

FACTUAL HISTORY

On December 17, 2002 appellant, then a 49-year-old general engineer, filed a traumatic injury claim alleging that on that date he suffered an anxiety attack and passed out as a result of harassment by his supervisor. He stopped work on December 17, 2002 and has not returned. In support of his claim, appellant submitted medical evidence consisting of an attending physician's report dated December 30, 2002, and a treatment note dated January 3, 2003 from Dr. David P. Wasserman, a family practitioner, who diagnosed anxiety.

In a December 24, 2002 statement, Carroll Abrams, supervisor of the Employee Assistance Program (EAP), advised that on December 17, 2002 appellant was standing and shaking in her office lobby while he awaited an appointment to see her. She asked appellant if he was okay, but before he had the opportunity to answer her question, he started to fall and she reached out to catch him. Ms. Abrams helped appellant to a chair where he passed out and a staff member called 911. She related that when appellant regained consciousness he kept repeating, "I am not a terrorist, I had nothing to do with September 11, I am not from Afghanistan." Ms. Abrams stated that she remained with appellant until the emergency medical service arrived.

In a January 24, 2002 letter, the Office informed appellant of the factual and medical evidence required to establish his claim for compensation. The Office requested that he provide a detailed description of those employment-related conditions or incidents that he believed contributed to his emotional condition. Appellant was also asked to provide a reasoned medical report from his treating physician that explained with medical rationale how his alleged emotional condition was causally related to work factors.

On February 24, 2003 the Office received a statement from appellant describing the incidents that he believed contributed to his illness. He alleged that on December 17, 2002 he received an email from Michael E. Coggin, a second-line supervisor, asking for the status of repairs to the "Abram's Pool project." Appellant related that Mr. Coggin had already been briefed about the status of the project in a meeting held on December 16, 2002, at which time he was told that the Department of Public Works maintenance had identified the problem and that appellant had the scope of work and design for a permanent fix. Appellant stated that he did not appreciate receiving the email and scheduled a meeting with Colonel Randall Butler for December 18, 2002. Later on December 17, 2002, appellant was called to the office of Mr. Coggin and questioned about why he wished to speak to the Colonel. He told Mr. Coggin that the subject of the meeting was personal and asked how Mr. Coggin found out about the meeting. Mr. Coggin told appellant that he had been "warned of the meeting" by the Colonel's secretary. Appellant alleged that he was told that he was not permitted to speak with the Colonel without permission from Mr. Coggin. Appellant stated that he reminded Mr. Coggin that the Colonel had an open door policy, but Mr. Coggin informed him that the appointment was already canceled. He related that Mr. Coggin also told him that he would receive a poor performance rating on his next evaluation. Appellant defended his performance, stating that many people had

taken credit for projects he had performed.¹ According to appellant, when he tried to leave Mr. Coggin's office, Mr. Coggin pointed his finger at him and told him to sit down stating that he was not through with him. Appellant alleged that he was forced to sign a paper stating that he would not meet with the Colonel without Mr. Coggin's prior approval. He alleged that he signed the paper under duress, then left the building and went to see Ms. Abrams at EAP. He stated that he wanted to discuss a transfer with her, but upon reaching the lobby of her office, he began to feel dizzy and started sweating. Appellant described that he passed out for about five minutes and was transported to the emergency room, where he was treated for high blood pressure and diagnosed with a stress anxiety attack.

Appellant also described that he suffered from work-related stress as a result of harassment by his immediate supervisor, James R. Stein, who allegedly pointed a finger at him and in a raised voice stating, "I am your boss now, I can do anything to you that I want to and I can make you do anything that I want to! Do you understand me?" Appellant described that Mr. Stein repeatedly appeared in his office at lunch time to interrupt appellant's meal and request status reports. He alleged that Mr. Stein denied his request for promotions based on discrimination of his national origin. Appellant lastly referenced an Equal Employment Opportunity (EEO) complaint he had filed against the employing establishment for harassment.

In a February 27, 2003 decision, the Office denied appellant's claim. He requested reconsideration on March 12, 2003 and submitted certified mail receipts documenting the Office's signed receipt of his work factor statement on February 24, 2003.

