspector General’s report established that Mr. Knowles stated regarding his February 28, 2003 EEO claim, “Here’s a really funny part, he says at the end that he won’t file an EEO complaint because of his wife’s tears or some shit like that.... I’d like to stick a fork in his fat fucking stomach.” He claimed that Mr. Knowles referred to him in a March 6, 2003 email when he stated: “I suspect this guy will become your next ‘L’. Less said in writing is better and when put in writing, make it only a few sentences.” Appellant asserted that Mr. Knowles and other management officials wrongly accused him of abusing sick leave.

Appellant submitted documents, including memoranda he produced and emails that were sent between him and supervisors. In some documents, he discussed his belief that supervisors wrongly accused him of abusing sick leave.² The record contains a document entitled “Examples of Misconduct Reported” which indicates that an unidentified person reported that an unidentified person made a comment similar to the comment appellant asserted Mr. Knowles made regarding his February 28, 2003 EEO complaint. The record also contains a March 6, 2003 email from Mr. Knowles to Mary Silvia, a supervisor, which stated: “I suspect this guy will become your next ‘L’. Less said in writing is better and when put in writing, make it only a few sentences.” Appellant also submitted reports produced by Dr. Joseph Blumen, an attending Board-certified family practitioner and by his therapist who was a licensed social worker.

On August 17, 2006 the Office requested that appellant submit additional factual and medical evidence in support of his claim. In an August 22, 2006 letter, appellant indicated that he felt that the documentation already of record was sufficient to support his claim. He submitted several more reports of his therapist.

On September 12, 2006 David Reusch, an employing establishment official, expressed disagreement with appellant’s assertions. He contended that appellant had not been subjected to harassment or discrimination and indicated that there was no evidence that his transfer request was improperly denied or that supervisors unfairly accused him of abusing sick leave. Mr. Reusch indicated that there was no evidence that Mr. Knowles made the statement that appellant alleged that he made regarding his February 28, 2003 EEO claim. He suggested that the March 6, 2003 email referred to appellant but indicated that Mr. Knowles’ comment was a “simple note of guidance to the department head on how to respond to the claimant.”

¹ Appellant did not specifically identify which female supervisor he feared or fully articulate why he feared her.

² In one document, appellant indicated that an unidentified supervisor asked him if he was afraid of her.

In a December 22, 2006 decision, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. The Office noted that the March 6, 2003 comment appeared to refer to appellant but that it did not rise to the level of abuse.

Appellant requested a review of the written record by an Office hearing representative. In an April 16, 2007 decision, the Office hearing representative affirmed the December 12, 2006 decision.³

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.⁴ 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.⁵

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.⁶ 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.⁷

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.⁸ 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

³ Appellant submitted additional evidence after the Office's December 12, 2006 decision, but the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*; 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁷ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁸ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁹

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. The Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged harassment and discrimination on the part of his supervisors, including Mr. Knowles, the department head, as contributing to his claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹⁰ 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.¹¹

In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination. The board finds that appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors.¹² Appellant alleged that supervisors made statements and engaged in actions which he believed constituted harassment and discrimination, but he did not provide adequate corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.¹³

Appellant asserted verbal abuse by Mr. Knowles regarding his February 28, 2003 EEO complaint. The record contains a barely legible document entitled "Examples of Misconduct Reported" which indicates that an unidentified person reported that an unidentified person made a comment similar to the comment appellant asserted Mr. Knowles made regarding his EEO complaint. However, this document does not support appellant's claim as there is no indication who made the alleged comment, to whom it was directed or who heard it. This evidence is not sufficient to substantiate appellant's allegation.

⁹ *Id.*

¹⁰ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹¹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹² *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).

¹³ *See William P. George*, 43 ECAB 1159, 1167 (1992).

The record does contain a March 6, 2003 email from Mr. Knowles to Ms. Silvia, a supervisor, which stated: “I suspect this guy will become your next ‘L’. Less said in writing is better and when put in writing, make it only a few sentences.” There is evidence in the record which suggests that this email referred to appellant. Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.¹⁴ Appellant has not shown how this comment would rise to the level of verbal abuse or otherwise fall within the coverage of the Act.¹⁵ As noted by the employing establishment, the comment appears to represent an attempt to provide guidance about how to respond to appellant’s claim rather than an attempt to harass him.¹⁶ Moreover appellant did not submit the favorable results of a grievance which showed that he was subjected to harassment or discrimination.¹⁷ Thus, he has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Regarding appellant’s allegations that the employing establishment wrongly denied leave, unfairly accused him of abusing leave and improperly denied his request for a transfer, 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.¹⁸ Although the handling of leave requests, disciplinary actions and job transfer requests are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹⁹ 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.²⁰

¹⁴ *Harriet J. Landry*, 47 ECAB 543, 547 (1996).

¹⁵ See, e.g., *Alfred Arts*, 45 ECAB 530, 543-44 (1994) and cases cited therein (finding that the employee’s reaction to coworkers’ comments such as “you might be able to do something useful” and “here he comes” was self-generated and stemmed from general job dissatisfaction). Compare *Abe E. Scott*, 45 ECAB 164, 173 (1993) and cases cited therein (finding that a supervisor’s calling an employee by the epithet “ape” was a compensable employment factor).

¹⁶ The Board notes that it does not appear that the sender or receiver of the email provided the email to appellant. It is unclear when or how appellant received a copy of the email.

¹⁷ Appellant asserted that he did not feel safe at work and indicated that he feared a female supervisor. The Board has recognized the compensability of physical threats or verbal abuse in certain circumstances. See *Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991). However, appellant did not identify the supervisor he feared or adequately explain why he feared her.

¹⁸ 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).

¹⁹ *Id.*

²⁰ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

The Board finds that appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters. Appellant did not submit the favorable results of a grievance which showed that the employing establishment committed wrongdoing. He submitted a number of documents, including memoranda he produced and emails that were sent between him and supervisors, in which he discussed his belief that supervisors wrongly accused him of abusing sick leave. However, appellant's mere assertions in this regard would not be sufficient to establish his claim. Thus, he has not established a compensable employment factor under the Act with respect to administrative matters.

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.²¹

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.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' April 16, 2007 and December 12, 2006 decisions are affirmed.

Issued: October 25, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

²¹ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).