

On September 19, 2008 the Office requested that appellant provide a detailed description of the employment factors that he identified as causing his condition as well as the specific aspects of his employment that he believed were detrimental to his health. It further requested that he respond to a series of questions about his job and work duties. The Office also informed appellant that he should submit a detailed medical report from his attending physician addressing the relationship of any diagnosed condition to the identified work factors.¹

On September 22, 2008 the employing establishment controverted the claim, noting that appellant filed the claim on the day that he was supposed to begin a 14-day suspension.

The record indicates that on June 5, 2008 appellant received a letter of warning for failing to maintain a regular work schedule. On August 26, 2008 he received a notice of a 14-day suspension for failing to follow instructions by working unauthorized overtime. A Step 3 Grievance Settlement dated August 6, 2008 provided that the employing establishment would submit any documentation given by appellant in support of his employment injury to the Office. The settlement indicated that it was “made without prejudice to either parties position.” On September 11, 2008 the employing establishment informed appellant that the dates of his 14-day suspension would be September 12 to 25, 2008.

By decision dated December 8, 2008, the Office denied appellant’s emotional condition on the grounds that he did not establish an injury in the performance of duty. It found that he had not provided a detailed statement outlining the work factors to which he attributed his condition. The Office further determined that appellant had not submitted any evidence that his supervisor erred or acted abusively in performing an administrative action.

LEGAL PRECEDENT

To establish an emotional condition in the performance of duty, an employee must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatrist disorder, (2) factual evidence identifying an employment factor or incident alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factor is causally related to his or her emotional condition.²

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

¹ In a report dated August 5, 2008, Dr. Mark A. Midthun, a Board-certified psychiatrist, diagnosed a generalized anxiety disorder, depressive disorder and PTSD. He noted that appellant had severe workplace stress. On September 3, 2008 Dr. Midthun discussed the employing establishment suspending appellant for 14 days in retaliation for “paperwork that he has filed alleging problems with his workplace.” He diagnosed PTSD and depression and increased anxiety due to workplace stress. On September 16, 2008 Dr. Midthun noted that appellant claimed that the employing establishment was a hostile work environment.

² *Vitaliy Y. Matviiv*, 57 ECAB 193 (2005); *Andy J. Paloukos*, 54 ECAB 712 (2003).

employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³ 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.⁴

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. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.⁵ A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and Equal Employment Opportunity complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.⁶ The issue is whether the claimant has submitted sufficient evidence under the Act to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁷

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of several employment incidents and conditions. He did not, however, provide a description of the specific employment factors which he alleged caused his emotional condition. On his claim form, appellant generally alleged that he experienced a hostile work environment and discrimination due to his disability. Harassment and discrimination by supervisors and coworkers, if established as occurring and arising from the performance of work duties, can constitute a compensable work factor.⁸ A claimant, however, must substantiate allegations of harassment and discrimination with probative and reliable evidence.⁹ Appellant did not specifically describe any instances that he believed constituted harassment or discrimination and thus has not alleged or established a compensable work factor.¹⁰

³ 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁵ See *Michael Ewanichak*, 48 ECAB 364 (1997).

⁶ See *Charles D. Edwards*, 55 ECAB 258 (2004); *Parley A. Clement*, 48 ECAB 302 (1997).

⁷ See *James E. Norris*, 52 ECAB 93 (2000).

⁸ *Doretha M. Belnavis*, 57 ECAB 311 (2006).

⁹ *Robert Breeden*, 57 ECAB 622 (2006).

¹⁰ In 2008 appellant received a letter of warning for failing to maintain a regular work schedule and a 14-day suspension for failing to follow instructions. The Board notes that disciplinary actions are administrative functions of the employer rather than duties of the employee and, unless the evidence discloses error or abuse on the part of the employing establishment, not compensable employment factors. *Jeral R. Gray*, 57 ECAB 611 (2006). A grievance settled on August 6, 2008 provided that the employing establishment would submit appellant's medical documentation supporting his injury to the Office. The settlement was made without a finding of fault by the employing establishment and thus does not support error or abuse in an administrative action. See *Robert Breeden*, *supra* note 9.

The Office advised appellant in its September 19, 2008 letter that he should submit a detailed factual statement describing the employment incidents alleged to have caused his emotional condition; however, he did not submit such a statement. As noted, his burden of proof requires the submission of a detailed description of the alleged employment incident.¹¹ Appellant failed to specifically identify the factors to which he attributed his claimed condition, and thus has failed to establish an essential element of his claim.

On appeal appellant contends that the evidence is sufficient to establish a hostile work environment. As discussed, however, he did not submit a detailed description of the work incidents that he believed established harassment or discrimination by the employing establishment. Consequently, appellant has not met his burden of proof.¹²

Appellant additionally notes that he has coworkers who will corroborate his symptoms. He has the burden of proof, however, to submit evidence supporting that he sustained an emotional condition in the performance of duty.¹³

Appellant further contends that the medical evidence is sufficient to show that work caused his emotional condition. It is well established, however, that in an emotional condition claim a claimant must first establish a compensable work factor before the medical evidence is considered.¹⁴ As appellant has not established a compensable work factor, however, the Board will not address the medical evidence.¹⁵

CONCLUSION

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

¹¹ *Robert Breeden*, supra note 9; *David Apgar*, 57 ECAB 137 (2005).

¹² *Id.*

¹³ See *Pamela D. Casey*, 57 ECAB 260 (2005); *Doretha M. Belnavis*, supra note 8.

¹⁴ *Richard Yadron*, 57 ECAB 207 (2005).

¹⁵ See *Lori A. Facey*, 55 ECAB 217 (2004); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 8, 2008 is affirmed.

Issued: September 17, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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