

This case has previously been before the Board. In a May 8, 2009 decision, the Board affirmed in part the Office's denial of appellant's emotional condition claim finding that the claimed employment factors alleged by appellant and considered by the Office were not

compensable.<sup>1</sup> The Board found that the Office failed to review appellant's allegations pertaining to drawings and comments by coworkers or evidence and arguments pertaining to Phillip Knight, a retired pharmacy chief. The Board remanded the case to the Office for a determination as to whether these additional allegations constituted compensable factors of employment. The facts of the prior Board decision are incorporated herein by reference.

In a March 17, 2007 statement, appellant alleged that several insulting and derogatory comments were made about him while the front of the pharmacy was under construction. He stated that someone drew a valentine heart that stated, "Brenda loves Tom C." Appellant found this humiliating and disturbing because his wife could see this from a pick-up window in front of the pharmacy. He stated that the valentine heart remained up for several months even though he told his supervisor it was offensive. Appellant's supervisor finally marked it out on December 22, 2006. Appellant advised that another drawing showed him looking at his watch with the caption, "What time is it?" He found the drawing offensive and derogatory as it insinuated that he was always gone. On December 13, 2006 another pharmacist, Phelicia Bush, made a derogatory comment about appellant when she stated, "I would ask [appellant] to do it but he would say, Oh! My blood pressure is too high!" Appellant submitted photographs of the drawing. His representative argued that the drawing embarrassed and belittled appellant and remained in view for months after he complained about them. Appellant's representative contended this was objective evidence of a hostile work environment. It was also argued that the employing establishment did not deny appellant was exposed to drawings in the workplace or took timely action to remove the drawings. Appellant's representative argued that allowing such drawings to be displayed for an unnecessary length of time was error.

Appellant also alleged that Mr. Knight repeatedly returned to the restricted pharmacy area even though he had retired. He stated that having Mr. Knight in his work area made the work environment hostile. Mr. Knight stood behind him in his personal work space and harassed him on May 14 and December 23, 2005, October 31, 2006 and January 10, 2007. Appellant alleged that Mr. Knight had never been informed that he had to sign in as a guest of the pharmacy. He alleged that Mr. Knight threatened him with 14-inch scissors and he experienced stress when he found out that Mr. Knight had five loaded guns on federal property. Appellant provided a visitor log which noted Mr. Knight came to the pharmacy on October 31, 2006 at 9:45 a.m. No time out time was indicated. In a handwritten note, appellant indicated that Mr. Knight came into the pharmacy at 3:00 p.m. on January 10, 2007 and he went to the line away from Mr. Knight.

In an undated statement received on March 25, 2008, Marilyn Wallace, a supervisor, noted that the drawings on the temporary wall were of various persons in the pharmacy and were not malicious. The one which said "Brenda loves Tom C or Tom Cruise" was marked out when appellant mentioned that it bothered him. Ms. Wallace also indicated that Mr. Knight frequently visited the pharmacy to see how the ScriptPro machine worked. She indicated the person who

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<sup>1</sup> Docket No. 08-2015 (issued May 8, 2009). With respect to appellant's allegations pertaining to Mr. Knight, the Board addressed why appellant's allegations pertaining to Mr. Knight were insufficient to establish error or abuse with policies and procedures of the employing establishment regarding sign in procedures. The Board also found that appellant failed to establish a factual basis for his claim of harassment or discrimination by Mr. Knight and the employing establishment was under no obligation to make any special accommodations, as the present claim is based on exposure to new employment factors and is separate from file number xxxxx997.

let him in must have forgotten to make him sign in. Ms. Wallace did not recall any contact between Mr. Knight and appellant.

In a decision dated September 3, 2009, the Office denied modification of its previous decisions. It found that appellant did not establish compensable factors of employment as his statements did not show that the employing establishment erred or acted abusively or subjected him to harassment or discrimination. The Office found that the photographs of drawings were not offensive or ill-intended.

### **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 illness has some connection with employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to his regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of his work or his fear and anxiety regarding his ability to carry out his work duties.<sup>2</sup> By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that

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<sup>2</sup> *Ronald J. Jablanski*, 56 ECAB 616 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>3</sup> *Id.*

<sup>4</sup> *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>5</sup> *Kim Nguyen*, 53 ECAB 127 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>6</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

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.<sup>7</sup> As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim, but rather, must be corroborated by the evidence.<sup>8</sup> Mere perceptions and feelings of harassment will not support an award of compensation.<sup>9</sup>

### ANALYSIS

Appellant attributed his emotional condition to Mr. Knight, the retired chief of pharmacy, being allowed into the restricted pharmacy area and to drawings and comments by coworkers which he found were a source of embarrassment. These allegations do not relate to appellant's performance of his regular or specially assigned duties under *Cutler*. Instead, they relate to administrative matters, his desire to work in a particular environment and his perceptions of unfair treatment or harassment.

