

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GERARD L. GODBOUT and DEPARTMENT OF AGRICULTURE,  
PACKERS & STOCKYARDS ADMINISTRATION, Lancaster, PA

*Docket No. 98-348; Submitted on the Record;  
Issued December 10, 1999*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant sustained an emotional condition in the performance of duty, as alleged.

On July 28, 1995 appellant, then a 52-year-old auditor, filed a claim for an occupational disease, Form CA-2, alleging that he sustained stress at work consisting of headaches, anxiety and cardiac arrhythmia because of harassment, discrimination and a hostile environment at work. Appellant's work involved conducting financial and operational audits. He has not worked since June 20, 1995. In a letter dated December 28, 1995, Harold W. Davis, the Assistant Deputy Commissioner, proposed removing appellant from his job because he was unable to perform it and there was no alternate job available within his restrictions at the same or lesser grade level. On March 8, 1996 appellant was removed from his employment effective March 16, 1996.

Appellant filed two complaints with the Equal Employment Opportunity Commission (EEOC) on May 26 and September 13, 1995 alleging harassment by his immediate supervisor, Durwood Helms, and by a coworker, both of which were not resolved and appellant appealed his leave status of unpaid furlough since October 15, 1995 to the Merit Systems Protection Board (MSPB), a claim which also was not resolved. On this appeal, appellant and his attorney alleged numerous instances of harassment by Mr. Helms some of which were addressed in the EEO complaints.

By decision dated April 12, 1996, the Office of Workers' Compensation Programs denied the claim, stating that the evidence of record failed to establish that an injury was sustained, as alleged.

By letter dated April 26, 1996, appellant requested reconsideration of the Office's decision.

By decision dated July 29, 1996, the Office denied appellant's reconsideration request.

By letter dated November 21, 1996, appellant requested reconsideration of the decision and submitted additional evidence, some of which was previously in the record and some which consisted of affidavits by him and his coworkers. In an affidavit dated March 16, 1994, appellant stated that Mr. Helms threatened him. Appellant stated that he took a month of sick leave in January 1993 and several weeks after his return to work, Mr. Helms denied him annual leave to attend his son's graduation from the marine corps boot camp, stating appellant must complete all his investigations for that quarter. Appellant said that was not possible, and when he got home he called Mr. Helms at his home to ask him again for leave and a few days later Mr. Helms granted him leave. The affidavits of appellant's coworkers establish that there were problems between appellant's coworkers and Mr. Helms. For instance, in an affidavit dated March 9, 1994, J. DiBernardo, appellant's coworker, stated that he had filed an EEO complaint, stating that he was mistreated because of his age (*i.e.*, 65 years old), being handicapped and "reprisal." He stated that Mr. Helms put him on a performance improvement plan (PIP). In an affidavit dated March 25, 1994, a legal documents worker, Barbara G. Fielder, opined that Mr. Helms and Mr. DiBernardo did not "get along," and one sign of this was that Mr. DiBernardo's travel vouchers were always questioned. Five employees, including appellant and Mr. DiBernardo filed EEO complaints against Mr. Helms.

By decision dated September 12, 1997, the Office modified its prior decision, stating that the medical evidence established that appellant had a psychiatric condition in June 1995 and therefore appellant established the fact of injury but otherwise denied appellant's claim stating that the evidence of record failed to establish that the claimed injury occurred in the performance of duty.

The relevant evidence of record is as follows. By letter dated August 14, 1995, Mr. Helms denied appellant's request for advanced sick leave, stating that the medical documentation appellant had so far submitted was insufficient to establish that he had a serious illness. Mr. Helms stated that appellant's behavior of coming into the office on certain dates to engage in casual conversation with his coworkers in June, July and August "raised questions" about the seriousness of his sickness. By letter dated August 30, 1995, Mr. Helms stated that, based on additional medical evidence appellant submitted, he granted appellant advanced sick leave retroactive to July 31, 1995 and extended it to September 20, 1995. He advised appellant that at the end of that time period his sick leave coverage would expire and appellant must indicate whether or not he wanted to continue coverage for his absence with annual leave.

