United States Department of Labor
Employees' Compensation Appeals Board

M.H., Appellant	)	
and	)	**Docket No. 09-1125**
	)	**Issued: February 23, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Canton, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 24, 2009 appellant filed a timely appeal from an October 17, 2008 decision of the Office of Workers' Compensation Programs affirming the denial of his emotional condition claim and a February 12, 2009 decision denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty; and (2) whether the Office properly denied his reconsideration request under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On December 4, 2006 appellant, then a 40-year-old mail carrier, filed a claim for stress arising out of his federal employment. He first became aware of his condition on March 1, 2005 and of its relationship to his employment on November 17, 2006. Appellant alleged that he had been treated badly since he filed a claim for a January 9, 2003 shoulder injury. He alleged that

his work schedule was changed; a supervisor pretended to be from the Office in order to obtain medical information; he had involuntary payroll deductions; the employing establishment was unwilling to assist with leave buy back; a breach of contract in an Equal Employment Opportunity (EEO) case; and his request for a transfer to building maintenance was denied.

In a May 3, 2007 statement, appellant noted submitting a Form CA-2 occupational claim form five times from December 4, 2006 through March 2, 2007 to have it processed. He stated that his supervisor refused to fill out her portion of the form and send it to the Office. Appellant noted that he has two previous stress claims accepted by the Office, claims file numbers xxxxxx733 and xxxxxx950 and the work-related shoulder injury.[1] Since 2005, his supervisors, Cheryl Shively and Monique (Nikki) Bagley, and manager Don Tucci were looking for reasons to discipline him. Appellant alleged that Mr. Tucci tried to have him work contrary to his limitations. He stated that Ms. Bagley represented herself as from the Office and had medical information sent to her illegally from his physician's office. Appellant alleged that his supervisors returned him to work on March 21 and 22, 2005 against his physician's orders regarding repetitive activities of the arms. He was hospitalized for a bowel obstruction related to his shoulder injury on May 5, June 15, September 27 and December 1, 2005 and September 2006. Appellant alleged that supervisors harassed and intimidated him when he returned to work. On May 30, 2005 Ms. Bagley did not relay a message from his wife to call home and denied talking to his wife. On May 31, 2005 she followed appellant as he delivered express mail. On another occasion Ms. Bagley looked as if she was going to open his lunchbox. On November 18, 2005 appellant reported being ordered to drive a vehicle that smelled of smoke which caused chest tightness. Ms. Shively told him that he would be terminated if he did not use the vehicle. On December 19, 2005 appellant was given a job offer which changed his start time from 7:45 a.m. to 8:30 a.m. He alleged that this affected his family life. Appellant had no work to do after 3:30 p.m. and he did not have required daily service/safety talks after the changed start time. As the employing establishment did not act on his request for the service/safety talks from March to September 2006, he contacted the district office and submitted a safety hazard report but there was no response.

Appellant also alleged that he was denied several positions at the employing establishment, contending that the employees who obtained the positions had more accidents than him. He was told that there were no available positions, he was not placed on a desired list and he felt he was being discriminated against because he was injured. Appellant alleged Shared Services lost or misplaced documents; refused to enter required documentation; refused to complete forms and process leave restorals from 2003 to 2006; and called and faxed his physician office repeatedly for medical information. In November 2005, he bid on his vacation days for 2006 and scheduled vacation for November 27 through December 3, 2006. Appellant stated that he was off work from September 2006 through January 2007 for his accepted shoulder condition and forgot about his scheduled vacation. On November 27, 2006 he contacted Jeff Thomas, a manager, to relinquish the requested leave but Mr. Thomas contacted Ms. Shively, who said it was not allowed. Appellant stated that the Office told him he could stay on leave without pay due to the authorized surgery, but Ms. Shively placed him on annual leave. He stated that this caused a payroll deduction that should not have happened. Appellant alleged

[1] These other claims are not before the Board on the present appeal.

that the employing establishment breeched an agreement in an EEO claim he filed in 2004. He requested clock rings in July 2006 from Ms. Shively for the year 2004 but she put him off by telling him she would provide them the next day. Appellant alleged that she yelled at him when she did not get her way and tried to get him to go against physician's orders regarding his shoulders. He alleged that Ms. Shively threatened him stopped him while he was working and gave him work other limited-duty employees could do.

