

By letter dated March 15, 2004, the Office asked appellant to submit additional information including a detailed description of the employment factors or incidents that he believed contributed to his claimed illness, and a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed emotional condition. The Office also asked the employing establishment to submit additional information which addressed the incidents appellant alleged contributed to his claimed illness.

On May 2, 2004 appellant alleged that on December 17, 2003 he received a memorandum from management advising him that for the period December 27, 2003 to January 23, 2004 his shift would change from 7:00 a.m. to 3:30 p.m. to 5:30 a.m. to 2:30 p.m. He believed that he was singled out for the shift change and alleged harassment and discrimination. Appellant indicated that the schedule change would interfere with his dialysis treatments which began at 4:15 p.m. He requested that his previous shift be reinstated and provided medical documentation regarding his dialysis treatments. Sollie M. Brooks, his supervisor, did not reinstate his prior work schedule. Appellant indicated that since April 2003 he had been working in mail processing in order to accommodate his diagnosed condition of carpal tunnel syndrome.¹

The employing establishment submitted a letter from Ms. Brooks dated January 14, 2004 noting that appellant was assigned to work in mail processing due to a personal illness. Ms. Brooks advised that on December 17, 2003 appellant was reassigned to the metro debris area because there was no work available in his craft at his previous assignment. The tour of duty was from 5:30 a.m. to 2:30 p.m. Ms. Brooks advised that appellant requested to return to his previous shift so that he could continue with his scheduled dialysis treatments after work. She requested that appellant provide a schedule of his dialysis treatments; however, he did not provide sufficient medical documentation. Ms. Brooks noted that appellant could work the assigned schedule from 5:30 a.m. to 2:30 p.m. and still continue with his dialysis treatments after work. She advised that management did not act improperly with regard to appellant's shift change.

Appellant submitted a memorandum from C. Evans, manager of the distributions operation for tour two, dated December 17, 2003, which advised that effective December 27, 2003 his tour of duty would change to 5:50 a.m. to 4:00 p.m. In a December 19, 2003 letter, Dr. Sheldon Hirsch, a Board-certified internist, stated that appellant was treated for end-stage renal disease and had been on dialysis, every Monday, Wednesday and Friday since December 16, 2002. He recommended that appellant maintain his current work schedule. In a letter dated February 6, 2004, Percy Harrison, Jr., union president, noted that appellant was accommodated with the mail processing position with a tour of duty of 7:00 a.m. to 3:30 p.m. He advised that appellant's shift was unilaterally changed without justification. Mr. Harrison requested that the employing establishment accommodate appellant by reinstating his previous work schedule. In a March 18, 2004 Equal Employment Opportunity (EEO) complaint, appellant alleged that he was discriminated against when his tour of duty was changed effective

¹ The record does not reflect that a claim for compensation was filed for carpal tunnel syndrome or that such condition was accepted by the Office.

December 27, 2003. A return to work slip dated March 23, 2004, prepared by a physician whose signature is illegible, diagnosed adjustment disorder and advised that appellant could return to work without restrictions. On April 21, 2004 Dr. Joyce Miller, a Board-certified psychiatrist, noted treating appellant since February 9, 2004 for work-related stress. She indicated that appellant related his problems at work to a change in shift which made it difficult for him to continue his regularly scheduled dialysis treatments. Dr. Miller diagnosed adjustment disorder with a depressed mood and opined that appellant's stress was due to a change in work schedule. In a letter dated May 6, 2004, Ramsey B. Dimmins, union steward, advised that Ms. Brooks failed to timely respond to his correspondence of January 7, 2004.

In a May 25, 2004 decision, the Office denied appellant's claim finding that the evidence did not establish that the claimed emotional condition occurred 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 psychiatric 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 emotional condition.² 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*,³ the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁴ 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 under the Act.⁵ When an employee experiences emotional stress in carrying out his employment duties, and the medical evidence establishes that the disability resulted from his 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 emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.⁶ 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 under the Act.

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

² *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ 28 ECAB 125 (1976).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ See *Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

⁶ *Lillian Cutler*, *supra* note 3.

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.⁷ 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.⁸

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of a change in work shift. By decision dated May 25, 2004, 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 the alleged employment incident was a covered employment factor under the terms of the Act.

