

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

E.C., Appellant)

and)

DEPARTMENT OF TRANSPORTATION,)
FEDERAL AVIATION ADMINISTRATION,)
Peoria, IL, Employer)

Docket No. 07-1605
Issued: December 11, 2007

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 30, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated April 23, 2007 with respect to his claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established an emotional condition causally related to compensable work factors.

FACTUAL HISTORY

On February 27, 2006 appellant, then a 44-year-old air traffic controller, filed an occupational disease claim (Form CA-2) alleging that he sustained stress, anxiety and depression as a result of his federal employment. In a narrative statement, appellant discussed a number of incidents which he characterized as harassment by the employing establishment management.

Among the alleged incidents: the denial of requested Family Medical Leave Act (FMLA) leave, being required to answer personal medical questions, a shift change, being charged with absent without leave (AWOL), having his supervisor stand behind him on November 30, 2005 and a meeting on December 27, 2005 where he was sworn at by employing establishment security personnel. Appellant alleged that at the December 27, 2005 meeting he was asked if he was “just a f---ing whining baby?” According to him he had filed a number of grievances on these issues.

Appellant also stated that his job as an air traffic controller required him to make rapid and accurate decisions and required intense concentration. He stated that this coupled with a management team that seemed intent on harassing him had caused stress, anxiety and depression.

In a statement dated March 10, 2006, a supervisor, Kent Wheeler, provided a detailed response to the specific allegations made by appellant. He indicated, for example, the FMLA leave request and request for medical information were handled in accordance with employing establishment policy; explained that he had mistakenly advised appellant on May 2, 2005 as to the start time of his shift for May 3, 2005 and appellant was reimbursed for any lost premium pay; stated that he was initially placed in AWOL status because appellant had not provided proper medical documentation; explained that he was routinely in the operation room and on November 30, 2005 he was concerned with the radar display. According to the supervisor, there was a December 13, 2005 meeting regarding appellant’s allegations of harassment, during which appellant became angry and stated that he would “not forget” the supervisor’s actions. Mr. Wheeler indicated that he interpreted the comments as a threat and a December 27, 2005 meeting was held with appellant and security personnel.

With respect to the December 27, 2005 meeting, the employing establishment submitted a March 10, 2006 response from the manager of the Internal Security and Investigations Branch. The manager reported the investigators at the December 27, 2005 meeting stated that the information provided by appellant relative to harassment, intimidation and threats were false and they denied calling appellant a “f---ing whining baby.”

Appellant submitted a March 24, 2006 report from Dr. Raju Paturi, a psychiatrist, who stated that appellant believed his supervisor “had it in” for him and he diagnosed adjustment disorder with anxious mood. In an April 19, 2006 report, Dr. Ken Birge, a family practitioner diagnosed depression, anxiety, headache and hypertension, noting that current symptoms seemed to be from job-related stress and anxiety.

By decision dated November 16, 2006, the Office denied the claim for compensation. The Office found that appellant had not established any compensable work factors.

Appellant requested a review of the written record by an Office hearing representative. He submitted a December 27, 2005 memorandum of the meeting held that day. Appellant alleged that the investigators appeared hostile and at one point an investigator stated: “you’re really pissing me off.” The memorandum was also signed by a union representative who attended the meeting.

By decision dated April 23, 2007, the hearing representative affirmed the November 16, 2006 decision. The hearing representative found that appellant had not established any compensable work factors.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.¹ This burden includes the submission of detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.² A claimant must also submit rationalized medical opinion evidence establishing a causal relationship between the claimed condition and the established, compensable work factors.³

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 the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors 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.⁵ 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.⁶

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

³ *See Bonnie Goodman*, 50 ECAB 139, 141 (1998).

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *See Norma L. Blank*, 43 ECAB 389-90 (1992).

⁶ *Id.*

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.⁷ Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.⁸

ANALYSIS

Appellant's primary allegation in this case is that he was subject to harassment by the employing establishment. The Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act, if a factual basis for the claim is supported with probative and reliable evidence.⁹ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.¹⁰ In the present case, appellant did not submit any probative evidence of harassment. He did not support a claim of harassment with probative evidence such as a finding of harassment by the Equal Employment Opportunity Commission, detailed witness statements, admissions or other pertinent evidence that would establish harassment as a compensable work factor.

The Board notes that many of the specific incidents alleged by appellant relate to administrative actions of the employing establishment. Matters relating to leave, for example, are administrative actions of the employer. If there is evidence sufficient to establish error or abuse by the employing establishment, a compensable factor may be established. In this case, however, appellant did not submit probative evidence establishing error or abuse. The supervisor explained his actions and the actions of the employing establishment with respect to the allegations. There is no evidence of record sufficient to establish error or abuse with respect to an administrative matter. As to the December 27, 2005 meeting, the evidence from the employing establishment's security office did not support appellant's allegations. No probative evidence of verbal abuse was submitted.

Appellant briefly referred to the requirements of his job, noting the need for concentration and the ability to make quick decisions. He does not provide any additional detail with respect to his job duties as the cause of an emotional condition. While disability resulting from an emotional reaction to regular or specially assigned duties is covered under the Act, appellant must provide, as noted above, a detailed factual statement regarding the implicated job duties and rationalized medical evidence on causal relationship between a diagnosed condition and the identified compensable work factors. Appellant did not provide the necessary factual and medical evidence in this case.

⁷ See *Brian H. Derrick*, 51 ECAB 417, 421 (2000).

⁸ *Margreat Lublin*, 44 ECAB 945, 956 (1993).

⁹ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

¹⁰ *Helen P. Allen*, 47 ECAB 141 (1995).

Accordingly, the Board finds that appellant has not met his burden of proof to establish an emotional condition causally related to compensable work factors. Appellant did not substantiate a compensable work factor with regard to harassment or administrative error. To the extent that he referred to his job duties, he did not provide a detailed factual statement or rationalized medical evidence on causal relationship.

CONCLUSION

The evidence of record is not sufficient to establish an emotional condition causally related to compensable work factors.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 23, 2007 and November 16, 2006 are affirmed.

Issued: December 11, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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