By letter dated September 27, 1995, appellant's attorney alleged that, after contacting the EEO on approximately January 11, 1993, appellant received harassing notes while at the employing establishment. Appellant's attorney stated that when appellant told Mr. Helms, he laughed at the situation. Appellant's attorney stated that appellant contacted an EEO counselor, that appellant was on sick leave due to office stress from January 12 to February 5, 1993 and the case was closed during that time period. Appellant's attorney stated that Mr. Helms gave appellant a "[m]emo[andum] of [c]aution" on February 19, 1993 which appellant regarded as a letter of reprimand, that appellant filed a grievance and won and by letter dated April 8, 1993, Mr. Helms stated that all references to the memorandum were to be destroyed. Appellant's attorney stated that Mr. Helms complained to appellant for giving an affidavit to Mr. DiBernardo for his EEO complaint.

Appellant's attorney stated that on June 30, 1994 appellant contacted the EEO with the intention of filing a complaint for harassment and sex and physically handicapped discrimination alleging that he was being treated differently than other employees regarding taking breaks. Appellant's attorney alleged that around that date Mr. Helms encouraged a female employee to physically assault appellant. Appellant's attorney stated that appellant was satisfied with "the inquiry" and did not pursue a complaint but subsequently appellant began to feel that he "was being forced out of the office."

Appellant's attorney stated that in 1994 Mr. Helms placed driving restrictions on appellant for a lung condition that supposedly impaired appellant's ability to drive but appellant's attorney claimed that there was no medical support for these restrictions. Appellant's attorney stated that Mr. Helms was hostile to appellant and required him to meet conditions of employment that were different than those applied to younger and nonhandicapped employees. On November 1, 1994 Mr. Helms removed the driving restrictions based on a letter dated October 19, 1994 from appellant's doctor, Dr. Michael W. Warren, a Board-certified family practitioner, who stated that appellant did not require driving restrictions.

Approximately on January 6, 1995 appellant reported to Mr. Davis who was Mr. Helm's immediate supervisor that Mr. Helms was continuing to harass him by placing unreasonable demands on him particularly regarding the "Sechler Foods" investigation. In another incident, on January 9, 1995 Mr. Davis told appellant that he should report to the secretary. Appellant's attorney stated that in appellant's May 26, 1995 EEO complaint, appellant alleged continuing discrimination based on age and being physically handicapped in that younger and nonhandicapped employees such as his coworkers, Larry Poss and Mary Heisey, were treated more favorably than he was regarding work plans and travel arrangements and that he was being retaliated against for his EEO contacts. Appellant's attorney stated that appellant alleged that Mr. Helms advised him not to become friendly with coworkers who had filed employment discrimination complaints. Specifically, appellant's attorney stated that the rules were applied differently to appellant than his coworkers in that his coworkers were able to sign in and out without being spied on by Mr. Helms and other employees. On January 30, 1995 appellant's attorney alleged that Mr. Helms unreasonably criticized appellant for work that was done by others or had been completed in retaliation for appellant filing his EEO complaint. Appellant stated that a coworker took notes on his shredding papers pursuant to a written directive from Mr. Helms dated January 19, 1995 to destroy papers when they were no longer needed to avoid Freedom of Information Act requests.

Appellant's attorney's other allegations included: (1) appellant was denied mileage or a travel voucher for personal travel to HIV/AIDS classes and was denied overtime for returning a government vehicle; (2) Mr. Helms told appellant he "did a lot of damage to himself" for keeping notes on office activities as part of his EEO complaint; (3) Ms. Heisey harassed appellant by stating on May 19, 1995 that she could not stand having him around another three years, calling him an old man and encouraging him to retire; (4) on May 31, 1995 Ms. Heisey criticized appellant for taking five days for an investigation when she and another employee took ten days on their investigation and Mr. Helms did nothing to stop the harassment; (5) Mr. Helms failed to introduce appellant to the summer accounting intern on May 19, 1995; (6) Mr. Helms refused to grant appellant administrative leave for work on EEO matters on approximately

May 23, 1995, although he eventually granted appellant's leave request; and (7) a younger, nonhandicapped female employee was treated more favorably than appellant in approval of annual leave for vacation and when appellant requested leave for October 25, 1995 in September 1995, Mr. Helms did not act on this request until June 19, 1996.

