

¹ Docket No. 03-632 (issued November 13, 2003).

he had not established that it was sustained in the performance of duty.² The Board found the evidence of record insufficient to establish appellant's allegations of harassment and retaliation, but found the evidence sufficient to establish appellant's allegations regarding his work duties and overwork. The Board determined that the record did not contain any rationalized medical opinion evidence establishing a causal relationship between his emotional condition and the accepted employment factors.³ In a decision dated December 9, 2004, the Board found that appellant's March 5, 2004 request for reconsideration⁴ was filed within one year of the Board's November 13, 2003 decision and that the request was timely filed.⁵ The Board found that the Office erroneously reviewed the evidence submitted in support of appellant's reconsideration request under the clear evidence of error standard. The Board remanded the case to the Office for review of the request under the proper standard of review. The law and the facts surrounding these appeals are set forth in the Board's prior decisions and are hereby incorporated by reference.

On April 5, 2004 the Office received an April 11, 2001 email from Ms. Jagels, an employee in another office within the employing establishment; a January 30, 2001 memorandum from Mr. Sparks, district manager, directing appellant to have no further contact with Ms. Jagels; and a portion of Ms. Jagels' February 26, 2004 answer to interrogatories.

Ms. Jagels stated that she "did not claim that there was any type of unwelcome sexual communications." In response to a question regarding disciplinary action, she stated that she had been suspended without pay for failing to tell the truth about her relationship with appellant in 2002 and was issued a seven-day suspension in 2003 for a document error. With respect to the key to appellant's post office box, Ms. Jagels stated: "[t]he first time I gave it to Pete to take to [appellant]. The second time I mailed it back." Ms. Jagels also stated that she "did not claim that there was any type of unwelcome sexual communications" and she "was asked if net sends were getting sexual and I said yes." In concluding, she stated that appellant's manager, Mr. Sparks, "had conveyed to Ms. Moore that he was watching [appellant] for he had done

² Appellant, then a 32-year-old claims representative, filed an occupational disease claim on April 1, 2001 alleging that on March 3, 2001 he first realized his depression and stress was employment related. In a statement dated May 15, 2001, appellant detailed the incidents he believed were harassment and were the cause of his paranoia, stress, depression and anxiety. He related an incident occurring on or about January 30, 2001 involving Brenda Jagels, an employee in another office of the employing establishment and Peter P. Jaudegis, the supervisor of Ms. Jagels. Appellant related mailing a key to his personal post office box to Ms. Jagels at her workplace and that he indicated on the envelope that it was not to be opened in the mailroom. Mr. Jaudegis was present when Ms. Jagels opened the envelope and at his request she gave him the key in the envelope which he used to obtain the letter and cassette tape appellant had placed in his personal post office box. Mr. Jaudegis then wrote a memorandum to Mark Sparks, appellant's supervisor, stating that appellant was sending inappropriate messages to Ms. Jagels and that he was disrupting her work. Appellant also alleged Mr. Sparks harassed him and began a vendetta against him due to his having once gossiped about Mr. Sparks' alleged extramarital affair in November or December 2000. As part of this vendetta, appellant alleged that "Mr. Sparks made it his business to find out who I was 'Net Sending' and somehow managed to convince" Mr. Jaudegis that I was unstable and dangerous.

³ On February 27, 2004 the Board issued an order dismissing appellant's petition for reconsideration.

⁴ This request was sent to the Board. In a letter dated April 1, 2004, appellant's counsel filed a formal request for reconsideration.

⁵ Docket No. 04-1628 (issued December 9, 2004).

nothing at work for at least six months and had withdrawn himself from his coworkers.” Ms. Jagels also stated that Mr. Sparks was also watching appellant allegedly because appellant knew of an affair Mr. Sparks was having.”

On April 19, 2001 the Office received evidence previously considered, including a December 12, 2001 report by Dr. David R. Trobaugh, an attending osteopath, a January 30, 2001 memorandum from Mr. Jaudegis regarding further contact with Ms. Jagels; a September 11, 2002 affidavit by Stephanie Moore, a coworker; a January 30, 2001 memorandum from Mr. Sparks; a February 9, 2001 letter and an April 11, 2001 email from Ms. Jagels.

The Office issued a decision on January 4, 2005 denying modification of its prior decision. The Office found the evidence insufficient to establish any error or abuse on the part of the employing establishment when an investigation was initiated into appellant’s relationship with Ms. Jagels.

