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W.D., Appellant	)	
	)	
and	)	Docket No. 09-700
	)	Issued: October 13, 2009
	)	
DEPARTMENT OF THE ARMY,	)	
Fort Bragg, NC, Employer	)	
	)	

Case Submitted on the Record

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

On January 13, 2009 appellant filed a timely appeal from a January 10, 2008 decision of the Office of Workers' Compensation Programs denying 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 the claim.

The issue is whether appellant met his burden of proof in establishing that his emotional condition is causally related to a compensable employment factor.

On May 1, 2006 appellant, then a 40-year-old human resources specialist, filed a claim for an emotional condition. He alleged that he was counseled verbally regarding leave procedures when he began his employment but never received a written copy of the procedures. Appellant was frustrated because management did not provide him with a password for two to three weeks. He requested administrative leave for two days to receive his shipment of his household goods from overseas. Appellant asked Christine Potter, his supervisor, if he could

take time off on December 22 and 23, 2004 because it coordinated with the December 24 and 25 holidays. She approved his request orally. Ms. Potter had to go on emergency leave and was out with pneumonia so she was not available to sign his leave request. When she returned to work she counseled appellant about taking leave without following procedures. Appellant alleged that Ms. Potter was always angry, mean and out of control. Ms. Potter threatened her employees and verbally abused them. Appellant called in to take a leave day to assist a friend who had a miscarriage. He could not reach Ms. Potter so he called Ronna Garrett, another supervisor, who approved the leave. In January 2005, Ms. Potter later verbally abused him and demanded medical documentation for his absence in December. In February 2006, Ms. Potter held a meeting to discuss problems with a project appellant was leading. He perceived this as a personal criticism and went home due to stress. Appellant alleged generally that Ms. Potter harassed and discriminated against him.

Appellant submitted medical reports dated February 4, 2005 to February 13, 2006 which diagnosed major depressive disorder and dysthymic disorder.

In a May 15, 2006 statement, Ms. Potter stated that in December 2004 she advised appellant that he could take three days of administrative leave to get settled in his new location. However, appellant submitted a leave request form after taking leave, not before. Ms. Potter counseled him regarding proper leave procedures. She noted that appellant told her about many personal problems during the period that she supervised him which she believed were the cause of his emotional condition.

By letter dated July 5, 2006, the Office asked appellant to submit additional evidence including a detailed description of the work situations or incidents that contributed to his emotional condition and a comprehensive medical report from his treating physician with a rationalized medical opinion as to how the condition was causally related to factors of his employment.

By decision dated November 28, 2006, the Office denied appellant's claim on the grounds that he failed to establish that his emotional condition was causally related to a compensable employment factor.

On December 6, 2006 appellant requested an oral hearing that was held on October 16, 2007.

Appellant submitted numerous letters from coworkers expressing positive comments on his job performance and personal character.

By decision dated January 10, 2008, an Office hearing representative affirmed the November 8, 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 employment but nevertheless does not come within the coverage of workers' compensation. Where the disability results from an employee's emotional

reaction to her 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.¹ 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.²

Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.³

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 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.⁴ When an employee fails to establish a compensable factor of employment, the Office should make a specific finding in that regard. If an employee does establish a compensable factor of employment, the Office should then determine whether the evidence of record substantiates that factor.⁵ As a rule, allegations alone by an employee are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by other evidence.⁶ Where the employee alleges compensable factors of employment, he must substantiate such allegations with probative and reliable evidence.⁷ 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.⁸

ANALYSIS

Appellant's allegations involve administrative or personnel matters. The Board has held 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.⁹ In determining whether the employing establishment erred or acted abusively, the Board has

¹ 5 U.S.C. §§ 8101-8193.

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁴ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁵ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁶ *See Charles E. McAndrews*, 55 ECAB 711 (2004).

⁷ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁸ *See Charles D. Edwards*, 55 ECAB 258 (2004).

⁹ *Id.*

examined whether the employing establishment acted reasonably.¹⁰ Appellant alleged that he was counseled verbally regarding leave procedures when he began his employment but never received a written copy of the procedures. He was frustrated because management did not provide him with a password for two to three weeks. These allegations involve administrative matters and appellant has not established error or abuse in the fact that he did not receive a written copy of leave procedures or a password when he first began his job. Appellant requested administrative leave for two days to receive his shipment of his household goods from overseas. Ms. Potter verbally approved his request. She left on emergency leave and was gone for quite some time and was not available to sign appellant's leave request. When Ms. Potter returned to work she counseled appellant about taking leave without following procedures. This allegation concerns an administrative matter, counseling an employee regarding employing establishment leave procedures. Appellant did not establish error or abuse in Ms. Potter's counseling. He alleged that on another occasion he called in to take a leave day but could not reach Ms. Potter. Appellant called Ms. Garrett who approved the leave. In January 2005, Ms. Potter later verbally abused him and demanded medical documentation for his absence in December. Appellant did not provide supporting evidence that Ms. Potter verbally abused him when she asked for documentation to support his absence from work. It is a supervisory function to request documentation for leave. Complaints regarding the manner in which a supervisor performs his duties fall outside the scope of the Act, absent error or abuse.¹¹ Employees may sometimes dislike administrative or personnel actions taken, but a supervisor or manager must be able to perform his duties. Mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent error or abuse.¹² In February 2006, Ms. Potter held a meeting to discuss problems with a project appellant was leading. He perceived this as a personal criticism and went home due to stress. However, it is a supervisory function to hold meetings with employees regarding work projects. Appellant failed to establish error or abuse in these administrative matters. Therefore, these allegations do not constitute compensable factors of employment.

Appellant alleged generally that Ms. Potter harassed and discriminated against him. Mere perceptions of harassment or discrimination are not compensable under the Act. Appellant's burden of proof is not discharged with allegations alone. He must supplement his allegations with probative and reliable evidence.¹³ Appellant did not provide such evidence. Therefore, these allegations of harassment and discrimination are not established as compensable employment factors.

Appellant submitted numerous letters from coworkers expressing positive comments on his job performance and personal character. However, these testimonials do not address his allegations of incidents and situations that caused his emotional condition. Therefore, they are of limited probative value and do not establish any compensable factor of employment.

¹⁰ *Janice I. Moore*, 53 ECAB 777 (2002).

¹¹ *See Marguerite J. Toland*, 52 ECAB 294 (2001).

¹² *Id.*

¹³ *Cyndia R. Harrill*, 55 ECAB 522 (2004).

Appellant failed to establish that his emotional condition was causally related to a compensable factor of employment. Therefore, the Office properly denied his emotional condition claim.¹⁴

On appeal, appellant states that his claim should be accepted because he had to take disability retirement because of the stress at work. However, for his emotional condition claim to be accepted, he must first establish a compensable factor of employment and then provide rationalized medical evidence establishing that his emotional condition was caused by a compensable employment factor. Therefore, his argument that his claim should be accepted because he took disability retirement is without merit.

CONCLUSION

The Board finds that appellant failed to establish that his emotional condition was causally related to a compensable factor of employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 10, 2008 is affirmed.

Issued: October 13, 2009
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

¹⁴ See *supra* note 5 (in the absence of compensable factors of employment, there is no need to address the medical evidence).