The Office received statements dated February 10 to March 28, 2007; a March 5, 2007 statement from Ms. Shively indicating that she was not aware that appellant had a stress problem; a February 3, 2007 statement from coworker Cynthia Brick addressing his limited duties before surgery on September 21, 2006; copies of his modified-duty assignments; a March 30, 2005 report of hazard, unsafe condition or practice signed by him; a June 25, 2005 letter from Mr. Tucci requesting documentation to support his claim of incapacity; letters from the employing establishment regarding leave buyback; prearbitration settlement; a January 13, 2006 letter regarding his reassignment request; a March 15, 2005 letter from him requesting a clerk position; a December 27, 2005 letter from him requesting a transfer to building maintenance; an undated log from him regarding work duties from April 12, 2006 to February 6, 2007; a January 20, 2006 EEO complaint and a September 27, 2004 EEO agreement between him and the employing establishment.

In a September 27, 2005 letter, Michelle A. Marks, an office administrator at a rehabilitation center, noted that, on March 2, 2005, Ms. Bagley requested side B of the Form CA-17 be completed by a physician and sent to her. She advised that this could not be done. On March 24, 2005 appellant directed not to release any information to Ms. Bagley. In a November 7, 2005 statement, a transcriber from the rehabilitation center advised that Ms. Marks spoke with Ms. Bagley on or about March 2, 2005 about a CA-17 form and Ms. Bagley stated that she was from the "Bureau of Worker's Compensation."

Appellant submitted reports from Ray A. Brunner, Ph.D., a clinical psychologist. On May 14, 2007 Dr. Brunner diagnosed major depressive disorder and generalized anxiety disorder caused by job stress. He indicated that these conditions were present since September 8, 2005 and that appellant was unable to function as a letter carrier.

The employing establishment controverted the claim. In a May 15, 2007 letter, Ms. Shively stated that she always filled out appellant's claim CA-2 forms as well as any other paperwork sent to her. She was not at the facility when he was denied a position that he sought and that he was not selected for another position because a coworker had greater seniority. Ms. Shively stated that Shared Services indicated to her that appellant's leave buyback was denied, as he did not file an appeal after a decision by the Office. She denied calling appellant's physician but provided him with a letter to give to his physician to complete. Ms. Shively changed appellant's start time due to office efficiency. She noted his time was changed back to 8:00 a.m., as there were problems with delivery confirmation scores. The fact that appellant was not given safety talks was an oversight that could have been remedied without appellant going to the district manager. Ms. Shively denied discriminating against him because of his injuries. She charged appellant annual leave in conformance with the union contract and she corrected this as soon as she received instructions. Ms. Shively advised two payroll adjustments were processed on January 27, 2007, which he signed on January 30, 2007.

In a March 2, 2005 statement, Ms. Bagley noted faxing a CA-17 form to appellant's physician and speaking with the transcriber from the rehabilitation center. She stated that she identified herself as appellant's supervisor and not from workers' compensation. Ms. Bagley noted that she needed work restriction information so that she could prepare an appropriate job offer. A copy of the fax coversheet identified her as a supervisor.

By decision dated September 12, 2007, the Office denied the claim finding that appellant did not establish any compensable factors.

