United States Department of Labor
Employees' Compensation Appeals Board

CHARLES D. EDWARDS, Appellant	)	
and	)	**Docket No. 02-1956**
	)	**Issued: January 15, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Portsmouth, NH, Employer	)	

Appearances:
James G. Noucas, Jr., Esq., for the appellant
Douglas S. Collica, Esq., for the Director

Oral Argument October 2, 2003

DECISION AND ORDER

Before:
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On July 23, 2002 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated September 21, 2001 and June 27, 2002 denying his emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

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

FACTUAL HISTORY

On March 30, 2001 appellant, then a 37-year-old mail handler, filed a claim for compensation alleging that he developed an emotional condition due to harassment and unfair treatment by the employing establishment. He stopped work on February 13, 2001 and has not returned.

In a narrative statement submitted in support of his claim and in his subsequent oral testimony, appellant described the events which led to the development of his emotional condition. He asserted that he first experienced unfair treatment when he was not selected for a position in the employing establishment's front office. Appellant stated that he believed that he was the senior bidder for the position, but that it was instead given to the daughter of one of his supervisors, Darlene Godfrey. He complained to his immediate supervisor, Michael Plotsky, about the selection of Ms. Godfrey's daughter, whom he felt had less time in service than he did, but was told that the daughter's time working as a casual employee had been counted toward her seniority.

On March 26, 1999 appellant was placed on administrative leave pending a psychiatric examination, because his supervisors observed him acting strangely. He explained that the behavior was only horseplay on his part. Appellant stated that he regularly kidded around with a coworker and that he had gone down on one knee and grabbed her hand in jest, when he was observed by Mr. Plotsky, who asked what was going on. He stated that there was no big discussion about the incident and that he just got up and walked off. Subsequently, he was called at home by Ms. Godfrey, who explained that he was immediately being placed on administrative leave, pending a psychiatric evaluation, because of his behavior. Appellant asserted that there was a considerable delay in arranging the psychiatric evaluation, resulting in his being away from work for almost two full months.[1] He stated that the long wait caused him additional anguish and suffering. Although appellant was found to have no psychiatric disorder, with no need for accommodation and no impairment in work function and was paid while he was on administrative leave pending the evaluation, he believed that he had not done anything warranting the psychiatric evaluation and had been singled out and treated differently.

Appellant stated that, when he returned to work in mid May 1999, his supervisors started treating him differently. Ms. Godfrey seemed upset that his psychiatric evaluation was normal and that she had to take him back and began making work more difficult to deal with. He alleged that he was given extra work without help, while others assigned the same work received assistance. Specifically, when appellant was assigned the runner's job, he was given more and more work to do, but only given help if he was not finished with his tasks towards the end of the night, not throughout the course of the night, as he requested. He observed others receiving help during the course of the night and believed that he was treated unfairly. Appellant alleged that his supervisor would occasionally interrupt his work flow to give him other tasks to perform. When he tried to exercise his seniority rights to switch jobs, he was denied the opportunity. Appellant alleged that these actions were done to harass him.

In early June 1999, appellant filed an Equal Employment Opportunity (EEO) complaint alleging that he had been treated unfairly when he was declined the front office position in favor of Ms. Godfrey's daughter and, when he was placed on administrative leave and required to undergo a psychiatric evaluation. He alleged that after filing the EEO complaint he had

[1] Appellant stated that he was taken off work on March 26, 1999 and waited three weeks to see the fitness-for-duty physician. It was discovered during the course of the examination that he had mistakenly been sent for a physical, rather than psychiatric evaluation, which resulted in a second scheduling delay. Appellant underwent a psychiatric fitness-for-duty evaluation on May 7, 1999.

