

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**M.G., Appellant**

**and**

**DEPARTMENT OF THE NAVY, CUSTOMER  
SUPPORT DIVISION, Gulfport, MS, Employer**

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**Docket No. 10-331  
Issued: August 17, 2010**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 18, 2009 appellant filed a timely appeal from an October 6, 2009 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has established an emotional condition causally related to compensable work factors.

**FACTUAL HISTORY**

This case was before the Board on a prior appeal. By order dated September 2, 2009, the Board found the Office had not made proper factual findings and the case was remanded for an appropriate decision.<sup>1</sup> Since the Board did not provide a complete factual history in its order, the Board will review the factual background in the current appeal.

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<sup>1</sup> Docket No. 09-600 (issued September 2, 2009).

Appellant filed an occupational disease claim alleging that he was taking medication for a prior work injury that made him drowsy and he was “put at a desk for supervisor to watch me and she told other employees in department.” He alleged that this caused stress. In a narrative statement, appellant indicated that he was injured in October 1988 and that he also had muscular dystrophy. According to him a supervisor had problems with the side effects of medication he was taking, which could make him sleepy. Appellant alleged the supervisor moved his desk so she could watch him and mentioned this to other employees.

The record contains a September 21, 2007 e-mail from appellant to Ms. Hill appellant’s supervisor, stating he felt Ms. Hill was doing her best to make him look bad. Appellant alleged that while other employees took excused leave to remodel their homes, he had to use donated leave and file a progress report. He stated that Ms. Hill gave him rude looks and answers. Appellant also submitted an undated e-mail to Ms Hill stating that he was not provided proper training. In an April 25, 2007 response, Ms. Hill stated that he had been provided the necessary training.

In an undated statement received on May 7, 2008, appellant stated that Ms. Hill did not like him and told him she would leave her husband when the children were grown because she hated men. He stated that he was “constantly ridiculed,” not given assignments “that made me feel part of the office” and when he was given assignments he was given little instruction so it would appear he had problems completing the task. Appellant stated he was in a “hostile work environment” for a long time and after Ms Hill left in October 2007 Ms. Thomas, the new supervisor, continued the harassment until he stopped working in March 2008.

By statement dated March 24, 2008, Ms. Thomas stated the desks were arranged prior to her becoming supervisor and noted that she could see appellant’s desk. She reported observing appellant asleep at his desk on several occasions and she spoke to him on this matter. She indicated that she told appellant to stop taking unnecessary medications, but he needed to stay awake to be productive. According to Ms. Thomas she talked to appellant about missing due dates, but he became offended and accused her of making him feel “left out” in the office.

In a September 24, 2008 decision, the Office denied the claim, without making adequately factual findings. Following the Board’s remand, the Office issued an October 6, 2009 decision. It reviewed the evidence and found appellant had not established a compensable work factor.

### **LEGAL PRECEDENT**

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 factors of his federal employment.<sup>2</sup> This burden, includes the submission of detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>3</sup> A claimant must also

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<sup>2</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>3</sup> *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Lanza*, 48 ECAB 115 (1996).

submit rationalized medical opinion evidence establishing a causal relationship between the claimed condition and the established, compensable work factors.<sup>4</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 illness has some connection with the employment, but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it, but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his 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.<sup>5</sup>

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.<sup>6</sup> Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.<sup>7</sup>

With regard to emotional claims arising under the Act, the term harassment as applied by the Board is not the equivalent of that as defined or implemented by other agencies, such as the Equal Employment Opportunity Commission which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers' compensation under the Act, the term harassment is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by coworkers. Mere perceptions and feelings of harassment or discrimination will not support an award of compensation.<sup>8</sup>

### ANALYSIS

The initial question presented is whether appellant has alleged and substantiated a compensable work factor. If a compensable work factor is established, then the medical evidence is considered on the issue of causal relationship between a diagnosed condition and the work factor.

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<sup>4</sup> See *Bonnie Goodman*, 50 ECAB 139, 141 (1998).

<sup>5</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>6</sup> See *Brian H. Derrick*, 51 ECAB 417, 421 (2000).

<sup>7</sup> *Margreate Lublin*, 44 ECAB 945, 956 (1993).

<sup>8</sup> *G.S.*, 61 ECAB \_\_ (Docket No. 09-764, issued December 18, 2009).

Appellant's allegations are generally based on conflicts with his supervisors Ms. Hill (through October 2007) and Ms. Thomas. He asserts that his desk was moved to a position where the supervisor could watch him. The monitoring of work activities is a supervisory administrative function and this would be a compensable work factor only if the evidence establishes error or abuse.<sup>9</sup> No evidence of error or abuse was presented. Ms. Thomas had noted that she observed appellant asleep at his desk on several occasions. Even if it were established that appellant's desk had been moved to facilitate observation by a supervisor, there is no evidence that such action would be erroneous or abusive. Appellant also alleged that Ms. Hill told other employees the purpose of moving his desk. No supporting evidence was provided for this allegation. But again, even if the purpose of moving the desk was known by coworkers, there was no evidence of record that this would establish error or abuse by the supervisor.

In the undated statement received on May 7, 2008, appellant referred to a "hostile work environment." To the extent appellant is alleging harassment by his supervisors, he must, as noted above, support such an allegation with probative evidence. Appellant stated that generally he was constantly ridiculed, given little instruction and treated differently, without providing specific examples and providing probative evidence, such as witness statements or other documentation, to support his claim.

The Board accordingly finds that appellant has not substantiated a compensable work factor with respect to his claim for compensation. Since he has not established a compensable work factor, the Board will not address the medical evidence.<sup>10</sup>

### **CONCLUSION**

The Board finds that appellant did not establish an emotional condition causally related to a compensable work factor.

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<sup>9</sup> See *David Cuellar*, 56 ECAB 626 (2005).

<sup>10</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 6, 2009 is affirmed.

Issued: August 17, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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