Appellant's attorney also alleged: (1) Mr. Helms falsely accused appellant of sexual harassment and ordered appellant to attend a sexual harassment class which only men from his office were required to attend; (2) on June 29, 1995 Mr. Helms required that appellant, who was not working due to his health, to come into the office to sign the appropriate leave forms; (3) Mr. Helms gave appellant bad work reviews for work he performed in May 1995; (4) Mr. Helms possibly illegally taped recorded conversation in the office and illegally kept files at home on the employee, Pamela Johnson, who had filed a complaint on sexual harassment; (5) Mr. Helms denied appellant advanced sick leave on July 25, July 27 and August 14, 1995; and (6) Mr. Helms made unreasonable demands for additional medical documentation to justify appellant's absence from work. Appellant's attorney stated that on August 23, 1995 Mr. Helms stated that no reasonable accommodation could be made for appellant's physical condition, that he suggested removing appellant from the employing establishment and that he threatened appellant with disciplinary action and absence-without-leave status.

In his August 28, 1995 report, appellant's treating physician, Dr. Howard S. Rosen, a psychologist, diagnosed adjustment disorder with mixed anxiety and depressed mood and stated that appellant "may" perform his work as an auditor. He stated that appellant was having occupational problems consisting of chronic discord with his boss and coworkers and that accommodations which would have therapeutic value would include change of work location or supervisor or both, employee initiated breaks and medical leave for therapy. Dr. Rosen stated that "the subjective distress and possible decreased work performance [were] in response to chronic work stress (discord with boss and coworkers) and were not inherent to the tasks and duties." In his November 2, 1995 report, Dr. Rosen reiterated his diagnosis of adjustment disorder with mixed anxiety and depressed mood and stated that appellant's current employment location produced stress which resulted in inability to cope and a substitute work environment might lead to better coping ability. In a report dated November 6, 1995, the employing establishment's medical officer, Dr. Oleh I. Jacykewycz, a specialist in occupational medicine, stated that he was unable to state when appellant could return to work because there was "a strong possibility" that not all his preconditions and accommodations could be met. In his report dated November 22, 1995, Dr. Rosen opined that the current work environment was not recommended. He stated that, if the work setting could eliminate or reduce the present stressors, appellant could return to work gradually and increase to full time over a month's period. Dr. Rosen also recommended weekly therapy.

In his December 28, 1995 letter, as noted above, Mr. Davis proposed removing appellant from the employing establishment because appellant could not perform his work and that there was no alternative work available. Mr. Davis stated that Dr. Rosen's suggestion that appellant change his work location or his supervisor or both, have employee initiated breaks and have medical leave for therapy were not applicable since appellant could not return to work. He stated that even if appellant could return to work, granting him flexible break time was not a reasonable accommodation as it would impede the employing establishment from planning on

his presence at designated times and would require rescheduling of appellant's and other employees' work assignments. Mr. Rosen stated that granting appellant medical leave was discretionary with the supervisor but was a moot point since appellant was not working. Further, Mr. Davis noted that Dr. Rosen's statement that a change of environment "may" help appellant's condition was too vague a statement on which to base reassigning appellant to another office.

In a memorandum dated August 1, 1995 to Mr. Davis, Mr. Helms reported that on January 11, 1993 appellant complained that a derogatory document "[c]ertificate of [u]pgrade to [c]omplete [a]sshole," had been placed on a picture frame on his office wall, that he was very upset at this personal attack, and he told Mr. Helms that a similar document was placed in his office two years earlier. Mr. Helms stated that he subsequently met with appellant to discuss the matter, and was advised by Kevin McGrath, a member of "HRD" [*i.e.*, Human Resources Division], to meet with the staff and emphasize that such behavior must cease and would not be tolerated. In notes of a staff meeting dated January 21, 1993, it was noted that "per" Mr. Helms, such behavior was to cease and would not be tolerated.

By letter dated October 6, 1995, the Office requested additional information from appellant including a statement addressing the employment-related factors which caused or contributed to his condition.

By letter dated January 17, 1996, appellant's attorney stated that the evidence established that appellant could perform his job of auditor if the hostile work environment was removed, Mr. Helm's harassment of appellant ceased and reasonable accommodation was provided. Appellant's attorney noted that appellant was hospitalized in June due to the stress at work and in his December 28, 1995 letter, Mr. Davis stated that the medical documentation was inadequate but Mr. Helms, in his September 13, 1995 letter (this letter is not in the record), stated that the medical documentation was sufficient. He stated that the employing establishment had no medical basis for determining that appellant could not report for work.