In memorandums dated December 17, 2002 and April 11, 2003, Mr. Coggin denied that appellant had been threatened or harassed. He met with appellant on December 17, 2002 to inform him that personal meetings with the Colonel were not to be scheduled without coordination with his office. He stated that this policy was in effect to try and work out issues prior to elevating them through the chain of command. Mr. Coggin was concerned about appellant's work performance because he did not appear to have been spending enough time working on projects. He noted that appellant was hostile to his attempt to coach his performance and that appellant left the office insisting that he would speak to the Colonel on his own time. Mr. Coggin noted that he did not feel that appellant's concerns warranted a meeting with the Colonel as requested. He attached copies of three email messages that he sent to appellant on December 17, 2002.

In a memorandum dated April 10, 2003, Mr. Stein stated that appellant frequently worked projects that were under short deadlines to fall within the fiscal year. He denied that requests for updates were meant to harass appellant, noting that he needed information to ensure that the projects would be done by the end of the allotted time. Mr. Stein stated that he had not meant to interfere with appellant's lunch schedule and that if appellant had only asked him to come back at a later time he would have complied with that request. He concluded that appellant was

¹ He argued in his statement that he has consistently received the highest rating of "exceptional" during his 17-year tenure with the employing establishment and that Mr. Coggin had only been his supervisor for a few months. Appellant described that he had met with the Colonel on two prior occasions to complain about short deadlines that were assigned to him. He related that he wanted to meet with the Colonel to request reassignment in order to escape the harassment and hostile work environment of the employing establishment.

treated no differently than any other employee. In memorandums dated September 20, 2002 and April 3, 2003, Mr. Stein addressed appellant's EEO claim for discrimination based on national origin. Mr. Stein also related events concerning appellant's request for leave on September 10 to 11, 2002 and explained that, since there was a heavy workload at that time, appellant was advised that he needed to provide a doctor's excuse.

In a decision dated June 10, 2003, the Office determined that appellant failed to establish a compensable work factor and, therefore, did not establish that he sustained an emotional condition while in the performance of duty.

On June 12, 2003 appellant requested reconsideration and submitted copies of checks, a medical statement, medication information and duplicates of medical reports previously of record.

In a decision dated June 27, 2003, the Office denied appellant's reconsideration request, finding that there was no new or relevant evidence to warrant a merit review of his case.

LEGAL PRECEDENT

Workers' compensation is not applicable to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,² the Board discussed at length the principles applicable to the adjudication of emotional conditions and the distinctions as to the type of employment situations giving rise to an emotional condition, which will be covered under the Federal Employees' Compensation Act.³ When an employee experiences an emotional reaction to his or her regular assigned employment duties or to a requirement imposed by the employment or fear and anxiety regarding his or her ability to carry out his or her duties and the medical evidence establishes that the disability resulted from an emotional reaction to such factors, the disability is generally regarded as due to an injury arising out of and in the course of employment and comes within coverage of the Act.⁴ On the other hand where the disability results from an employee's emotional reaction to employment matters, which are not related to the employee's regular or specially assigned work duties or to requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within coverage of the Act.⁵ While the handling of evaluations, the provision of training and equipment and the monitoring of work activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.⁶

² 28 ECAB 125 (1976).

³ 5 U.S.C. §§ 8101-8193.

⁴ *James E. Norris*, 52 ECAB 93 (1999).

⁵ *Id.*

⁶ *Brian H. Derrick*, 51 ECAB 417 (2000).

For harassment to give rise to a compensable disability, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.⁷ Grievances and EEO complaints by themselves also do not establish that workplace harassment or unfair treatment occurred.⁸

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment 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.⁹ The Board will review the evidence to determine whether the alleged incidents and conditions of employment constitute compensable work factors.

ANALYSIS

Appellant alleged that Mr. Coggin and Mr. Stein created a hostile work environment and constantly harassed him about project deadlines and status reports. Appellant alleged that he was harassed when he received an email from Mr. Coggin on December 17, 2002 requesting an update on the pool system heating project. He also alleged harassment when Mr. Stein appeared in his office at lunch time to obtain information on pending projects. Contrary to appellant's allegations, however, the monitoring of an employee's activities at work by a supervisor relates to administrative or personnel matters unrelated to the employee's regular or specially assigned work duties. Such actions do not fall within the coverage of the Act unless the evidence discloses error or abuse by employing establishment personnel.¹⁰ The Board finds no such error or abuse by either Mr. Coggin or Mr. Stein.