Appellant generally alleged that he was harassed and discriminated against when his supervisor changed his work shift from 7:00 a.m. to 3:30 p.m. to 5:30 a.m. to 2:30 p.m. To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.⁹ However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.¹⁰

Ms. Brooks advised that on December 17, 2003 appellant was properly assigned to the metro debris area with a tour of duty was from 5:30 a.m. to 2:30 p.m. because there was no work available in his craft at his previous assignment and work shift. Ms. Brooks advised that appellant requested to return to his previous shift so that he could continue with his dialysis treatments; however, she determined that the medical documentation submitted was insufficient to support a change in schedule and noted that appellant could continue to work the shift from 5:30 a.m. to 2:30 p.m. and still continue his dialysis treatments at 4:15 p.m. after work. The record indicates that the new shift ended an hour prior to the former shift. The employing establishment further contended that at no time did management harass appellant or single him out for a shift change. General allegations of harassment are not sufficient¹¹ and in this case appellant has not submitted sufficient evidence to establish disparate treatment by his supervisor.¹² Although appellant alleged that his manager singled him out and discriminated

⁷ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁸ *Id.*

⁹ See *David W. Shirey*, *supra* note 9.

¹⁰ *Jack Hopkins, Jr.*, *supra* note 10.

¹¹ See *Paul Trotman-Hall*, 45 ECAB 229 (1993).

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).

against him for the change in shift and engaged in actions which he believed constituted harassment, he provided insufficient evidence such as witness statements, to establish his allegations.¹³ Appellant submitted statements from Mr. Harrison and Mr. Dimmins, union representatives, who contended that appellant's shift was unilaterally changed without justification. However, the employing establishment through Ms. Brooks provided a reasonable explanation for its actions, noting that the work shift was changed because there was no work available in appellant's craft at his previous assignment and work shift. Appellant noted that he filed an EEO complaint for harassment and discrimination. However, grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.¹⁴ The Board notes that there is no other evidence substantiating appellant's allegations. Thus, he has not established a compensable employment factor under the Act with respect to the claimed harassment or discrimination.

Appellant did not allege any inability to perform his regular or specially assigned duties, nor did he allege that the shift change interfered with his work. Rather the focus of his allegations is that the shift change would interfere with his dialysis treatments at 4:15 p.m.

In *Gloria Swanson*,¹⁵ the Board addressed case precedent which distinguished allegations concerning when changes in an employee's work shift would give rise to a compensable factor of employment. To the extent that appellant has alleged that the change in shift constituted punishment or was inconvenient due to his commute to work with other employees this is analogous to emotional frustration in not being allowed to work specific hours. It is well established that when disability results from an employee's frustration over not being permitted to work in a particular environment, to hold a particular position, or to secure a promotion, such disability does not arise in the performance of duty.¹⁶ To this extent, appellant has not submitted sufficient evidence to establish that the administrative change in his tour of duty constituted administrative error or abuse by employing establishment management.¹⁷ The record establishes that his supervisor explained, as noted above, the reason, lack of work, for such change. Appellant asserted that the change in shifts interfered with his dialysis treatments at 4:15 p.m. However, there is no evidence that the shift change precluded appellant from getting medical treatment or that the shift change caused physical injury or symptoms.¹⁸ His allegations of interference are vague as he had an additional hour to go to his dialysis sessions. Further, to the extent that appellant asserts that the shift change resulted in inconvenience to his daily commute

¹³ See *William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

¹⁴ *James E. Norris*, 52 ECAB 93 (2000).

¹⁵ 43 ECAB 161 (1991). See also *George H. Clark*, 56 ECAB ____ (Docket No. 04-1572, issued November 30, 2004).

¹⁶ See *Lillian Cutler*, *supra* note 3.

¹⁷ 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. *Charles D. Edwards*, 55 ECAB ____ (Docket No. 02-1956, issued January 15, 2004).

¹⁸ See *Clark*, *supra* note 15.

to work, this would not be a factor arising in the performance of duty.¹⁹ The Board finds that the evidence does not establish that the change in appellant's tour of duty was unreasonable or, as noted above, that it was a form of harassment or discrimination. Thus, appellant has not established a compensable employment factor under the Act with respect to the proposed change in work shift.

CONCLUSION

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.²⁰

ORDER

IT IS HEREBY ORDERED THAT the May 25, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 18, 2005
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁹ *Id.*

²⁰ As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).