In his October 13, 1995 statement, Robert P. Melcher stated that when he was admiring Mr. Helms lawn in 1992, Mr. Helms stated that he had a problem with appellant and he hoped that he would retire from the employing establishment soon.

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.<sup>1</sup> On the other hand, the disability is not covered where it results from such factors as an

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<sup>1</sup> *Dinna M. Ramirez*, 48 ECAB \_\_\_\_ (Docket No. 94-2062, issued January 17, 1997); see *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

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>2</sup>

Where an employee alleges harassment and cites specific incidents and the employer denies that harassment occurred, the Office or some other appropriate fact finder must make a determination as to the truth of the allegations.<sup>3</sup> The issue is not whether the claimant has established harassment or discrimination under standards applied by the EEO. Rather the issue is whether the claimant under the Act has submitted evidence sufficient to establish an injury arising in the performance of duty.<sup>4</sup> To establish entitlement to benefits, the claimant must establish a factual basis for the claim by supporting allegations with probative and reliable evidence.<sup>5</sup>

Appellant has alleged that Mr. Helms discriminated against him because of his age, sex, being physically handicapped or in retaliation for his EEO contacts or supporting his coworker's EEO complaint. Appellant has not presented sufficient evidence to establish this allegation. By letter dated March 7, 1996, William H. Ryan, the employing establishment workers' compensation manager, responded to each of appellant's allegations in the September 27, 1995 letter and denied that Mr. Helms harassed appellant in any way.

Regarding appellant's allegation that he was abused by his coworkers, either verbally, physically, *i.e.*, by Louise Jones when she put his arm on his chest, or in writing, *i.e.*, by receiving harassing notes or offensive wall hangings and management either did nothing or encouraged this treatment, appellant did not corroborate his allegation. Regarding appellant's statement that he received harassing notes approximately on January 11, 1993, Mr. Ryan stated Mr. Helms met with appellant's coworkers and informed them this conduct would not be tolerated and appellant, who initially sought a full investigation, sought to close the case. Regarding appellant's allegation that Mr. Helms encouraged a coworker to physically assault him, Mr. Ryan stated that Mr. Helms had not ordered, suggested, or otherwise encouraged physical assaults among his employees. At the hearing before the MSPB which was held on May 30, 1996, Mr. Helms stated that in a staff meeting in August 1994 where appellant and a coworker, Ms. Jones, were present, he said "[g]o for it," to her meaning it was her turn to speak, not that she should assault or intimidate appellant. He stated that as Ms. Jones was leaving she placed her hand on appellant's chest but did not "push" him and he later counseled her that she should not have done that. Appellant has not shown that Mr. Helms abused his discretion in these incidents.<sup>6</sup>

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<sup>2</sup> *Michael Ewanichak*, 48 ECAB \_\_\_\_ (Docket No. 95-451, issued February 26, 1997); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Michael Ewanichak*, *supra* note 2; *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

<sup>4</sup> *See Martha L. Cook*, 47 ECAB 226, 231-32 (1995).

<sup>5</sup> *Barbara E. Hamm*, 45 ECAB 843, 851 (1994).

<sup>6</sup> *See id.*

Regarding appellant's allegation that Ms. Heisey stated that she could not wait for appellant to retire, Mr. Helms who was not present when the statement was made to her not do that again. Regarding appellant's complaint of a derogatory document being placed on his wall on January 11, 1993 and that he had received a similar document in 1991, Mr. Helms stated that he discussed the matter with appellant and was advised by the human resources division to emphasize in a staff meeting that such behavior would not be tolerated and Mr. Helms so advised the staff in a meeting on January 21, 1993. A claim based on verbal altercations or difficult relationship with coworkers or a supervisor must be supported by evidence of record.<sup>7</sup> In the present case, appellant has not presented sufficient evidence to establish he was harassed, as alleged. According to Mr. Ryan's and Mr. Helms' accounts, Mr. Helms acted reasonably in trying to eliminate any abuse whether verbal, written or physical by appellant's coworkers and appellant has not presented evidence to the contrary.