Mr. Coggin denied that his discussion with appellant on December 17, 2002 was emotional or that he tried to harass appellant by requesting information on the project by email. He noted that appellant was behind on his project list and Mr. Coggin felt that appellant required some counseling on his performance, which was undertaken as a coaching session and not an attempt to threaten him. The Board finds that Mr. Coggin acted reasonably in requiring appellant to inform him if he required a meeting with an upline Colonel. Mr. Coggin noted that it was his desire to try and resolve issues before involving the upper chain of command. The Board finds no evidence to support appellant's allegation that Mr. Coggin angrily pointed a finger at him and told him to sit down during the meeting of December 17, 2002.

Mr. Stein explained why updates on projects were important and stated that he had no knowledge that he had interfered with appellant's lunchtime. He stated that he was never made

⁷ See *Dennis J. Balogh*, 52 ECAB 232 (2001); *John Polito*, 50 ECAB 347 (1999).

⁸ *James E. Norris*, *supra* note 4.

⁹ *Id.*

¹⁰ *Dennis J. Balogh*, *supra* note 7.

aware that appellant did not want him stopping by his office at lunchtime and indicated that appellant could have asked him to come back at a later time. Given the statements from Mr. Coggin and Mr. Stein, the Board concludes that appellant's emotional reaction to the request for project updates, whether on his lunch hour or not, were self-generated and do not rise to the level of error or abuse.

The Board also finds that appellant failed to establish a compensable work factor when he alleged that Mr. Coggin harassed him by threatening to give him a poor performance rating. There is no evidence of record from which to conclude that Mr. Coggin acted in error or abusively by advising appellant that he needed to complete more projects in order to maintain his high performance level. Mr. Coggin denied that he called appellant into his office on December 17, 2002 to discuss appellant's work performance as a form of harassment.

The Board finds no factual support for appellant's allegation that he was denied a promotion based on discrimination due to his national origin. The record before the Board does not provide any evidence, such as witness statements, to establish that appellant was denied promotions or was harassed or discriminated against at the employing establishment.¹¹ Although appellant filed an EEO grievance alleging harassment and discrimination, there is no indication that a decision was reached in his favor. The mere filing of the complaint does not prove that harassment occurred.¹²

Appellant also alleged that he was harassed when he was required to provide a doctor's excuse for sick leave taken on September 10 to 11, 2002. The Board finds that there was no error or abuse by the employing establishment in this administrative matter with respect to the use of sick leave. Mr. Stein explained that, when there was a heavy workload, employees were required to provide medical documentation to support sick leave requests. He denied that appellant was told to bring in medical documentation as a form of harassment.

However, appellant has indicated that he was under stress at work due to short deadlines imposed upon him as part of his regular duties. He stated that he had spoken with Colonel Butler on at least two occasions to complain of the short deadlines. Appellant's immediate supervisor, Mr. Stein, has also verified that short deadlines were assigned to appellant on numerous occasions in order to have projects completed within the fiscal year.

The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable and there is no requirement that the duties or deadlines be unreasonable.¹³ Based on Mr. Stein's April 10, 2003 memorandum statement, the Board concludes that appellant established a compensable factor of his employment since he has shown that he was under pressure to meet deadlines in his job as a general engineer.

¹¹ See *Dennis J. Balogh*, *supra* note 7.

¹² See *Bonnie Goodman*, 50 ECAB 139 (1998).

¹³ *Donna J. Dibernardo*, 47 ECAB 700 (1996); *Joseph A. Antal*, 34 ECAB 608 (1983).

Because appellant has established a compensable work factor, the Board finds that the case must be remanded to the Office for evaluation of the medical evidence. The Office must address whether the medical evidence demonstrates a causal relationship between appellant's emotional condition and the established work factor. After further medical development as the Office deems necessary, the Office shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has established a compensable work factor. Because the case is remanded for further evaluation of the medical evidence, the Board declines to address the issue of whether the Office properly refused to reopen appellant's case for a merit review under 5 U.S.C. § 8128. That issue is moot given the Board's findings on appeal.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 27, June 10 and February 27, 2003 are vacated and the case is remanded for further consideration consistent with this opinion.

Issued: April 28, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member