

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BRUCE WRIGHT and DEPARTMENT OF LABOR, OFFICE OF  
WORKERS' COMPENSATION PROGRAMS, New York, NY

*Docket No. 00-309; Submitted on the Record;  
Issued December 22, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
VALERIE D. EVANS-HARRELL

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

On June 23, 1998 appellant, a 54-year-old vocational rehabilitation specialist, filed a traumatic injury claim for benefits based on an emotional condition. Appellant stated on the Form CA-1 that he was verbally assaulted, abused and harassed by his supervisor while discussing a case on June 23, 1998. He further alleged that his supervisor followed him to his cubicle and continued the verbal assault, which resulted in his experiencing extreme emotional stress, anxiety, shakiness, tension, rapid breathing, depression, elevated blood pressure and heightened pulse.<sup>1</sup> The employing establishment submitted statements from the supervisor and a coworker, which rebutted appellant's allegations.

In a June 23, 1998 statement, appellant's supervisor, Precila Negron, a claims examiner, stated that she had been reviewing a file on the day of the incident when she asked another claims examiner, Seymour Fleishman, whether certain information contained in the file had been received by the employing establishment. According to Ms. Negron, Mr. Fleishman then walked over to appellant's cubicle to ask him whether the employing establishment had received this information. Appellant, accompanied by Mr. Fleishman, approached Ms. Negron at her cubicle and told her that he had verbally provided the information and that this should be sufficient. When Ms. Negron told appellant that she could not sign the decision until she had something in writing, appellant left his cubicle but then returned screaming that "they" were a bunch of lazy people. Appellant then exclaimed that he should not be required to review cases for them, then grabbed the case file and slammed it against the desk, saying, "Look, look, it's here." Appellant stated that he continued to yell loudly and then threw the case toward Mr. Fleishman. Ms. Negron noted that during this time appellant was swinging his arms and approaching her and

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<sup>1</sup> Appellant submitted a handwritten statement, attached to his Form CA-1, in which he expounded on his account of events, which allegedly occurred on June 23, 1998.

Mr. Fleishman in a threatening manner, causing her to back up to avoid being struck. Appellant continued to scream, saying they should look for things themselves and then Ms. Negron told him to calm down. He then threatened Mr. Fleishman, screaming at him and saying he would never work with him again and that he better stay away from him. The employing establishment also submitted a statement from Mr. Fleishman in addition to statements from five of appellant's coworkers, all of which corroborated the statements from appellant's supervisor and coworker regarding the day in question.

On July 10, 1998 the employing establishment issued a formal reprimand to appellant for unprofessional conduct on June 23, 1998. The memorandum stated that he had been observed acting in an unprofessional manner by his supervisor and several coworkers and that he was being verbally abusive and making other staff members in his unit feel threatened.

By letter dated July 17, 1998, the Office of Workers' Compensation Programs advised appellant that he needed to submit additional information in support of his claim. The Office requested that he submit additional medical evidence in support of his claim and provide factual evidence, including statements from witnesses, which would corroborate his account of the events which occurred on June 23, 1998.

Appellant submitted an August 11, 1998 report from Dr. Max Drechsler, a psychologist and psychotherapist, indicating that appellant had been treated for emotional problems, which were created and exacerbated by his employment several years prior and that he had treated appellant with psychotherapy and Prozac. Dr. Drechsler stated:

"On June 23, 1998 [appellant] reported an incident at work where he was verbally assaulted and threatened. This was very frightening to him and resulted in terror that some serious bodily harm might befall him. He was so agitated that he left work and contacted me."

Dr. Drechsler found on examination that appellant was trembling, hyperventilating, had difficulty focussing his vision and had feelings of depersonalization, numbness of the extremities, inability to concentrate, agoraphobia, helplessness and tearing. He stated that appellant had experienced a recurrence of post-traumatic stress disorder caused by the incident of June 23, 1998 and also diagnosed dysthmic disorder, generalized anxiety, somatization disorder, sleep disorder and obsessive compulsive personality disorder.

By decision dated October 16, 1998, the Office found that fact of injury was not established, as the evidence of record failed to establish that an emotional injury was sustained in the performance of duty.

By letter dated July 8, 1999, appellant requested a review of the written record. Appellant did not submit any additional factual or medical evidence with his request.

By decision dated August 30, 1999, an Office hearing representative affirmed the Office's previous decision denying benefits. The hearing representative found that appellant failed to provide factual support for his allegation that he was verbally harassed and abused on June 23, 1998 and, therefore, did not meet his burden to establish that he sustained an emotional condition in the performance of duty on the date in question.

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.<sup>2</sup> There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup> 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 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.<sup>6</sup>

In the present case, the Office found that the allegation made by appellant concerning the work-related incident on June 23, 1998 was not established as factual by the weight of evidence of record. The Office reviewed appellant's specific allegation that he was harassed and verbally and physically abused on the date in question and found that it did not accept as factual that the incident occurred as he described. The Office found that the statements from appellant describing the incident were contradictory and that appellant failed to submit witness statements from coworkers to substantiate his allegation that he had been harassed and abused on June 23, 1998.

The Board finds that appellant has failed to substantiate his claim of harassment. Appellant has not submitted any factual evidence to support his allegation that he was harassed,

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<sup>2</sup> See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

<sup>3</sup> See *Ruth C. Borden*, 43 ECAB 146 (1991).

<sup>4</sup> *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>5</sup> *Norma L. Blank*, 43 ECAB 384 (1992).

<sup>6</sup> *Id.*

mistreated, or abused by his supervisor on June 23, 1998 as alleged. The Board finds that the episode of harassment and abuse cited by appellant did not factually occur, as alleged, as he failed to provide any corroborating evidence for his allegations. Further, the employing establishment submitted rebuttal statements from the other parties involved in the incident, plus five statements from other employees present in the area, which contradicted appellant's version of the events. Appellant's allegations constitute a mere perception or generally stated assertion of dissatisfaction with a certain superior at work, which does not support his claim for an emotional condition.

Therefore, appellant failed to provide evidence to show that he sustained an emotional condition as a direct result of his regularly assigned duties. His reactions to administrative actions are not covered as there has been no evidence of harassment,<sup>7</sup> error or abuse on the part of the employing establishment.

The decision of the Office of Workers' Compensation Programs dated August 30, 1999, is hereby affirmed.

Dated, Washington, DC  
December 22, 2000

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Valerie D. Evans-Harrell  
Alternate Member

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<sup>7</sup> *Supra* note 4.