Regarding appellant's allegations that he was unfairly disciplined in that he was not allowed to take the same amount of breaks as other employees and Mr. Helms issued him a "[m]emo[ra]ndum of [c]aution" on February 13, 1993, Mr. Ryan stated that appellant and another employee took numerous, long smoke breaks throughout the workday which annoyed the other nonsmoking employees who began to arrive late or take long lunch breaks to compensate. Mr. Helms stated that all employees were to have brief breaks in the morning and afternoon and a half hour for lunch. He stated that the policy was put into effect on June 2, 1994 and all the employees with the exception of appellant and the other employee who smoked were satisfied. Mr. Ryan noted that appellant contacted the EEO staff but did not pursue the matter. Mr. Davis corroborated that appellant went out to smoke a lot and that this irritated other employees and when the changes in the breaks were implemented by Mr. Helms, appellant began keeping tabs on coworkers to the extent of using a stopwatch to monitor the activities of his coworkers. Mr. Davis stated that the office's hostile environment was created by appellant, not Mr. Helms. Ms. Heisey's testimony at the MSPB hearing corroborated Mr. Ryan's testimony in that she stated that approximately in the summer of 1994, after the memorandum came out about breaks and leave, appellant was watching her a lot, pacing in front of her office and noting when and how long she took breaks.

Concerning the "[m]emo[ra]ndum of [c]aution," Mr. Ryan explained that appellant divulged a letter to a "Wall Street Journal" reporter without obtaining proper authorization to release it. Mr. Ryan stated that Calvin Watkins, Mr. Helms' supervisor, advised Mr. Helms to issue a written caution which he did, appellant then filed a grievance to Mr. Watkins who after discussion with Mr. Helms reversed his former decision, presumably meaning that he withdrew the memorandum. Disciplinary matters concerning an oral reprimand, discussions or letters of warning for conduct pertain to actions taken in an administrative capacity. As such, they do not constitute compensable factors of employment, unless the employee shows that management acted unreasonable.<sup>8</sup> The evidence establishes that Mr. Ryan and Mr. Helms acted reasonable in changing appellant's breaks and in issuing the memorandum of caution.

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<sup>7</sup> *Diane C. Bernard*, 45 ECAB 223, 228 (1993).

<sup>8</sup> *Gregory N. Waite*, 46 ECAB 662, 673 (1995); *Elizabeth W. Esnil*, 46 ECAB 606, 618 (1995).

Regarding appellant's allegation that Mr. Helms harassed him by placing driving restrictions on him, Mr. Ryan stated that appellant had informed Mr. Helms that he had emphysema which caused him to have coughing seizures which, when severe, caused him to pass out and, on one occasion, caused him to have a car accident. At the behest of Mr. Davis, Mr. Helms placed driving restrictions on appellant pending the submission of medical documentation describing the nature of appellant's health problem and the need for accommodations. When, on October 19, 1994, Dr. Warren stated that appellant could drive but should stop when he starts coughing, Mr. Helms removed the driving restrictions. Mr. Helms' restricting appellant's driving for safety concerns is an administrative matter and as such is not a compensable factor unless appellant establishes that Mr. Helms acted unreasonable.<sup>9</sup> Appellant has not made this showing.

Regarding appellant's allegation that Mr. Helms complained about the affidavit appellant gave for Mr. DiBernardo's EEO complaint in March 1994, Mr. Helms told appellant that he had overheard coworkers stating that appellant had "burned" Mr. Helms in the affidavit and it was not further discussed. He denied intimidating appellant or cautioning him as to his choice of friends. While retaliating against appellant for his involvement in assisting a coworker with an EEO complaint would constitute harassment, appellant has not established factually that he was harassed in this regard.<sup>10</sup> Appellant also did not present sufficient evidence to show that Mr. Helms criticized his work in retaliation for filing an EEO complaint.

Appellant has failed to establish that Mr. Helms falsely accused him of sexual harassment. Mr. Helms testified at the MSPB hearing that the human resources division recommended that three male employees in the office, appellant among them, should take sexual harassment training. He stated that only men were required to attend the class because the human resources division determined after performing an investigation of the office that certain male employees would benefit from the training. Mr. Helms denied that he ever accused appellant of sexual harassment and did not know of any incident where appellant sexually harassed anyone. Appellant presented no corroborating evidence that he was accused of sexual harassment and therefore did not establish a compensable factor of employment in this regard.<sup>11</sup> Further, because he and two other male employees were required to take the class on sexual awareness, he was not treated differently than those other two employees.

