

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT L. SHAINLINE and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, NY ARTCC, Ronkonkoma, NY

*Docket Nos. 01-1227 & 02-269; Submitted on the Record;
Issued March 13, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant established that he sustained an emotional condition on February 7, 2000 for which he filed a traumatic injury claim, Docket No. 02-269; and (2) whether he sustained an emotional condition after February 7, 2000 for which he filed an occupational claim, Docket No. 01-1227.

On February 7, 2000 appellant, then a 58-year-old air traffic controller, filed a traumatic injury claim alleging that he experienced stress, anxiety and chest pains resulting from his employment. Appellant stated that his condition resulted from hostile remarks and jokes about his coworkers.

In a statement dated March 9, 2000, appellant stated that he returned to work in September 1997, having gone on strike 16 years earlier. Appellant stated that his coemployees were hostile to him and other Professional Air Traffic Controllers Organization (PATCO) coworkers who had gone on strike and been rehired. Appellant stated that he heard many negative remarks directed at PATCO employees such as "I bid on a job but did n[o]t get it because one of those f___ing PATCO guys got it" or "every time one of those f___ing PATCO guys check out I lose seniority." Appellant stated that in April 1998 he began having chest pains and underwent a quadruple bypass. He returned to work in a staff position and eventually was told that he either must return to the control room floor as an assistant controller or take sick leave and then medical retirement. Appellant opted to return to work as an air traffic controller and on February 7, 2000 he heard a coworker complain about a PATCO employee who made a minor computer error and said, "I can[no]t believe he did that, those f___ers should all be fired."

Upon returning from his break later that day, appellant heard that his friend, Tony, had gone home sick because people had been making jokes about him. Appellant also learned, when someone asked for his password to the computer in another office, that the person had obtained a job in the office where he was told there was no work available. Appellant stated that, as he continued to work, he got tears in his eyes, and one controller said to him, "You [a]re not

thin-skinned are you?" which greatly upset appellant. On another break, he said his friend, Tony, told him that he became upset due to a comment about a "f___ing PATCO controller."

Appellant stated "that did it" and he filed forms for leave and went home. Appellant submitted a disability note, an attending physician's report and a narrative medical report from his treating physician dated February 8, March 9 and March 23 2000, respectively. By decision dated April 11, 2000, the Office denied the claim, Docket No. 02-269, stating that appellant did not establish any compensable factors of employment.

By letter dated May 1, 2000, appellant requested an oral hearing before an Office hearing representative which was held on September 19, 2000.

At the hearing, appellant stated that, on February 7, 2000, he heard an air traffic controller, Linsen Gilstred, referring to an African American rehiree, say that "these f___ing guys should all be fired." He testified that, even before Mr. Gilstred started training, he stated, "These jungle bunnies are never going to make it here" and either before or after training, Mr. Gilstred stated, "That nigger will check out just never at New York Center." Appellant testified that "these things irritated" him and made "his blood boil." Appellant testified that, later on February 7, 2000, a second incident occurred where he received a call from a person in the quality assurance office asking for his password because the person was taking his job. Appellant stated that he had returned to the control room floor as an assistant controller because he had been told there were no jobs available to him in the quality assurance office. Appellant stated that when the person called to ask him for his password, he realized someone was replacing him in the job that he had been told was not available.

