



offensive comments to appellant such as, "I can't see you at night because you are too dark." In Korea, there were Americans who shouted obscenities outside appellant's hotel room and threatened to kill him. He alleged that his living facilities in Korea were dirty and moldy. There was no running water or bathroom. On August 27, 2005 appellant was traveling by plane to the United States and was tired, confused and disoriented. He experienced a panic attack, believing that people were "after him." Appellant was hospitalized through September 16, 2005. When he returned from temporary duty, supervisor Curtis Benham accused him of intentionally damaging a \$20,000.00 piece of equipment, a network analyzer, indicating that appellant was financially liable. Appellant tested the equipment and it was fully functional although a piece of sheet metal was bent. At his duty station in the United States, there was great tension because coworkers argued with each other and the different military branches did not get along. Coworker Michael Holly started a rumor that someone else had fathered appellant's children. Harriet Heyward told coworkers that she slept with appellant on numerous occasions and that he called her a vulgar name. Several weeks later she told everyone that she made up the stories. Appellant experienced stress in his personal life when his wife had medical complications in January 2005 due to her pregnancy.

Appellant submitted medical evidence in support of his claim.

On March 10, 2006 the Office asked appellant to submit a detailed description of the specific work-related incidents or situations that contributed to his emotional condition, including relevant dates, locations, names or coworkers and supervisors involved and witness statements.

Appellant submitted a written statement essentially repeating his previous allegations. He also indicated that he was sent alone on one mission in Korea to the site that he had previously described as dirty with no running water or bathroom.

In statements dated March 24 and April 6, 2006, Mr. Benham denied that he accused appellant of intentionally damaging the network analyzer that he had used in his temporary duty overseas. He observed that the equipment had not been properly packed for transit and asked appellant to verify that it was working. Mr. Benham denied asking for financial compensation regarding the equipment. He stated that he did not see any signs of stress in appellant before he left for temporary duty. Regarding living conditions in Korea, Mr. Benham indicated that the facilities were not up to standards at home but everyone assigned to temporary duty had basic utilities and services. He stated that appellant did not report any racial comments or threats while he was on temporary duty. Mr. Benham stated that appellant's position required travel and deadlines but his workload was average. He denied that appellant was sent alone on the mission in Korea. An office protocol driver took appellant to the airport where he took a flight to Seoul. Appellant was met at the airport and taken to a hotel at the army base. United States personnel escorted him at all his duty stations. Appellant's allegation of long work hours on his temporary duty was misleading in that little or no labor was required. Physical security required that equipment be monitored by a minimum of two personnel at all times but appellant shared shifts with other temporary-duty employees. Mr. Benham had no knowledge regarding the allegations of racial comments or rumors about appellant's family. On April 3, 2006 Mark McQuay, a supervisor, stated that he questioned Mr. Holly and Ms. Heyward, both of whom denied making

the comments alleged by appellant. He indicated that they were individuals with no history of the type of conduct alleged by appellant. Mr. McQuay stated that appellant's level of stress was no higher than that of other employees.

By decision dated November 8, 2006, the Office denied appellant's claim on the grounds that the evidence did not establish that his emotional condition was causally related to a compensable factor of employment.

### **LEGAL PRECEDENT**

To establish a claim that he sustained an emotional condition in the performance of duty, a claimant 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.<sup>1</sup>

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 an 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.<sup>2</sup> The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of his work or his fear and anxiety regarding his ability to carry out his work duties.<sup>3</sup> 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 the 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 to hold a particular position.<sup>4</sup>

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors of employment, which may be considered by a physician when providing an opinion on causal relationship, and which are not deemed compensable factors of employment and may not be considered.<sup>5</sup> When a claimant fails to implicate a

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<sup>1</sup> *Pamela D. Casey*, 57 ECAB \_\_\_\_ (Docket No. 05-1768, issued December 13, 2005); *George C. Clark*, 56 ECAB \_\_\_\_ (Docket No. 04-1573, issued November 30, 2004).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Id.*

<sup>5</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.<sup>6</sup> When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.<sup>7</sup> 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.<sup>8</sup>

### ANALYSIS

The Board finds that appellant has not established any compensable factors of employment under the Act.

