



he had not established that it was sustained in the performance of duty.<sup>2</sup> The Board found the evidence of record insufficient to establish appellant's allegations of harassment and retaliation, but found the evidence sufficient to establish his 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. The Board affirmed the Office's decisions of August 26 and October 30, 2002.<sup>3</sup> On December 9, 2004 the Board found appellant's March 5, 2004 request for reconsideration was timely filed within one year of the Board's November 13, 2003 decision.<sup>4</sup> The Board remanded the case to the Office for review of the request under the proper standard of review. In a February 13, 2006 decision, the Board again affirmed the denial of appellant's emotional condition claim.<sup>5</sup> The Board found that the record contained no rationalized medical opinion evidence establishing that his emotional condition was due to the accepted *Lillian Cutler* factor.<sup>6</sup> The factual history of the claim is set forth in the Board's prior decisions and is incorporated herein by reference.

On August 29, 2006 appellant's counsel requested reconsideration.

In a report dated February 3, 2005, Dr. David R. Trobaugh, an attending osteopath, diagnosed mixed personality disorder with narcissistic and obsessive-compulsive traits. He stated:

"A situation in his workplace developed and resulted in [appellant] becoming paranoid of the workplace. His anxieties and fears, as well as his perception that he was being watched and persecuted in the workplace caused further decomposition to the point he was unable to concentrate and was experiencing rapid, intrusive thoughts."

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<sup>2</sup> 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. He 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 that 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 he was unstable and dangerous.

<sup>3</sup> On February 27, 2004 the Board issued an order dismissing appellant's petition for reconsideration as untimely filed.

<sup>4</sup> Docket No. 04-1628 (issued December 9, 2004).

<sup>5</sup> Docket No. 05-1374 (issued February 13, 2006).

<sup>6</sup> 28 ECAB 125 (1976).

The precipitating work situation occurred when appellant was accused of sexually harassing a coworker and when his affair with this coworker became known to his supervisor and the opening of mail he sent to the coworker in a private post office box.

On April 28, 2006 Dr. Trobaugh indicated that he had reviewed the statement of accepted facts and the record. He opined that appellant's emotional condition was "clearly exacerbated prior to the unauthorized opening of his post office box and the accusations of harassment." Dr. Trobaugh noted that appellant discussed with Ms. Jagels, the coworker, that he was having an affair with, the pressure of his workplace and how he felt overwhelmed. He noted that appellant "suffers from obsessive compulsive and narcissistic traits," which was exacerbated by an increasingly heavy workload" and the increasing work stress. The combined work stress and heavy workload "precipitated an acute exacerbation of his condition to the point that he began to suffer from depression and display symptoms found in schizophrenia, such as extreme suspiciousness and paranoia." Dr. Trobaugh also noted that after reviewing appellant's correspondence with Ms. Jagels that he discussed with her the problems he had at work which he did not discuss with the physician. He noted that had appellant discussed with him his problems at work instead of his problems with Ms. Jagels, "it would have been easier to quickly document and treat the real issues underlying this whole incident, namely the decomposition of [appellant's] mental health." Dr. Trobaugh opined that the documentation he reviewed proved that appellant was falling further behind at work due to the unreasonable workload he was assigned which caused the deterioration of his mental health. The problems with Ms. Jagels were "simply a diversion a symptom of the underlying problems [appellant] was experiencing at work due to being overworked." Dr. Trobaugh concluded that appellant's "psychiatric conditions were aggravated to the point of being debilitating by being overworked and in fear of falling hopelessly behind at work."

By decision dated December 1, 2006, the Office denied modification of the denial of his emotional condition claim.

### **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 *Cutler*,<sup>7</sup> 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.<sup>8</sup> There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.<sup>9</sup> 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

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<sup>7</sup> *Id.*

<sup>8</sup> 5 U.S.C. §§ 8101-8193.

<sup>9</sup> See *Robert W. Johns*, 51 ECAB 137 (1999).

imposed by the employing establishment or by the nature of the work.<sup>10</sup> On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>11</sup>

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.<sup>12</sup>

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.<sup>13</sup> 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.<sup>14</sup> An employee's frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable.<sup>15</sup> Similarly, an employee's dissatisfaction with perceived poor management is not compensable under the Act.<sup>16</sup>

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.<sup>17</sup>

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<sup>10</sup> *Lillian Cutler*, *supra* note 6.

<sup>11</sup> *Kim Nguyen*, 53 ECAB 127 (2001).

<sup>12</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>13</sup> *Felix Flecha*, 52 ECAB 268 (2001).

<sup>14</sup> *Kim Nguyen*, *supra* note 11.

<sup>15</sup> *Barbara J. Latham*, 53 ECAB 316 (2002).

<sup>16</sup> *Id.*

<sup>17</sup> *James E. Norris*, 52 ECAB 93 (2000).

## ANALYSIS

In the first appeal, the Board noted that appellant had established compensable factors under *Cutler* with regard to his work duties and overwork. However, the Board found the evidence of record insufficient to establish compensable factors with regard to his allegations of harassment and retaliation by Mr. Sparks, his supervisor, or that the employing establishment erred or acted abusively with regard to the sexual harassment investigation of Ms. Jagels.

The question to be resolved is whether the accepted employment factor caused appellant's emotional condition and this must be proven by rationalized medical opinion evidence. Appellant submitted reports dated February 3, 2005 and August 28, 2006 by Dr. Trobaugh. The February 3, 2005 report is insufficient to support appellant's claim as Dr. Trobaugh attributes his condition to the incidents involving a coworker, which were not accepted. On August 28, 2006 Dr. Trobaugh attributed the aggravation of appellant's emotional condition to overwork, which is an accepted factor and to work stress, which is not an accepted factor. While his August 28, 2006 report suggest a causal relationship between appellant's condition and the accepted employment factor, his report does not contain adequate rationale explaining how appellant's emotional condition was caused or contributed to by the accepted factor of overwork.<sup>18</sup> Rather, Dr. Trobaugh couched his opinion in terms such as the combined heavy workload and work stress precipitated appellant's depression and paranoia. He did not explain from a medical perspective the nature of the relationship between appellant's diagnosed condition and the established employment factor of overwork. Dr. Trobaugh also noted that appellant was fearful "of falling hopelessly behind at work," which the Board finds does not, without an explanation, establish a causal relationship.<sup>19</sup> His reports are therefore inadequate to establish the critical element of causal relationship.<sup>20</sup>

## CONCLUSION

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

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<sup>18</sup> See *David Apgar*, 57 ECAB 137 (2005).

<sup>19</sup> See *I.J.*, 59 ECAB \_\_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Calvin E. King*, 51 ECAB 394 (2000).

<sup>20</sup> *D.D.*, 57 ECAB 734 (2006); *Beverly R. Jones*, 55 ECAB 411 (2004). (The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 1, 2006 is affirmed.

Issued: May 6, 2008  
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