Regarding appellant's allegation that Mr. Helms delayed approval of appellant's "work schedule, travel time and leave," Mr. Ryan stated that appellant submitted leave requests and work schedules for more than a year in advance. He stated that because of appellant's senior status, approval of some of his requests were delayed until it could be determined that they would have another senior staff member to cover for him. Mr. Ryan stated that many of the leave requests were approved at the time they were made and the remainder were made within a range of a few weeks to several months in advance of the dates of the requested leave. Mr. Ryan stated that the only exception was when appellant and other employees were scheduled to attend

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<sup>9</sup> See *Jose L. Gonzalez-Garced*, 46 ECAB 559, 564 (1995).

<sup>10</sup> See *Barbara E. Hamm*, *supra* note 5 at 851 (1994).

<sup>11</sup> See *id.*



the class on sexual harassment awareness. He stated that the organization conducting the class had only one class for the foreseeable future in September 1995 and appellant was told he must reschedule his leave to accommodate the class.

In a statement dated February 14, 1996, Mr. Helms stated that when appellant asked him for leave which would conflict with the class, he asked appellant what was "so significant" about his taking leave at that time, appellant stated, "I do n[o]t think I have to tell you that." Further, at a later date, he offered to reconsider appellant's leave request for the time period in question but appellant was not interested. He stated that he also denied one of the other employees a leave request so he would not miss the class. Mr. Helms stated that appellant requested and was granted annual leave on 16 occasions totaling 304 hours in 1994 and in 1995 until June 20, 1995 when appellant stopped working. Appellant's other allegations concerning leave or his work schedule, that he was spied on signing in and out, that a female got preferred treatment for leave, that he was required to come in to complete leave forms while he was unable to work and that he was denied leave for his son's graduation in 1993 and for time spent on EEO matters were either not described in sufficient detail or not corroborated by other evidence of record in order to establish acts of harassment.

Regarding appellant's allegation that on March 30, 1995 he was denied mileage or travel voucher for personal travel to an HIV-AIDS class and denied overtime for returning a government vehicle, Mr. Ryan stated that all employees were allowed to use their personal vehicles to attend the class so mileage coverage was not necessary and further, appellant could not use official time for his commute home. Mr. Ryan stated that he did not charge appellant a half hour for leaving early, but if he had, it would have been appropriate since appellant's commute was not covered.

The Board has held the matters involving the use of leave and procedures relating thereto are administrative and personnel matters that are not directly related to an employee's regular or specially assigned duties. Mr. Ryan and Mr. Helms reasonably exercised their discretion in granting appellant leave and did not single him out in refusing him leave during the week the sexual awareness class was going to be held. The fact that the class was infrequently held provided some justification for Mr. Helms denial of appellant's request for leave at that time although Mr. Helms stated when he told appellant he would reconsider the request, appellant was not interested. Further, according to Mr. Helms and Mr. Ryan, management delayed appellant's leave requests in certain instances because appellant failed to submit sufficient medical evidence to document his inability to work. Appellant has not shown that management erred.

Moreover, concerning appellant's allegation that the employing establishment unreasonably required further documentation of his medical condition and unreasonably refused to accommodate his work restrictions as set forth by Dr. Rosen, Mr. Ryan stated that until August 28, 1995 all the medical documentation the employing establishment had were disability slips stating that appellant was unable to work. He stated that as of August 28, 1995 the employing establishment received sufficient documentation to grant appellant advanced sick leave and on August 30, 1995 granted him the maximum amount of 240 hours which would expire on September 13 or September 20, 1995. Because the medical documentation the employing establishment received was general, Mr. Ryan stated that on September 13, 1995 the