In a March 12, 2008 letter, appellant requested reconsideration. He alleged a pattern of abuse and confrontations by supervisors. Appellant summarized his prior stress claims and referred to documents in those claims. He alleged that Ms. Bagley and another supervisor, Candace Daniels, falsified statements jointly regarding a response to a carrier's injury and that Mr. Tucci falsified an EEO statement. Appellant noted that a customer wasted over 30 minutes to pick up a package that had already been delivered and he was not allowed to talk to the customer. He stated that Coworker Cindy Brick noticed Ms. Bagley going through personal belongings. Appellant claimed that the employing establishment breached a mediation contract with the EEOC. He indicated on January 21, 2005 an unsafe vehicle was on the parking lot waiting to be repaired and the next day Ms. Bagley told him to use that vehicle to deliver express mail. Appellant stated that he refused to use the vehicle because of noise from the front of the vehicle which a mechanic later told him were loose main bearings. He noted a situation where he could not do his job because the supervisor would not answer a direct question involving a customer's delivery problem. Appellant indicated that express mail delivery issues were the reason management changed his starting time and stated that those issues could be avoided if he was allowed to take out express mail when he came to work. He alleged it was normal for postal supervisors to lie, that the Employees Assistance Program was dispatched to his office, that Ms. Bagley was asked to be replaced and not permitted to do street observations and that the Canton police had to remove her from a postal collection truck for trying to remove the keys from the vehicle.

Evidence submitted included medical evidence and objective testing regarding appellant's other conditions. Additional medical reports from Dr. Brunner concerning appellant's emotional condition were also submitted. In a March 31, 2008 report, he stated that appellant's psychological condition had severely deteriorated as reflected by testing and he was unable to function as a letter carrier. Dr. Brunner continued to opine appellant's diagnoses were work related.

In an April 3, 2008 statement, Ms. Bagley indicated that she never saw appellant being harassed or treated unfairly. She referred to him as anti-management and a troublemaker and advised management treaded very lightly around him so as not to give him cause to start trouble. Ms. Bagley indicated that management had requested medical documentation from appellant for his work injury for some time. She stated that Mr. Tucci had her to call the physician's office to verify one of his appointments. Ms. Bagley told the receptionist who she was and the purpose of her call and the receptionist told her that appellant's physician's was on maternity leave and had no appointments. When Mr. Tucci confronted appellant with this, he went to the union. Ms. Bagley denied pretending to be someone else or verbally requesting medical records. She indicated that she has sent forms documenting appellant's work restrictions on numerous

occasions and called to verify receipt in instances where he stated that such forms were not received by his physician. Ms. Bagley indicated that when he did provide medical documentation, it indicated that he could carry mail with limitations. She noted that appellant disagreed about his fitness to return to such duty and asserted that the medical documentation was obtained inappropriately. Ms. Bagley stated that an employing establishment nurse confirmed that appellant's physician released him to carrying mail with limitations. She further indicated that appellant was provided an opportunity to provide additional documentation. Ms. Bagley stated that she spoke to him only when a witness was present to avoid being accused of saying or doing things that did not happen. She denied going through appellant's lunch box and indicated that the employing establishment mandated that all personal effects be removed from the carrier's cases and that carriers were told to do it themselves by a certain date. After that, management gathered everything left behind. Ms. Bagley explained the circumstances surrounding various incidents he mentioned concerning himself and other carriers. Regarding telephone calls, she indicated messages were taken if appellant was not in the building. Ms. Bagley confirmed that she was taken off doing street observations but indicated that this was not due to any particular interaction with him. She also denied suggesting or demanding employee use unsafe equipment. In a May 19, 2008 letter, appellant responded to Ms. Bagley's letter and reiterated many of his assertions.

By decision dated May 23, 2008, the Office modified its previous decision to reflect that the claim was denied on the basis appellant failed to establish that he was injured in the performance of duty.

On July 11, 2008 appellant requested reconsideration. In a July 9, 2008 statement, he indicated that it appeared to him that the Office needed proof that he was working and on the job when the incidents occurred and that was why clock rings were submitted. Appellant noted Ms. Bagley's statement indicated that management was aware his physician was on maternity leave. A copy of Ms. Bagley's previously submitted statement with comments attached was submitted along with copies of clock rings for the periods 2005 through 2007.

By decision dated October 17, 2008, the Office denied modification of its prior decision.

On December 3, 2008 appellant requested reconsideration. He mentioned his prior stress claims and argued that it showed a pattern of abuse by his supervisors and reiterated other previous allegations. In support of his request, appellant submitted various labeled exhibits[2] that included: documents from 1996 and 1998 pertaining to other claims before the Office; a frequently asked questions printout from a Department of Labor internet site; 1996 and 1998 medical reports; copies of Ms. Bagley's prior statements; a December 9, 2003 internet article about EEO complaints; a portion of an employee benefits document; and a copy of clock rings for the July 1, 2005 pay period.