Allegations relating to administrative or personnel matters are unrelated to the employee's regular or specially assigned-work duties and do not generally fall within the coverage of the Act.<sup>10</sup> The Board has held, however, that an administrative or personnel matter will be considered 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 employer acted reasonably.<sup>11</sup> Appellant has not shown that his employer's decision to allow drawings on a temporary wall or its allowing Mr. Knight to visit at the pharmacy was unreasonable. The statement from Ms. Wallace supports that the drawings were temporary and that the one to which appellant objected was marked out when he mentioned that it bothered him. She noted that it could be construed as not directed at appellant. Ms. Wallace acknowledged that Mr. Knight frequently visited the employing establishment to see how a piece of equipment worked. She did not recall any contact between appellant or Mr. Knight. The Board finds that these administrative matters do not rise to the level of compensable employment factors. The employer provided a reasonable explanation for Mr. Knight's presence and it noted that the drawings were temporary and that it took appropriate action when appellant voiced an objection. The photographs of the drawings do not reflect anything demeaning or offensive specifically towards appellant.

Appellant also alleges that these matters show that he was subjected to a hostile work environment and harassment, retaliation and improper treatment by management with respect to

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<sup>7</sup> *Id.*

<sup>8</sup> *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Arthur F. Hougens*, 42 ECAB 455 (1991) and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence established such allegations).

<sup>9</sup> *Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>10</sup> An employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. *Sandra Davis*, 50 ECAB 450 (1999).

<sup>11</sup> *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

being exposed to drawings on the employer's wall and comments made by coworkers, which he considered to be a source of embarrassment.<sup>12</sup> He stated that he found the drawing of the valentine heart which stated "Brenda loves Tom C" very humiliating and disturbing and that it took several months for his supervisor to mark it out. Appellant stated that the drawing of him looking at his watch was very insinuating because it was not true that he was always gone. However, these appear to be his perceptions regarding the drawings. The evidence of record does not establish that the drawings were demeaning or disrespectful toward appellant.<sup>13</sup> As noted, when appellant objected to one of the drawings, the employer marked it out. The Board finds that appellant's reaction to the drawings is self-generated and not a compensable factor of employment.

The Board finds that the statement attributed to Ms. Bush on December 13, 2006, that she would not ask appellant to do a task because he would say his blood pressure was too high, does not constitute verbal abuse under the Act. There is no evidence that Ms. Bush made such a comment to appellant. Appellant has submitted no evidence, such as witness statements, to establish his allegation as factual. General allegations that he was treated disrespectfully are insufficient to establish that harassment did, in fact, occur. While the Board has recognized the compensability of verbal abuse in certain situations, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.<sup>14</sup> The Board finds that this allegation is not factually established as alleged.<sup>15</sup> Appellant has not established a compensable employment factor with respect to these allegations.

The majority of appellant's allegations pertaining to Mr. Knight were addressed in the Board's prior decision. Appellant has since alleged that Mr. Knight stood behind him in his personal space, threatened him with 14 inch long scissors; and that Mr. Knight had five loaded guns on federal property. The record supports that Mr. Knight entered the pharmacy area after he retired; but there is no evidence to support appellant's allegations that Mr. Knight had stood in his work space. Appellant noted only that he moved to another work area away from Mr. Knight. There is also no evidence to support his allegations that Mr. Knight ever threatened him with scissors or had firearms on federal property. Appellant has failed to establish a factual basis for his allegations of harassment with probative and reliable evidence.<sup>16</sup> The evidence

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<sup>12</sup> For harassment or discrimination to give rise to compensable disability under the Act, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. The issue is whether the claimant has submitted sufficient evidence under the Act to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence. *C.T.*, 60 ECAB \_\_\_\_ (Docket No. 08-2160, issued May 7, 2009).

<sup>13</sup> *M.D.*, 59 ECAB \_\_\_\_ (Docket No. 07-908, issued November 19, 2007) (mere perceptions and feelings of harassment or discrimination will not support an award of compensation; the claimant must establish such allegations with probative and reliable evidence).

<sup>14</sup> See *Leroy Thomas, III*, 46 ECAB 946, 954 (1995).

<sup>15</sup> See *Denis M. Dupor*, 51 ECAB 482, 486 (2000).

<sup>16</sup> See *Mary J. Summers*, 55 ECAB 730 (2004).

instead suggests that appellant's perceptions of harassment were self-generated and not compensable under the Act.<sup>17</sup>

While appellant's representative contends that the Office failed to address the additional evidence and argument pertaining to Mr. Knight, the record does not support this. The Office's September 3, 2009 decision reflects that it considered the allegations as directed by the Board and made appropriate findings. Appellant has not established a compensable employment factor under the Act. He has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty.<sup>18</sup>

### **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 decision of the Office of Workers' Compensation Programs dated September 3, 2009 is affirmed.

Issued: August 11, 2010  
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

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<sup>17</sup> See *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>18</sup> 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 (1992).