The Board finds that the evidence of record does not establish appellant's allegations as factual. Appellant alleged that, while he was on temporary duty in Korea, there were Americans who shouted obscenities outside his hotel room and threatened to kill him. When he returned from temporary duty, Mr. Benham accused him of intentionally damaging a \$20,000.00 network analyzer and indicated that he was financially liable. Appellant alleged that Mr. Holly started a rumor that someone else had fathered his children and Ms. Heyward told coworkers that she had slept with appellant on numerous occasions and that he called her a vulgar name. These allegations are not supported by the evidence of record. There is no corroborating evidence, such as witness statements establishing that appellant was threatened in Korea. Mr. Benham denied that he accused appellant of intentionally damaging the network analyzer or held him financially liable. He indicated that the equipment had not been properly packed for transit from overseas and asked appellant to verify that it was working. Mr. McQuay questioned Mr. Holly and Ms. Heyward, who both denied making the comments alleged by appellant. As there is insufficient evidence to establish these allegations as factual, they cannot be considered as possible compensable employment factors.

Appellant made certain allegations that concern administrative or personnel matters. The Board has found that an administrative or personnel matter will be considered to be an employment factor only where the evidence discloses error or abuse on the part of the employing establishment.<sup>9</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>10</sup> Appellant alleged that he had a hectic work schedule while on temporary assignment in Korea. He alleged that he was sent alone to one work site in Korea and his living facilities there were dirty and there was no running water or bathroom. At his duty station in the United States, there was great tension because coworkers argued with one another and the different military branches did not

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<sup>6</sup> *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>7</sup> *See Charles D. Edwards*, 55 ECAB 259 (2004).

<sup>8</sup> *See Charles E. McAndrews*, 55 ECAB 711 (2004).

<sup>9</sup> *Charles D. Edwards*, *supra* note 7.

<sup>10</sup> *Janice I. Moore*, 53 ECAB 777 (2002).

get along. Regarding appellant's living conditions in Korea, Mr. Benham indicated that the facilities were not up to standards at home but everyone assigned there had basic utilities and services. He stated that appellant's position required travel and deadlines but his workload was average. Mr. Benham denied that appellant was sent alone on a mission in Korea. Appellant was met at the airport and taken to a hotel at the army base. United States personnel escorted him at all his duty stations. Appellant's allegation of long work hours was misleading in that little or no labor was required and he shared shifts with other temporary-duty employees he met at the duty station. The allegations regarding the tension in appellant's working environment in the United States lack specificity such as dates, employees involved and what occurred. Such general allegations are not deemed compensable factors of employment. The Board finds that appellant has not submitted sufficient evidence to show that the employing establishment committed error or abuse with respect to these administrative matters. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant alleged that in Korea Mr. Travis made racially offensive comments to him such as, "I can't see you at night because you are too dark." With regard to emotional condition claims arising under the Act, the term "harassment" as applied by the Board is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by coworkers. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute a compensable employment factor.<sup>11</sup> However, for harassment and 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 of harassment or discrimination are not compensable under the Act.<sup>12</sup> In this case, appellant has not submitted sufficient evidence to establish his claim.<sup>13</sup> His allegations alone are insufficient to establish a factual basis for his claim.<sup>14</sup> Mr. Benham stated that appellant did not report any racial comments or threats while he was on temporary duty. The Board finds that appellant has not established a compensable factor of employment under the Act with respect to his allegations of harassment and discrimination.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act. Therefore, he has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.<sup>15</sup>

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<sup>11</sup> See *Charles D. Edwards*, *supra* note 7.

<sup>12</sup> *Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>13</sup> See *Joel Parker, Jr.*, 43 ECAB 220 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

<sup>14</sup> See *Charles E. McAndrews*, *supra* note 8.

<sup>15</sup> Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence. See *Barbara J. Latham*, 53 ECAB 316 (2002); *Garry M. Carlo*, 47 ECAB 299 (1996).

**CONCLUSION**

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty causally related to compensable factors of employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 8, 2006 is affirmed.

Issued: June 13, 2007  
Washington, DC

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

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

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