

obtain reasonable accommodations for his medical condition.² Appellant stopped work on February 1, 2006.

In several statements, appellant alleged that management retaliated against him for reporting waste, fraud and abuse. He claimed that Robin Banks, a supervisor, constantly harassed him, including an occasion when she stated, in the presence of coworkers, that his thought process and reasoning skills were defective. In June 2005, Ms. Banks unfairly chastised appellant for not disciplining a newly assigned employee. Appellant claimed that in January 2006, Ms. Banks improperly assigned him to three separate work units in three different buildings and that after he placed an employee with medical problems on three days of continuation of pay Ms. Banks stated that the safety of employees did not matter. He claimed that Arlene Link, a manager, insulted him after he questioned actions by senior management and that Kelvin Williams, the senior plant manager, threatened to fire him. Appellant alleged that Thomas Graham, a manager, retaliated against him for reporting payroll fraud carried out by another supervisor, Dale Liddle. He asserted that he was assigned too many work tasks given his health problems and that he was assigned more operational responsibilities than his peers. An acting labor relations manager allegedly informed appellant that he had been profiled by the area threat assessment team and that he was determined to be “most likely to go postal.”³ Appellant asserted that Mr. Graham improperly informed him that he could no longer attend therapy sessions. He alleged that Carol Bagwell, a supervisor, required him to work beyond his medical restrictions and mischaracterized his use of leave. Appellant asserted that management prevented him from reporting abusive or alcohol-impaired employees and that coworkers ridiculed him because he did not have direct access to e-mail.⁴

Appellant submitted several medical reports dated in January 2006, including reports of Dr. Stanley N. Furman, an attending Board-certified internist. The record contains several letters in which management officials, including Ms. Banks and Mr. Graham, denied that appellant was subjected to retaliation or other improper actions at the employing establishment.

In a September 26, 2006 decision, the Office denied appellant’s emotional condition claim on the grounds that he did not establish any compensable employment factors. It found that appellant did not submit evidence showing that the employing establishment subjected him to harassment or discrimination or committed acts that constituted error or abuse with respect to administrative matters.

In July 2007, appellant requested reconsideration of his claim and submitted a statement in which he further implicated his claimed employment factors. He claimed that management punished him for acting as a union representative and for raising the issue of posting religious flyers in the workplace. Appellant asserted that Ms. Banks unfairly chastised him for not

² Appellant noted that he worked the night shift for a period in the late 1990s. By 2000, he had prevailed in his request for reasonable accommodation and was working the day shift.

³ In a July 29, 2002 letter, an employing establishment official stated that an informal investigation was made of appellant in response to a supervisor complaint but that he was not investigated by a threat assessment team.

⁴ Appellant indicated that he filed an Equal Employment Opportunity (EEO) claim regarding some of these matters.

disciplining a newly assigned employee, falsely accused him of not completing a work project and wrongly questioned his actions when he placed his name in the supervisor's leave book. He claimed that Ms. Banks improperly denied his request to attend a mediation meeting scheduled for January 12, 2005 and otherwise interfered with his participation in union matters. Ms. Banks wrongly threatened to issue him a disciplinary letter for sustaining an injury while inspecting and counting mail and instructed him to perform functions that were outside his craft classification. Appellant claimed that Mr. Williams insulted him after he filed reports of hazardous and unsafe working conditions and that he was "set up" such that it was difficult to locate mail for delivery. He asserted that a coworker, Kenneth Carter, physically threatened him by "inviting me outside."

Appellant further alleged that his attempt to arrange an automatic shipment with a supplier was thwarted by management and that he was denied access to a new computer until April 26, 2004. He claimed that he had to carry his briefcase to and from work because he was not provided with a locker at work. Appellant alleged that he was "bounced from unit to unit," including an occasion that he had to work in six units in one day and that he had to perform tasks that no other supervisors were willing to perform. In June 2003, he was improperly ordered to return to work at the main plant in July 2003 and in August 2005 he received an unwarranted letter of proposed removal from the employing establishment. Appellant asserted that written comments made on routing slips by other supervisors caused his work unit to be less productive and that he did not receive appropriate wages for his position. He claimed that Ms. Bagwell purported to give him her personal telephone number but that it turned out to be a number for a sex chat line.

Appellant submitted numerous documents, including memoranda and e-mails to superiors in which he discussed his belief that management had mishandled various matters. In some of these documents, he took issue with disciplinary actions that were taken against him.⁵ Appellant submitted additional medical reports describing his emotional and physical conditions.

In a September 2, 2003 statement, Betty Closely, a coworker, indicated that Ms. Bagwell angrily told her that appellant should not be performing a certain work task. She stated that appellant was "treated badly by Ms. Bagwell from the start" and asserted that she wanted him out of the building because he followed postal rules. A September 16, 2005 letter indicates that on September 7, 2005 the employing establishment rescinded a November 28, 2004 proposed letter of warning. In an October 10, 2006 letter, Harold Moss, a union representative, contended that appellant was harassed by management at the employing establishment. In a September 28, 2007 letter, a subordinate, Gregory Crute, stated that the fact that appellant did not stand over employees "like a warden" caused him to have problems with management.⁶

⁵ A document from the Department of Veterans Affairs shows that beginning September 27, 2006 appellant received compensation for service-related emotional problems.