Appellant testified that the third incident on February 7, 2000 was when his supervisor, Gary Ayres, asked appellant if he had talked to his friend, Tony DiMassa, because he "got upset about something and he went home." Appellant called Mr. DiMassa who told him that an employee had a coordination problem and an air traffic controller, Artie Maul, stated, "Oh, it must have been one of them f___ing PATCO guys." Appellant stated that an air traffic controller responded to the remark about the "f___ing controllers" by saying "You're going to receive a two week suspension for that remark." Appellant testified that when he came back from break he was very upset and a group of people were standing around the supervisor's desk making fun of Mr. DiMassa by saying such things as "[Mr. DiMassa] couldn't handle it" and "went home," or he "blew up." Appellant stated that he became increasingly upset, had "tears in his eyes," began to have chest pains and left early to see a doctor. Appellant stated that he did not return to work after February 7, 2000. Appellant further explained that he was upset by the three incidents because it was a culmination of the events since he returned to the New York Center. Appellant explained that because of their history, how the PATCO controllers went on strike, were fired in 1981 and later rehired, they felt solidarity with one another and if someone made a derogatory remark against a fellow PATCO employee, appellant felt it was a derogatory remark against him. Appellant testified that he had no problems with his wife, children or finances, and was a recovered alcoholic, having not had a drink for over seven years. Appellant testified that, since February 7, 2000, he spent his days at home on the computer.

By decision dated November 29, 2000, the Office hearing representative affirmed the Office's April 11, 2000 decision.¹

The Board finds that the Office properly denied appellant's traumatic injury claim for an emotional condition, Docket No. 02-269.

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.² On the other hand, the disability is not covered where it results from such factors as an 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.³

Where an employee alleges harassment and cites to 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.⁴ The issue is not whether the claimant has established harassment or discrimination under standards applied by the Equal Employment Opportunity Commission. Rather the issue is whether the claimant under the Act has submitted evidence sufficient to establish an injury arising in the performance of duty.⁵ To establish entitlement to benefits, the claimant must establish a factual basis for the claim by supporting allegations with probative and reliable evidence.⁶

To the extent that disputes and incidents alleged as constituting harassment by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.⁷ However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.⁸

¹ Two hearings were held for appellant's respective claims, No. 01-1227 and 02-269, on September 19, 2000. On November 29, 2000 the Office hearing representative issued two decisions, one for each claim.

² 5 U.S.C. §§ 8101-8193.

³ *Clara T. Norga*, 46 ECAB 473, 480 (1995); see *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁴ *Michael Ewanichak*, 48 ECAB 364, 366 (1997); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

⁵ See *Martha L. Cook*, 47 ECAB 226, 231 (1995).

⁶ *Barbara E. Hamm*, 45 ECAB 843, 851 (1994).

⁷ *Clara T. Noga*, *supra* note 2 at 481; *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

⁸ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

In this case, appellant presented no corroborating evidence of the hostile remarks that were made to him or other PATCO coworkers on February 7, 2000. He therefore has not shown that his work environment was hostile or that he was harassed. His contention that he was told that there was no work for him in a particular office when there might have been was not corroborated. Regardless, appellant's frustration at not being able to work in a particular environment or to obtain a particular job constitutes an administrative matter and is only compensable if appellant shows management acted unreasonably or abused its discretion.⁹ Appellant has not made this showing. He therefore has failed to establish his traumatic injury claim for an emotional condition.¹⁰

Further, the Board has given careful consideration to the issue involved, the contentions of the parties on appeal and the entire case record regarding Docket No. 01-1227. The Board finds that the November 29, 2000 decision of the Office is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.¹¹

The November 29, July 24 and April 11, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
March 13, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ See *Ronald C. Hand*, 49 ECAB 113, 115 (1997).

¹⁰ Since appellant did not establish any compensable factors of employment, the Board need not address the medical evidence. See *Diane C. Bernard*, 45 ECAB 223, 228 (1993).

¹¹ Appellant failed to present corroborating evidence of his allegations that he worked in a hostile environment characterized by abusive remarks, some containing foul language, made against him and other coworkers by air traffic controllers who resented the fact that appellant and other staff had been rehired after having gone on strike and been fired in 1981. See *Alfred Arts*, 45 ECAB 530, 543-44 (1994). Appellant did not show that management acted unreasonably or abusively in its treatment of him regarding alleged incidents where he was not offered a permanent job and nonre-hirees were, he was not allowed to work in a particular office, a manager refused to recommend him for a job and his training was cancelled. See *Basharat A. Jamil*, 49 ECAB 379, 384 (1998). Appellant therefore failed to establish compensable factors of employment and did not establish his claim.