U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS G. PARK and DEPARTMENT OF THE AIR FORCE, TINKER AIR FORCE BASE, Oklahoma City, Okla.

Docket No. 97-104; Submitted on the Record;
Issued January 19, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM, BRADLEY T. KNOTT

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

On June 30, 1995 appellant, a 38-year-old mechanic, filed a CA-2, claim for occupational disease, claiming he sustained an emotional condition which he first became aware of on May 23, 1995. Appellant alleged that he began experiencing problems with his employing establishment's supervisors in 1983. In an August 15, 1995 letter, appellant alleged the occurrence of the following incidents:

> 1. Beginning in the fall of 1983, there were two different occasions where female employees falsely accused him of sexual harassment.
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> 2. In December 1985 his front-line supervisor harassed and "persecuted" him by making statements that he was going to dock his time card because he wasn't working in his assigned area. In the latter part of December 1985, another supervisor did in fact dock his time card for 30 minutes, which was restored following appellant's filing of a union grievance.
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> 3. In August 1986 appellant volunteered for an assignment in England with a co-worker. Upon their return to the United States the co-worker was promoted and appellant was not, an action which appellant believed to be discriminatory, and by which he felt humiliated.
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> 4. In October 1988 he was "written up" in his personnel file for falling out of his chair at work after management had the rollers removed from the chair. Appellant considered this administrative action by the employing establishment an act of harassment.

5. From February 1992 through August 1993 appellant was assigned the task of setting up what was known as "the Navy Bond Room." Appellant alleged that four different incidents of harassment occurred during this period. The first was when an African-American employee approached him and provoked a verbal confrontation in which he subjected appellant to racial taunts. Appellant submitted a written complaint to his supervisors regarding the co-worker, but claimed that the employing establishment took no action. The second incident allegedly occurred in March 1993 when, according to appellant, a female co-worker was "sexually harassing him by creating a hostile work environment." Appellant claimed that he once again filed a complaint with management, but they once again took no action. The third episode involved another confrontation with a supervisor, whom appellant alleged had been watching him closely and following him around until he eventually approached him after a lunch break one day and asked him about his whereabouts. When appellant told the supervisor he had been to the bathroom, the supervisor allegedly replied that he would be charged with leave without pay. Appellant stated that the supervisor did not follow through on this threat, but alleged that this supervisor liked to use intimidation and fear as a management style if thought he could get away with it. Lastly, appellant alleged that on August 11, 1993, his scheduling supervisor "rudely embarrassed" him in front of his co-workers by yelling at him and using abusive and offensive language toward him, and by screaming at him to "get the hell out" of his office area. Appellant alleged that on August 12, 1993, the following day, he was removed from his assignment in the Navy Bond Room and replaced by a management favorite.

Appellant contended that he was "totally humiliated" in front of his peers and superiors. Appellant stated that he returned to work in December 1994 on a swing shift, believing that in transferring to a new shift he would be able to avoid the harassment he had encountered from his previous supervisors. Instead, appellant alleged his new supervisor on the swing shift was out to make an example of him for "whatever" reason. Appellant alleged that this behavior on the part of his new supervisor continued until April 28, 1995, when appellant sustained a nervous breakdown.

Attached to the above statement was a May 18, 1995 report from Dr. Joe G. Savage, a specialist in psychiatry. In his report, Dr. Savage stated that he had been treating appellant since July 1994 and that, based on psychological testing, he had diagnosed significant paranoia, which he characterized as a severe major depressive disorder. Appellant informed Dr. Savage that he had been severely depressed since October 1994, when he stated he began to withdraw and felt that he could not socialize because of the depression and anxiety. He told Dr. Savage that since his transfer to the swing shift in December 1994, he had continued to experience depression and believed that his supervisor was watching him and trying to find inadequacies about which to criticize him. Dr. Savage stated that appellant had been having suicidal thoughts and feelings, and had lost twenty pounds in the last two weeks. Dr. Savage related that appellant was having trouble sleeping at night and felt as if he was "working in a fish bowl." He advised that he was going to start appellant on Prosac to alleviate his depressive disorder, and help him to be more comfortable.

