

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

RALPH A. SAUNDERS, Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, New Orleans, LA, Employer**

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**Docket No. 05-426
Issued: April 25, 2005**

Appearances:
Ralph A. Saunders, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On December 6, 2004 appellant filed a timely appeal of a November 24, 2004 decision of the Office of Workers' Compensation Programs that found he had not established that he sustained an emotional condition in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On September 12, 2003 appellant, then a 48-year-old painter, filed an occupational disease claim for compensation, stating that he was stressed out, that his supervisor harassed him, and that he had a hard time concentrating and thinking. He submitted an August 27, 2003 report from Dr. John M. Boutte, Ph.D., a clinical psychologist, stating that appellant was in need

of psychological treatment due to job stress, depression and anxiety. He was placed on temporary medical leave in order to prevent further exacerbation of his symptoms.

On December 12, 2003 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 his statement describing the employment factors he felt caused his condition, or medical evidence addressing causal relationship. Appellant submitted a copy of a complaint of employment discrimination he had filed with the employing establishment, and additional reports from Dr. Boutte. The complaint alleged refusal to grant medical leave from August 27 to September 2, 2003, issuance of a proposed reprimand relating to this on October 1, 2003, and the October 22, 2003 refusal of his supervisor to take his response to the proposed reprimand. In a report of his treatment of appellant from August 26 to September 23, 2003 Dr. Boutte set forth a history that appellant had filed an Equal Employment Opportunity (EEO) complaint, that he was subjected to constant harassment and stress from his supervisor, that he was charged with eight days of absence without leave when he took his wife to the hospital for triple bypass surgery in April 2003, and that he was refused leave when his mother died. In an October 21, 2003 report Dr. Boutte stated that appellant received a letter of reprimand for being absent without leave but that it was only harassment. Dr. Boutte diagnosed major depression and generalized anxiety disorder.

By decision dated January 23, 2004, the Office denied appellant's claim on the basis that he had not established a factual basis for the claim.

Appellant requested reconsideration on November 8, 2004 and submitted a copy of a September 8, 2004 letter from his attorney to the employing establishment responding to its notice of proposed removal. The attorney contended that appellant was denied leave from August 27 to September 2, 2003 and issued a proposed reprimand for being absent without leave for that week, that a proposed suspension was issued on November 15, 2003 for alleged misconduct on September 24 and October 17, 2003, that the action for removal was premature and retaliatory since the suspensions were pending EEO review, and that appellant's unsatisfactory performance of his duties in March 2004 was the result of harassment and denial of medical treatment. In a March 8, 2004 report, Dr. Boutte stated that appellant was confronted and physically pushed by a supervisor on March 3, 2004. Appellant submitted his March 2, 2004 account of this incident.

By decision dated November 24, 2004, the Office found that appellant had not established that he sustained an emotional condition in the performance of duty, as he had not submitted a detailed statement describing specific employment incidents, written evidence of his proposed termination or refusals of leave, or witness statements.

LEGAL PRECEDENT

In cases involving emotional conditions,¹ the Board has held that until a claimant has identified incidents or occurrences that are alleged to have arisen out of the employment for

¹ With regard to emotional condition cases in general, see *Lillian Cutler*, 28 ECAB 125 (1976).

compensation purposes, it is unnecessary to address the medical evidence.² The Board has held that actions of an employee's supervisor which the employee characterizes as harassment or discrimination may constitute factors of employment giving rise to coverage under the Act. 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 alone of harassment or discrimination are not compensable under the Act.³ The Office's procedure manual states that, in occupational disease claims, an employee must submit sufficient evidence to identify fully the particular work conditions alleged to have caused the disease and show that the employee was exposed to the conditions claimed,⁴ that a statement from the claimant showing when, where and how the injury occurred is mandatory,⁵ and that when an employee who claims an emotional reaction to conditions of employment must identify those conditions.⁶ The Board has found that an appellant must provide a personal statement identifying the employment factors he believes to be responsible for his condition and an appellant does not meet his burden of proof where in failing to do so, he prevents the Office from performing its adjudicatory function of determining the truth of his allegations and whether the factors that caused his disability were within the coverage of the Act.⁷ The Board has also held that the need for such a personal statement from the employee describing specific incidents, factors and conversations is not obviated by a physician's report containing information on employment factors, as a physician's function is to provide opinions on medical questions, not to determine facts.⁸

ANALYSIS

Appellant filed a claim for compensation for an occupational disease, in which he alleged that he was stressed out and that his supervisor was allowed to harass him. The Office advised him that this was insufficient and that it needed a detailed description of the employment factors to which he attributed his condition.

Appellant has not submitted such a statement. The copy of the complaint of employment discrimination and his attorney's response to the employing establishment's proposal to remove appellant cited actions of the employing establishment, but appellant has not provided any of the documents that effectuated these actions. Appellant's allegation of harassment is vague and does not cite to any particular incidents that constituted harassment. He has failed to provide a factual basis to allow the Office to adjudicate his claim for an emotional condition.

² See *Richard J. Dube*, 42 ECAB 916 (1991). Regarding a claimant's burden of proof in an emotional condition claim, see *Kathleen D. Walker*, 42 ECAB 603 (1991).

³ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3 (April 1993).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.3 (June 1995).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.17 (March 1994).

⁷ *Samuel F. Mangin, Jr.*, 42 ECAB 671 (1991).

⁸ *Jack Hopkins, Jr.*, 42 ECAB 818 (1991); *George Tseko*, 40 ECAB 948 (1989).

CONCLUSION

The Board finds that appellant has not met his burden of proving that he sustained an emotional condition in the performance of duty, for the reason that he has not submitted a personal statement describing the specific factors of his employment to which he attributes his condition.

ORDER

IT IS HEREBY ORDERED THAT the November 24 and January 23, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 25, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member