

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of THOMAS L. LINEBERG and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Martinsburg, WV

*Docket No. 01-231; Submitted on the Record;  
Issued July 18, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

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

On February 9, 1999 appellant, then a 48-year-old painter/carpenter, filed a claim alleging that his work environment had caused emotional stress. In an accompanying narrative statement, appellant asserted that he was subject to harassment, threats and racial comments from coworkers.

In a decision dated May 19, 1999, the Office of Workers' Compensation Programs denied the claim. By decision dated October 28, 1999, the Office denied modification of the prior decision.

The Board finds that appellant has not established an employment-related emotional condition.

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>1</sup> To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.<sup>2</sup>

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<sup>1</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>2</sup> *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

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>3</sup>

Appellant's primary allegation is that he was subject to harassment by coworkers. According to appellant, he was harassed and subject to a hostile work environment because: he worked with another employee, Mr. Baker, who was unpopular; he was a work leader for several minority employees and was subject to racial comments; and he provided testimony in an EEO (Equal Employment Opportunity) action by Mr. Baker.<sup>4</sup>

With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.<sup>5</sup> An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.<sup>6</sup>

In this case, the record does not establish a claim based on harassment. There is, for example, no finding of harassment or discrimination pursuant to an EEO claim filed by appellant,<sup>7</sup> nor is there other probative evidence sufficient to support a finding of harassment. The Board notes that the record does contain witness statements regarding a February 4, 1999 incident involving a verbal confrontation between appellant and several coworkers over the ownership of some tools. Appellant did not discuss the incident in detail in his narrative statements. The record indicates that he received a reprimand for the incident; to the extent that

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<sup>3</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> The record contains transcripts of testimony provided by appellant.

<sup>5</sup> *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

<sup>6</sup> *Helen P. Allen*, 47 ECAB 141 (1995).

<sup>7</sup> The record indicates that appellant filed a complaint for discrimination and reprisal for prior EEO activity; there are no findings with respect to this complaint.

he is alleging a reaction to the administrative actions taken, he must establish error or abuse by the employing establishment.<sup>8</sup> Appellant filed a grievance, but did not submit probative evidence of error or abuse in issuing a reprimand in this case.

The Board finds that appellant has not established a compensable factor based on a claim of harassment, nor has he submitted sufficient evidence to establish any compensable work factors in this case. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.<sup>9</sup>

The decision of the Office of Workers' Compensation Programs dated October 28, 1999 is affirmed.

Dated, Washington, DC  
July 18, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>8</sup> It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee. The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment. See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>9</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).