employing establishment requested documentation with more specificity but it was not provided. Appellant's allegation on this issue, *i.e.*, whether he was capable of returning to work, constitutes a personnel matter and as such does not constitute a compensable factor unless management acted unreasonably.<sup>12</sup> In his August 28, 1995 letter proposing appellant's removal from his position, Mr. Davis stated that the speculative nature of Dr. Rosen's August 28, 1995 report in which Dr. Rosen stated that appellant "may" perform better in another work environment mitigated against transferring appellant to another office. Further, Mr. Davis stated that Dr. Rosen's recommendation that appellant be granted flexible break time could not be accommodated in his office as it would undermine the need for others employees in the office to depend on his being available at designated times. Moreover, Mr. Davis stated that there were no other jobs at appellant's or a lesser grade level within appellant's restrictions. The employing establishment acted within its discretion in finding it could not accommodate appellant pursuant to Dr. Rosen's restrictions. Appellant has not shown harassment in this regard.

Regarding the Sechler Food investigation, Mr. Ryan stated that appellant found records that he was supposed to use too poor to use but ended up using them because conducting another investigation as he was advised to do would be too much work and this was what he called an unreasonable demand. Appellant's allegation regarding the Sechler Food investigation is very general. To the extent, Mr. Ryan's response indicates the problem was that appellant objected to the records he was advised to use for his investigation, the matter would relate to the nature of his work and as such be a compensable factor of employment. However, appellant did not describe the alleged offense in sufficient detail to establish that he was harassed in this regard.<sup>13</sup>

Appellant has also not established that Mr. Helms gave him poor work evaluations. In his February 14, 1996 letter, Mr. Helms stated that in 1994 and 1995, appellant received an "[e]xceeds [f]ully [s]uccessful" on his element for timely completing his investigations. Mr. Ryan stated that appellant was rated "[f]ully [s]uccessful" in 1995. A memorandum in the record dated June 22, 1995 from Mr. Helms to Mr. Davis indicates that Mr. Helms recommended that appellant be placed on a PIP. A performance appraisal is an administrative action of the employing establishment and is not compensable absent a showing of error or abuse by the employing establishment.<sup>14</sup> Appellant has not shown that the ratings he received from 1993 through 1995 were in error or that he actually underwent a PIP and if he did, that it was in error.<sup>15</sup>

Appellant has not corroborated his other allegations to establish that he was harassed by management. Mr. Ryan denied that appellant was ever supervised by a secretary but stated that appellant and other staff members were required to give information to support staff in order for the support staff to assist them in carrying out their assignments. Regarding appellant's allegation that Mr. Helms did not introduce him to the summer intern, Mr. Ryan stated that he

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<sup>12</sup> See *Helen Casillas*, 46 ECAB 1044, 1051 (1995).

<sup>13</sup> See *Alice M. Washington*, 46 ECAB 382, 391 (1994).

<sup>14</sup> *Sammy N. Cash*, 46 ECAB 419, 424 (1995).

<sup>15</sup> See *Barbara Hamm*, *supra* note 5 at 851.

might have forgotten to do so but appellant did not object at the time and Mr. Helms did not discuss the matter with him. Mr. Ryan denied that Mr. Helms illegally recorded conversations or maintained personnel files at his residence. Appellant did not corroborate that a coworker unfairly criticized him for taking too long on an investigation or that a coworker took notes on him for shredding papers. Absent the requisite factual corroboration, appellant cannot establish that he was harassed.<sup>16</sup> Although appellant submitted affidavits from his coworkers, they often pertain to troubles with other workers such as Mr. DiBernardo had with Mr. Helms and do not address problems appellant had with Dr. Helms. Also, some of his coworkers corroborate that there was much hostility in the office but do not provide specific incidents where appellant was harassed and therefore fail to corroborate his allegations. Mr. Melcher's October 13, 1995 statement that Mr. Helms told him outside of work that he hoped appellant would retire soon is not probative because it is not evidence of appellant being harassed in the workplace. The two EEO complaints appellant filed were not resolved and appellant has not shown that management acted unreasonably towards him. He therefore failed to establish that his emotional condition arose out of factors of his employment.<sup>17</sup>

The decision of the Office of Workers' Compensation Programs dated September 12, 1997 is hereby affirmed.

Dated, Washington, D.C.  
December 10, 1999

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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

<sup>17</sup> Since appellant has failed to establish compensable factors of employment, it is not necessary to address the medical evidence; see *Sharon R. Bowman*, 45 ECAB 187, 194 (1993).