

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEVEN M. GOLDSTEIN and DEPARTMENT OF AGRICULTURE,
RURAL DEVELOPMENT, Washington, DC

*Docket No. 01-1552; Submitted on the Record;
Issued March 6, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

On May 10, 1999 appellant, a 35-year-old loan specialist, filed an occupational disease claim alleging that he suffered acute anxiety disorder and depression as a result of his federal employment. He explained that his condition was due to constant and intense harassment from managers following his filing of an Equal Employment Opportunity (EEO) complaint. Appellant also alleged harassment to his request for paternity leave under the Family and Medical Leave Act (FMLA). Following his FMLA request and EEO complaint, appellant stated that management scrutinized his performance and placed him on leave restriction. He was placed on absent without official leave (AWOL) status despite approval for his absence from the employing establishment medical officer. Appellant stated that he was subjected to frequent threats of disciplinary action. He ceased working January 13, 1999 and identified November 1998 as the month he first became aware of his employment-related condition.

The Office of Workers' Compensation Programs denied appellant's claim by decision dated February 17, 2000. The denial was based upon his failure to establish that his claimed condition arose in the performance of duty. Appellant subsequently requested an oral hearing, which was held on July 27, 2000. By decision dated February 13, 2001, the Office hearing representative affirmed the February 17, 2000 decision.

The Board finds that appellant failed to establish that he sustained an emotional condition in the performance of duty.

To establish that he sustained an emotional condition causally related to factors of his federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional condition or psychiatric

disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.¹

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.² Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.³

The vast majority of employment incidents that are alleged to have contributed to appellant's claimed emotional condition involved administrative and personnel matters; specifically, time and attendance issues. As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Federal Employees' Compensation Act.⁴ However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.⁵

Although the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.⁶ In a January 7, 1999 memorandum to appellant, the employing establishment advised that he was being placed on leave restriction. The memorandum noted that during the prior 12-month period appellant had been absent from work approximately 670 hours, which is equivalent to 16.75 weeks.

Appellant requested leave for personal, family, medical and religious reasons.⁷ The evidence reflects that the employing establishment placed restrictions on his time and attendance

¹ See *Kathleen D. Walker*, 42 ECAB 603 (1991). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁴ *Id.*

⁵ *Id.*

⁶ *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997).

⁷ Appellant sought and received an accommodation of his work schedule so that he could participate in daily prayer during the workday. While appellant also alleged that he was mistreated because of his religious beliefs, the record does not establish that the employing establishment's handling of appellant's various leave requests were in any way effected by appellant's religious beliefs.

in accordance with applicable guidelines and regulations. The employing establishment has the responsibility of ensuring that the employing establishment's mission was not seriously undermined by appellant's absence. Appellant's grievances and EEO complaints were resolved through settlement agreements in which neither party admitted any particular wrongdoing. The record does not establish that the employing establishment either erred or acted abusively in the personnel actions taken with regard to appellant's time and attendance.

Appellant also alleged that he was wrongfully denied a promotion to the GS-12 level and that he was later placed on a performance improvement plan and threatened with dismissal in retaliation for having filed an EEO complaint. He alleged that the employing establishment improperly interfered with his efforts to obtain a transfer. An employee's frustration from not being permitted to work in a particular environment or hold a particular position is not compensable.⁸ The record does not establish that the employing establishment either erred or acted abusively in assessing appellant's performance and attempting to implement a performance improvement plan. Appellant has failed to substantiate his allegations that his performance evaluation was a result of harassment for having filed an EEO complaint.⁹

Alfred Rodgers, appellant's supervisor, was alleged to have called him a liar and used profanity during private meetings. The Board has held that, while verbal abuse may constitute a compensable factor of employment, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.¹⁰ The evidence of record does not substantiate appellant's allegation that Mr. Rodgers used profanity or was otherwise verbally abusive during their September 1, 1998 meeting to discuss appellant's job performance.

Since appellant failed to substantiate a compensable employment factor as a cause of his claimed emotional condition, the Office properly denied appellant's claim.

⁸ See *Lillian Cutler*, *supra* note 2.

⁹ For harassment to give rise to a compensable disability there must be evidence that harassment did, in fact, occur. A claimant's mere perception of harassment is not compensable. *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996). The allegations of harassment must be substantiated by reliable and probative evidence. *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991).

¹⁰ *Leroy Thomas, III*, 46 ECAB 946, 954 (1995).

The February 13, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
March 6, 2003

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member