[2] Although appellant noted exhibits F and G, pertaining to letters from Mr. Tucci, these documents were not submitted.

In a February 12, 2009 decision, the Office denied appellant's reconsideration request finding that he failed to offer any new and relevant argument.[3]

LEGAL PRECEDENT -- ISSUE 1

To establish a claim that an emotional condition arose in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.[4]

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 her work or her fear and anxiety regarding her ability to carry out her work duties.[5] 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.[6]

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.[7] However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.[8] In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.[9]

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[3] The decision was first issued on December 23, 2008 but was reissued to correct a typographical error.

[4] *D.L.*, 58 ECAB 667 (2006).

[5] *Ronald J. Jablanski*, 56 ECAB 616 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[6] *Id.*

[7] *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

[8] *See William H. Fortner*, 49 ECAB 324 (1998).

[9] *Ruth S. Johnson*, 46 ECAB 237 (1994).

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. 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.[10] Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.[11] The primary reason for requiring factual evidence from the claimant in support of his 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.[12]

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. 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.[13]

ANALYSIS -- ISSUE 1

The Office denied appellant's emotional condition claim finding that appellant had not established that any of the alleged working conditions constituted compensable factors of employment. In reviewing appellant's allegations, the Board notes that several of appellant's allegations are not established as factual.

For example, appellant alleged that Ms. Bagley sought to go through his lunch box and search his personal items. He provided no evidence to support this allegation as factual and she denied the allegation. Moreover, Ms. Bagley explained that the employing establishment directed that management ensure personal effects were removed from carrier cases and that management gathered such items after carriers had been given an opportunity to remove such

[10] *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).

[11] *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

[12] *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

[13] *A.K.*, 58 ECAB 119 (2006); *C.S.*, 58 ECAB 137 (2006); *D.L.*, *supra* note 4.

items. There is no evidence to support that she was going to or had rifled through appellant's lunch box or personal belongings. As such these allegations are not established.

Appellant stated the employing establishment falsified records and he was verbally abused daily by his supervisors. He alleged Ms. Shively would yell at him when she did not get her way, tried to get him to go against physician's orders concerning repetitive motion to his shoulders, verbally assaulted and threatened him and would look for ways to create stress or confrontations. Appellant has not presented any evidence that she verbally assaulted or threatened him or presented any documentation that he worked against his physician's restrictions.[14] He also provided no supporting evidence, such as the falsified records or witness statements, to establish these allegations as factual. Absent supporting evidence, these allegations are not accepted as factual.

Several of appellant's allegations involved administrative or personnel matters. As noted, such matters will generally not be considered an employment factor.[15] Appellant alleged being denied several job opportunities. However, the denial by the employing establishment of a request for a different job, promotion or transfer is an administrative decision which does not directly involve an employee's ability to perform work duties, but rather constitutes an employee's desire to work in a different position.[16] Appellant did not submit any evidence that the employing establishment acted unreasonably in these matters and the employing establishment denied any disparate treatment. He has not established a compensable employment factor in this regard.

Appellant also disagreed with the duties assigned to him and questioned the motives of his supervisors in making assignments. He alleged that Ms. Shively gave him work that other limited-duty employees could do. Appellant also alleged that he was ordered to drive a smoke filled and unsafe vehicle and that he felt put off when she told him she would get him requested clock rings the next day. He further asserted that issues involving express mail delivery could be avoided if he was allowed to take out the express mail when he came into work. Appellant has not submitted any evidence showing that management acted unreasonably in these matters. The assignment of work by a supervisor is an administrative function that is not compensable absent error or abuse.[17] Complaints about the manner in which a supervisor performs his or her duties or the manner in which a supervisor exercises his or her discretion fall, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor or manager must be allowed to perform his or her duties and employees will, at times, dislike the actions taken. Mere disagreement or dislike of a supervisory or managerial action will not be

[14] The Board has recognized the compensability of physical threats and verbal abuse in certain circumstances. In such cases, the Board has reviewed the evidence of record to determine whether the allegations of the claimant are substantiated by reliable and probative evidence. *J.F.*, 59 ECAB ___ (Docket No. 07-308, issued January 25, 2008).