⁶ Appellant also submitted statements in which several subordinates stated that he was a good supervisor and that he never caused delays in the mail.

In a September 14, 2007 letter, Ms. Banks disputed appellant's claims of wrongdoing. In a September 13, 2007 e-mail, Mr. Carter denied appellant's claim that he had invited him outside. In a September 9, 2007 letter, Mr. Graham stated that he appropriately responded to all of appellant's concerns about management.

In a November 8, 2007 decision, the Office affirmed its September 26, 2006 decision.

LEGAL PRECEDENT

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 the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁷ 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.⁸

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.⁹ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.¹⁰

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 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.¹¹ 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.¹²

⁷ 5 U.S.C. §§ 8101-8193.

⁸ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁹ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹⁰ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹¹ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹² *Id.*

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. The Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that harassment and discrimination on the part of his supervisors and coworkers contributed to his claimed stress-related condition, including instances when management retaliated against him for reporting "waste, fraud and abuse." He claimed that a supervisor, Ms. Banks, constantly harassed him by criticizing his actions and questioning his abilities, including an occasion when she called his reasoning "defective."¹³ Appellant claimed that a manager, Ms. Link, insulted him after he questioned actions by senior management and that the senior plant manager, Mr. Williams, threatened to fire him. He asserted that Mr. Williams insulted him after he filed reports of hazardous and unsafe working conditions and that a coworker, Mr. Carter, physically threatened him by "inviting me outside." Appellant alleged that a manager, Mr. Graham, retaliated against him for reporting payroll fraud carried out by another supervisor and that coworkers ridiculed him because he did not have direct access to e-mail. He claimed that management punished him for acting as a union representative and for raising the issue of posting religious flyers in the workplace.

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 employment factors.¹⁴ However, for harassment or 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.¹⁵

In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination.¹⁶ Appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors or coworkers.¹⁷ He alleged that supervisors and coworkers made statements and engaged in actions which he believed constituted harassment and discrimination, but he provided insufficient corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions

¹³ Appellant also claimed that Ms. Bagwell purported to give him her personal telephone number but that it turned out to be a number for a sex chat line.

¹⁴ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁵ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁶ For example, Ms. Banks, Mr. Graham and Mr. Carter submitted statements in which they denied appellant's claims.

¹⁷ 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).

actually occurred.¹⁸ Appellant submitted several statements in which coworkers generally indicated that he was “harassed” or “treated badly” by management officials, but these vague statements did not identify particular acts that would constitute harassment or discrimination. It appears that appellant filed an EEO claim but the record does not contain the results of any such a claim. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Appellant claimed that he was assigned too many work tasks given his health problems and that he was assigned more operational responsibilities than his peers. He asserted that Mr. Graham improperly informed him that he could no longer attend therapy sessions and claimed that a supervisor, Ms. Bagwell, required him to work beyond his medical restrictions and mischaracterized his use of leave. Appellant indicated that an acting labor relations manager informed him that he had been profiled by the area threat assessment team and that he was determined to be “most likely to go postal.” He asserted that Ms. Banks wrongly denied leave requests and improperly disciplined him. Appellant alleged that supervisors interfered with his ability to perform his work duties by preventing him from disciplining certain employees and by denying him access to a computer and a locker. He claimed that in June 2003 he was improperly ordered to return to work at the main plant and that in August 2005 he received an unwarranted letter of proposed removal from the employing establishment.

Regarding appellant’s allegations that the employing establishment improperly assigned work duties, engaged in improper disciplinary actions, failed to provide supervisory support, wrongly denied leave and mishandled investigative matters, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee’s regular or specially assigned work duties and do not fall within the coverage of the Act.¹⁹ Although the handling of disciplinary and investigative actions, the consideration of leave requests, the assignment of work duties and other personnel decisions made by supervisors are generally related to the employment, they are administrative functions of the employer and not duties of the employee.²⁰ However, the Board has also found that 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. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.²¹

Appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters. Management officials denied that they committed wrongdoing in carrying out these personnel functions and appellant has not submitted evidence, such as the finding of a grievance, to show that the employing establishment committed error or abuse. A September 16, 2005 letter indicates that on

¹⁸ See *William P. George*, 43 ECAB 1159, 1167 (1992).

¹⁹ See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

²⁰ *Id.*

²¹ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

September 7, 2005 the employing establishment rescinded a November 28, 2004 proposed letter of warning. However, the mere fact that personnel actions are later modified or rescinded, does not in and of itself, establish error or abuse²² and there is no indication that the rescission of this disciplinary action constitutes an admission of wrongdoing. Appellant expressed disagreement with managers' actions but the Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.²³ Thus, he has not established a compensable employment factor under the Act with respect to administrative matters.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.²⁴

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

²² *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

²³ *Id.*

²⁴ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' November 8, 2007 decision is affirmed.

Issued: September 2, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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