problems with Ms. Godfrey and was constantly watched, given extra work, denied help and harassed in retaliation for having filed the EEO complaint. On June 25, 1999 while Ms. Godfrey was having a conversation with a union steward regarding appellant's pay, while on administrative leave, Ms. Godfrey allegedly stated to the steward: "Chuck's the one who better have learned a lesson." Appellant asserted that, on November 16, 1999, while he was in the union office working on a grievance, Ms. Godfrey barged into the union office to harass him about a sick leave request he had submitted. On December 7, 1999 he was working on the dock and listening to his radio, which was placed on a hamper. Ms. Godfrey observed him and then consulted with another supervisor and one of them walked over and unplugged his radio from the wall. When appellant questioned Ms. Godfrey about the situation, she became irate and started shouting only two inches away from his face. He told Ms. Godfrey that she was violating his personal space, but she continued to move toward him as he backed up, staying close to his face.

On December 23, 1999 when appellant approached a coworker with a question, he was allegedly harassed by Dave Adams, a supervisor, who told him to go back to his assigned area. He alleged that Mr. Adams also harassed him by instructing him to provide medical documentation for the same illness for December 29, 1999, January 3 and 4, 2000. Appellant felt that this was unnecessary and was in retaliation for filing the EEO complaint. He alleged that Mr. Adams harassed and retaliated against him on September 21, 2000 when he placed him on a seven-day suspension for failure to follow instructions concerning an injury to his back. Appellant stated that, had Mr. Adams pursued the results of his medical examination, he would have seen that a delay in the appearance of back pain following an injury was not uncommon. On September 28, 2000 Mr. Adams talked to appellant in a loud and angry voice while pointing a finger in his face and saying: "Just be a man, will you," blaming him for a back-up of mail that night. Mr. Adams had requested that appellant follow him to his office to finish the conversation; however, appellant refused to accompany Mr. Adams without a union steward present, which resulted in Mr. Adams yelling at him and humiliating him in the express area.

Appellant alleged that Ms. Godfrey had threatened another employee who was removed from the work site, but rather than being disciplined or required to undergo a psychiatric evaluation, the employee was transferred to another facility where she reportedly received a promotion.

Appellant submitted copies of statements from several coworkers which had originally been submitted in support of his EEO claim. On December 28, 1999 Bruce Braley stated that on December 23, 1999 he observed a radio sitting on top of a "post con" in the flats area during the tour one shift. He added that the "post con" was not red tagged and several supervisors were around it several times during the shift. In a December 23, 1999 statement, Larry Buracker stated that on that day appellant stopped by his work area to ask him a question, but before appellant could phrase the question, Mr. Adams told him to return to his work area. Mr. Buracker observed a radio sitting on a "post con" that was not red tagged. In a statement dated November 16, 1999, Kirk Johnson, a union steward, stated that Ms. Godfrey came to the union office and informed appellant that he did not have enough sick leave to cover his leave request and that he would have to change his request to one for annual leave. He stated that appellant agreed. In a statement dated June 25, 1999, Anthony Gerry, a union steward, stated that, while discussing appellant's leave situation with Ms. Godfrey, he stated that he hoped

management had learned a lesson about putting employees on administrative leave. In response, Ms. Godfrey became irate and yelled, "Chuck's the one who better have learned a lesson." In a statement dated June 6, 1999, Joe Statkus stated that, although he could not pinpoint the exact dates, he had witnessed several incidents of harassment and racial discrimination directed at appellant by Mr. Plotsky and Ms. Godfrey. On several occasions, he saw them tell appellant to quit standing around and return to work, without a word to the others who were also standing around talking. Also, when they asked him to send a mail handler to the carrier section to work and he offered to send appellant, he was told to send someone else. Mr. Statkus stated that he believed Ms. Godfrey and Mr. Plotsky did not want a black person working in the carrier section. He stated that he also felt that appellant had been declined the front office position because he was black and that he was also sent for the unwarranted psychiatric evaluation as a form of racial harassment and discrimination.