[15] *See supra* notes 7-9.

[16] *Ernest J. Malagrida*, 51 ECAB 287 (2000).

[17] *D.L.*, 58 ECAB 217 (2006).

compensable, absent evidence of error or abuse.[18] As appellant submitted no probative evidence of error or abuse, his allegations do not constitute compensable factors of employment.

Appellant alleged Ms. Bagley represented herself as being from the Office and improperly had medical information sent to her from his physician's office. He stated that he was returned to work against his physician's orders after she called his physician. Monitoring an employee is an administrative action and is not compensable unless the employee establishes error or abuse.[19] Ms. Bagley denied appellant's allegation and his version of events. Although a transcriber from the medical office indicated that she identified herself from the "Bureau of Worker's Compensation," she stated that she had told the transcriber that she was appellant's supervisor. This is verified in the copy of the fax coversheet sent to the office that identified Ms. Bagley as appellant's supervisor. Furthermore, Ms. Bagley explained that she needed this information to make appellant an appropriate job offer and that he had not been very cooperative in the process. In these circumstances, the evidence is insufficient to establish that Ms. Bagley acted unreasonably. Thus, these allegations do not show a compensable work factor.

Likewise, appellant stated that, on May 31, 2005, Ms. Bagley followed him on the street as he delivered express mail. He alleged that she was trying to find him doing something wrong in order to write him up. Appellant submitted no evidence to support his allegation that Ms. Bagley acted unreasonable. As noted, monitoring an employee is an administrative function of the employer. Thus, this does not constitute compensable factor of employment.

Appellant also has not shown that the change in his work schedule constituted error or abuse. He indicated that, after his start time was change, he had no work to do after 3:30 p.m. and also that the change in work time affected his family life. Under the circumstances of this case, the Board finds that appellant's emotional reaction must be considered self-generated. Appellant's frustration from not being permitted to work in a particular job is not a compensable factor under the Act.[20]

Appellant indicated that he did not have his daily safety or service talks since December 2005 and Ms. Shively, the station manager and the safety captain had been informed. He indicated that he contacted the district office and sent a safety hazard report when the employing establishment did not act upon his request to make up the safety talks during the time period March to September 2006. Ms. Shively explained that this was an oversight that could have been remedied, but appellant chose to take it to the district manager. The Board notes that he did also not clearly explain how the lack of safety talks caused or contributed to his claimed emotional condition. The employing establishment did not commit compensable error or abuse in this administrative matter. Under these circumstances, the evidence does not establish that the lack of safety talks rises to the level of a compensable employment factor.

[18] *T.G.*, 58 ECAB 189 (2006).

[19] *See Brian H. Derrick*, 51 ECAB 417 (2000).

[20] *See Cyndia R. Harrill*, 55 ECAB 522 (2004). *See L.S.*, 58 ECAB 249 (2006) (the fact that management changed an employee's work schedule a number of times did not bring the claim within the scope of workers' compensation absent a showing that management changed her schedule in error).

Appellant alleged that the employing establishment lost or misplaced documents regarding his claims; refused to enter required documentation; refused to complete forms and process leave restorals; called and faxed his physician's office repeatedly to obtain medical information. However, stress from a claimant's pursuit of a claim before the Office does not constitute a compensable employment factor.[21] Although the record contains a 2004 EEO settlement agreement with the employing establishment which includes provisions for helping appellant complete paperwork pertaining to personnel and Office matters, this agreement generally predates the events at issue in this claim and it does not purport to make any findings on any specific allegations made by appellant in the present claim.[22] Appellant has not established that the employing establishment acted unreasonably in these administrative matters.