Dr. Savage stated that appellant had been feeling stressed over various matters since 1982 and 1983. He related that appellant claimed to have earned the highest appraisals and had received bonuses, but stated that he had never even been interviewed for a possible new job offer. Dr. Savage concluded:

> "I am addressing this letter to the medical department because I do believe he has a significant emotional problem which is going to continue to be aggravated by the supervisors in his area. I doubt that he will be able to improve enough to be comfortable if he has to stay in that area. I would hope that something could be done to give this man an opportunity to change to a different department or another job before he becomes another casualty and has to apply for workers' comp[ensation]."

On May 23, 1995 the employing establishment submitted to appellant a notice of enforced leave based on Dr. Savage's May 18, 1995 medical report.

In a letter dated June 27, 1995, the employing establishment informed appellant that it was placing him on enforced leave as of June 30, 1995.

On December 11, 1995 the employing establishment terminated appellant based on his physical inability to perform, and he was approved for disability retirement on February 15, 1996.

The employing establishment controverted appellant's claim in a letter dated December 15, 1995. Attached to the letter were statements from 10 different co-workers and/or supervisors who worked with appellant during the times and dates he alleged that he was harassed, treated in a discriminatory manner, or verbally abused. Each of these individual employees categorically denied that appellant had ever been treated in the manner he had alleged in his August 15, 1995 statement.

In a letter to appellant dated June 24, 1996, the Office informed appellant that the evidence he submitted was not sufficient to establish his claim and to submit a detailed description of the specific employment-related conditions or incidents he believed contributed to his illness. The Office also asked appellant to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition, and an opinion as to whether factors or incidents, *i.e.*, specific employment factors, at his employing establishment contributed to his condition.

Appellant responded to the Office's request in a letter dated June 29, 1996. He also attached copies of grievances and letters sent to congressman and their responses.

In a letter dated July 29, 1996, the employing establishment noted that it had attached statements from appellant's co-workers and supervisors which rebutted his allegations of harassment and abuse.

By decision dated July 30, 1996, the Office found that fact of injury was not established, as the evidence of record did not establish that an injury was sustained in the performance of

duty. In an accompanying memorandum to the Director, the Office found that appellant failed to provide sufficient factual evidence to support his allegations. The Office reviewed appellant's allegations and the employing establishment's responses to them, and made the following factual findings:

> 1. The Office found that, according to records submitted by the employing establishment, appellant was counseled by his supervisor in 1983 for allegedly harassing two female co-workers. The Office stated that following the first incident, appellant had been verbally counseled. Following the second episode of sexual harassment, appellant was again counseled and received a notation in his personnel file. The Office noted that there were no formal complaints filed by appellant or the female co-workers. The Office stated that appellant had written to his congressman, who authorized a congressional inquiry on his behalf, and that this investigation concluded that appellant had no valid basis for his complaint.
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> 2. The Office stated that on November 22, 1985, appellant filed a grievance regarding 30 minutes of overtime which his supervisor withheld as a disciplinary action because appellant had not been in his assigned work area. Appellant received reimbursement for the thirty minutes overtime.
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> 3. In 1986 appellant was on temporary-duty assignment to England along with a co-worker. Upon their return to the United States, the co-worker was promoted and he was not.
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> 4. In 1988 appellant fell out of a chair and stated he was written up for safety violations.

The Office found that personnel and administrative matters were not considered factors of employment, and a reaction to such factors did not constitute an injury arising within the performance of duty. The Office concluded that in the absence of agency error, administrative and personnel matters were not compensable factors of employment. The Office further found that appellant failed to establish that his supervisors at the Navy Bond Room singled him out and harassed him. The Office further noted, that in March 1993 appellant had alleged that a female co-worker had sexually harassed him, but found that appellant subsequently informed his supervisor that he wished to withdraw the charge. The Office noted that the female co-worker had submitted a statement denying the allegation. The employer also submitted a statement from another co-worker indicating he heard appellant on several occasions making lewd comments about the female whom he had accused of sexually harassing him. The Office noted that appellant had alleged that he had several verbal confrontations from May 1993 through August 1993 with his supervisor at the Navy Bond Room. The Office stated that appellant's supervisor at that time denied these allegations and submitted statements from other employees who had worked in the vicinity of the areas where these incidents were alleged to have occurred which supported his contention that he did not yell at or verbally abuse appellant. Finally, the Office noted that it had received a statement from appellant's supervisor at the swing shift, to which he had been transferred in December 1994, in which the supervisor denied appellant's allegation that he sought to make an example of him and harass him.