On February 1, 2005 the Office received a copy of the Board’s December 9, 2004 decision remanding the case; a January 30, 2001 memorandum from Mr. Jaudegis regarding further contact with Ms. Jagels; letters dated March 5 and June 10, 2004 from appellant to the Board; a May 31, 2004 website posting; a January 30, 2001 memorandum from Mr. Sparks; February 26, 2004 answers to interrogatories by Ms. Jagels and an April 11, 2001 email from Ms. Jagels.

In a decision dated March 9, 2005, the Office denied modification of its prior decisions.

LEGAL PRECEDENT

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*,⁶ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees’ Compensation Act.⁷ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁸ When an employee experiences emotional stress in carrying out his employment duties, and the medical evidence establishes that the disability resulted from an 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 an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁹ On the other hand, the disability is not covered where it results from such factors as an employee’s fear of a

⁶ 28 ECAB 125 (1976).

⁷ 5 U.S.C. §§ 8101-8193.

⁸ See *Robert W. Johns*, 51 ECAB 137 (1999).

⁹ *Lillian Cutler*, *supra* note 6.

reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.¹⁰

In emotional condition claims, 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.¹¹

As a general rule, an employee's emotional reaction to administrative or personnel actions taken by the employing establishment is not covered because such matters pertain to procedures and requirements of the employer and are not directly related to the work required of the employee.¹² 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.¹³ An employee's frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable.¹⁴ Similarly, an employee's dissatisfaction with perceived poor management is not compensable under the Act.¹⁵

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. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. Rather, the issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his allegations with probative and reliable evidence.¹⁶

ANALYSIS

The Board previously found that appellant established compensable factors with regard to his work duties and overwork. The Board noted that the evidence of record was insufficient to establish compensable factors with respect to his allegations of harassment and retaliation by his

¹⁰ *Kim Nguyen*, 53 ECAB 127 (2001).

¹¹ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹² *Felix Flecha*, 52 ECAB 268 (2001).

¹³ *Kim Nguyen*, 53 ECAB 127 (2001).

¹⁴ *Barbara J. Latham*, 53 ECAB 316 (2002).

¹⁵ *Id.*

¹⁶ *James E. Norris*, 52 ECAB 93 (2000).

supervisor, Mr. Sparks, or that the employing establishment erred or acted abusively by investigating the alleged sexual harassment of Ms. Jagels.

In his request for reconsideration, appellant resubmitted evidence previously considered, which includes an April 11, 2001 email and February 9, 2001 letter from Ms. Jagels, a January 30, 2001 memorandum from Mr. Jaudegis to Mr. Sparks regarding appellant's contact with Mr. Jagels and a January 30, 2001 memorandum from Mr. Sparks ordering appellant to have no further contact with Ms. Jagels. The only new evidence submitted by appellant is the February 26, 2004 answer to interrogatories by Ms. Jagels.

Appellant attributed his emotional condition to being falsely investigated for the sexual harassment of Ms. Jagels. He contends that he did not sexually harass Ms. Jagels and her deposition testimony supported his contention. Ms. Jagels stated that she had asked appellant to stop sending her messages and acknowledged that they were getting sexual. The Board has held that investigations, which are an administrative function of the employing establishment, do not involve an employee's regular or specially assigned employment duties and are not considered to be an employment factor where the evidence does not demonstrate error or abuse on the part of the employing establishment.¹⁷ In support of his contention that the investigation was abusive, appellant submitted Ms. Jagels' answer to interrogatories. Appellant has not shown that the employing establishment erred in initiating an investigation based upon his relationship with Ms. Jagels and his use of Federal Government equipment to transmit or to send messages. The deposition testimony of Ms. Jagels is not sufficient to establish that Mr. Sparks acted unreasonably or abusively in finding out the person appellant was net sending or informing Ms. Jagels' supervisor of that fact. Ms. Jagels states that she never accused appellant of harassment, but did acknowledge that the messages he was sending her "were getting sexual." Ms. Jagels' interrogatories provides evidence that the investigation was an abuse of discretion. Thus, the Board finds that this is not a compensable factor of employment.

The record contains no rationalized medical evidence establishing that appellant's emotional condition was causally related to the accepted compensable employment factors, *i.e.*, the work duties and overwork. Thus, appellant has failed to discharge his burden of proof.

CONCLUSION

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty.

¹⁷ *Beverly A. Spencer*, 55 ECAB ____ (Docket No. 03-2033, issued May 3, 2004).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 9 and January 4, 2005 are affirmed.

Issued: February 13, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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