Appellant asserted that Ms. Shively improperly placed him in an annual leave status due to a previously scheduled vacation when he should have remained in a leave without pay status. Payroll disputes and leave denials relate to administrative and personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act without evidence that the employing establishment acted unreasonably.[23] Appellant has submitted no evidence that the employing establishment acted unreasonably in this matter and Ms. Shively explained that she was following the union contract as she understood it. He has not established a compensable employment factor in this matter.

Appellant also asserted that the employing establishment acted improperly with regard to a telephone message from his wife on May 30, 2005. The Board notes that this is not part of his regularly or specially assigned duties but is a personal matter. Ms. Bagley further explained that appellant was called to the telephone if he was in the building and a message was taken if he was out. There is no evidence supporting that the employing establishment acted unreasonably in this matter and it is not a compensable factor of employment.

Appellant also generally asserted that the employing establishment's actions constituted harassment and also discrimination due to his injury status. He did not otherwise explain, and provide supporting evidence to establish, that any of the actions alleged constituted harassment or discrimination. While appellant noted various incidents where he disagreed with a supervisor's action with respect to the handling of customers or other coworker, he did not submit any probative reliable evidence in support of his allegations of harassment or discrimination with respect to him. He also did not submit corroborating evidence, such as witness statements, to establish that any statements were made or events actually occurred. Although appellant submitted an EEO settlement, as noted and filed other EEO claims, such evidence is insufficient to establish a compensable employment factor.[24] Ms. Shively and

[21] *John D. Jackson*, 55 ECAB 465 (2004).

[22] The Board has held that the determination of an employee's rights or remedies under other statutory authority does not establish entitlement to benefits under the Act. *J.F.*, *supra* note 14.

[23] *Elizabeth Pinero*, 46 ECAB 123, 130 (1994).

[24] *See supra* note 22. *See also C.T.*, 60 ECAB ___ (Docket No. 08-2160, issued May 7, 2009) (grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred).

Ms. Bagley both denied any unfair treatment of appellant. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant has not established that any of the events to which he attributed his stress constituted compensable employment factors. As he has not established any compensable employment factors, the Board need not consider the medical evidence of record.[25]

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a), the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[26] Section 10.608(b) of Office regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[27]

ANALYSIS -- ISSUE 2

On reconsideration, appellant referenced his prior stress claims and submitted material as well as medical reports from those claims. This material predates the claimed period of exposure and is not relevant to the current claim. Appellant submitted reference materials from an internet site, a section of an employee benefits document and an internet article regarding EEO complaints. This material, while new, contains generic information and does not address the underlying issue of whether compensable employment factors caused or contributed to his emotional condition. This evidence is not relevant to the underlying issue and not sufficient to require further merit review.[28] The submission of clock rings as well as copies of Ms. Bagley's statements were previously submitted. While the comments attached to her statements were new, the arguments advanced were consistent with arguments previously considered in prior decisions. This evidence is repetitive of evidence already contained in the record.[29] Appellant failed to offer any new and relevant argument or evidence not previously considered by the Office.

Appellant's request for reconsideration did not otherwise show that the Office erroneously applied or interpreted a specific point of law nor did it advance a relevant legal argument or provide relevant. Instead, he essentially reiterated previous contentions.

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[25] *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

[26] 20 C.F.R. § 10.606(b)(2); *D.K.*, 59 ECAB ___ (Docket No. 07-1441, issued October 22, 2007).

[27] *Id*. at § 10.608(b); *K.H.*, 59 ECAB ___ (Docket No. 07-2265, issued April 28, 2008).

[28] Evidence that does not address the particular issued involved constitutes no basis for reopening a case. *D Wayne Avila*, 57 ECAB 642 (2006).

[29] Evidence which repeats or duplicates evidence already in the record has no evidentiary value and constitutes no basis for reopening a case. *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

Because appellant's request did not meet at least one of the three regulatory standards for obtaining a merit review of his case, the Board finds that the Office properly denied his request.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an emotional injury in the performance of duty. The Board also finds that the Office properly denied his December 3, 2008 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the February 12, 2009 and October 17, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 23, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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