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

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition, and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.[1] There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.[2]

The first issue to be addressed is whether appellant has established factors of employment that contributed to his alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[3] On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.[4]

It is well established that mere perceptions of harassment or discrimination do not constitute a compensable factor of employment. A claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.[5] The Board has underscored that, 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 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.[6] The Office has the obligation to make specific findings with regard to the allegations raised by a claimant. When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a compensable factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings, alone, are not compensable. Only when the matter asserted is a compensable factor of employment and the

[1] *See Debbie J. Hobbs,* 43 ECAB 135 (1991).

[2] *See Ruth C. Borden,* 43 ECAB 146 (1991).

[3] *Lillian Cutler,* 28 ECAB 125 (1976).

[4] *Id.*

[5] *Curtis Hall,* 45 ECAB 316 (1994); *Margaret S. Krzycki,* 43 ECAB 496 (1992).

[6] *Norma L. Blank,* 43 ECAB 384 (1992).

evidence establishes the truth of the matter asserted may the Office then base its decision to accept or reject the claim on an analysis of the medical evidence.[7]

In the present case, the Office found that the allegations made by appellant concerning the implicated work-related incidents were not established as factual by the weight of evidence of record. The Office reviewed all of appellant's allegations of harassment, abuse and mistreatment, which allegedly occurred over a 12-year period, and found that they were not only unsubstantiated, but that the employing establishment had submitted witness statements which categorically rebutted appellant's allegations. The statements from appellant's co-workers do not establish that his supervisors disparaged appellant or otherwise ridiculed him during the periods and dates he alleged these episodes to have occurred. Nor do the statements of the co-workers substantiate appellant's allegations that his supervisors harassed him.[8]

The Board finds that the Office's finding that appellant failed to substantiate his claim was proper. Appellant has not submitted sufficient factual evidence to support his allegations that he was harassed, mistreated, or treated in a discriminatory manner by his supervisors. The Board finds that the Office properly found that the episodes of harassment cited by appellant did not factually occur as alleged by appellant, as he failed to provide any corroborating evidence for his allegations. As such, appellant's allegations constitute mere perceptions or generally stated assertions of dissatisfaction with a certain superior at work which do not support his claim for an emotional disability.[9] For this reason, the Office properly determined that these incidents constituted mere perceptions of appellant and were not factually established.

The Board further finds that the administrative and personnel actions taken by management in this case contained no evidence of agency error, and are therefore not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.[10]

In the instant case, appellant has presented no evidence that the employing establishment acted unreasonably or committed error with regard to the four incidents of alleged unreasonable actions involving personnel matters on the part of the employing establishment. As to the 1983 episode of alleged sexual harassment, the record only indicates that appellant was counseled for allegedly harassing two female co-workers; no claim was ever filed, and appellant was never formally reprimanded. In 1985, appellant's supervisor withheld 30 minutes of overtime from appellant as a disciplinary action,[11] and in 1986, appellant's supervisor cited him for safety

[7] *Id.*

[8] *Merriett J. Kauffmann*, 45 ECAB 696 (1994).

[9] *See Hall, supra* note 5.

[10] *Alfred Arts*, 45 ECAB 530 (1994).

[11] The Board notes that the 30 minutes of overtime were subsequently restored to appellant following his filing of a grievance. However, the mere fact that the employing establishment lessens or reduces a disciplinary action or sanction does not establish that the employer acted in an abusive manner towards the employee; *see Richard J. Dube*, 42 ECAB 916 (1991).

violations when he fell from his chair. None of these episodes constituted a factor of employment. Disciplinary matters consisting of counseling sessions, discussions or letters of warning for conduct pertain to actions taken in an administrative capacity, and are not compensable as factors of employment.[12]

Finally, appellant indicated that he became emotionally distraught when he was passed over for a promotion in favor of a co-worker with whom he traveled to England on a work assignment in 1986. This matter is also not compensable, as determinations by the employing establishment concerning promotions and the work environment are administrative in nature and not a duty of the employee.[13] Accordingly, a reaction to such factors did not constitute an injury arising within the performance of duty. The Office properly concluded that in the absence of agency error such personnel matters were not compensable factors of employment.

[12] *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

[13] *See Kauffman*, *supra* note 8; *William P. George*, 43 ECAB 1159 (1994).

The decision of the Office of Workers' Compensation Programs dated July 30, 1996 is hereby affirmed.

Dated, Washington, D.C.
January 19, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member