Appellant submitted medical reports and treatment notes from his therapist, Jeffrey M. Wagner, Ph.D.[2] On December 8, 2000 Dr. Wagner noted that appellant presented with complaints of harassment from workers at the employing establishment. Appellant described many of his coworkers as problematic, that the environment was "rule-oriented" and one where the "new guy gets pushed to see how far they can take him." He reported to Dr. Wagner that, as he is assertive when pushed, this behavior made him stand out in an environment which rewarded conformity. Dr. Wagner noted that appellant described himself as one who valued his privacy and who often annoyed others with his reluctance to discuss his private life at work. Dr. Wagner documented appellant's complaints of ongoing stress and anxiety regarding how others at his employment would treat him and stated that appellant had described several situations where coworkers had treated him with hostility, intrusiveness or demeaning language. Dr. Wagner noted that appellant reported feeling anxiety, tension, anticipatory anxiety, sleep disturbance, helpless and hopelessness that the situation would improve. Dr. Wagner concluded: "In my opinion, the work situation as described by [appellant] would be sufficient to cause these psychological disturbances. Impression is [a]djustment [d]isorder with [m]ixed [f]eatures of [a]nxiety and [d]epression."

In additional progress notes dated from September 5, 2000, to August 20, 2001, Dr. Wagner documented appellant's progress handling his work stress, but did not describe any specific incidents or factors of appellant's employment.

The record also contains a note from Dr. John Foley, a treating osteopath, who concurred with the opinion of his physician's assistant, that appellant should be moved to a different supervisor in order to alleviate his symptoms of employment-related stress and anxiety.

The employing establishment submitted narrative statements from appellant's supervisors, Ms. Godfrey and Mr. Adams. In a statement dated April 26, 2001, Ms. Godfrey explained that, in March 1999, appellant was placed on administrative leave pending a psychiatric evaluation after a supervisor saw him walking down a hallway and then suddenly dropped to his hands and knees and crouch under a flats case. Ms. Godfrey stated that this incident occurred after appellant had been counseled on several occasions about horseplay on the

[2] Dr. Wagner's precise qualifications are unknown.

workroom floor. She acknowledged that appellant was subsequently released back to work with the understanding that there were no medical or psychological reasons that he could not perform his duties as instructed.

With respect to the June 25, 1999 incident, Ms. Godfrey stated that, while discussing with a union steward the details of appellant's entitlement to night differential and Sunday premium pay while on administrative leave, the union steward said to her, "I hope management has learned a lesson about putting employees on administrative leave." Ms. Godfrey stated that she responded: "I hope Chuck has learned a lesson about appropriate behavior."

Regarding the November 16, 1999 incident, Ms. Godfrey explained that the union steward's office has swinging, half doors, that are open above and below. She stated that she walked up to the doors and, when appellant and his steward saw her standing there, she then entered, told appellant his leave request would be approved pending appropriate medical documentation, left his copy of the leave slip with him and left the room.

With respect to the December 7, 1999 radio incident, Ms. Godfrey stated that she was paged to the dock area because, despite several prior requests that appellant not place his radio on empty equipment he had again placed it on top of an empty hamper, an item in short supply due to the holiday season. She told appellant to find another place for his radio. Later, when appellant and a coworker approached her to discuss moving the radio, she told them it was dispatch time and she needed appellant at his workstation. Ms. Godfrey stated that, when appellant attempted to step around her, she stepped toward him and told him to return to the dock. She explained that at that point appellant stepped towards her, swinging his arms in a pendulum fashion, saying that she was invading his personal space. Ms. Godfrey stated that she responded, "then turn around and go back to work," which appellant did.

In a statement dated April 19, 2001, Mr. Adams discussed the allegations raised by appellant beginning with the December 23, 1999 incident, when he allegedly harassed appellant.[3] He acknowledged that, on that day, when he observed appellant outside of his assigned work area talking to another clerk, he told appellant to return to his own duty station.

On December 29, 1999 Mr. Adams attempted to have an official discussion with appellant, who had given him a leave slip and stated that he was going home. He explained that, because he thought it was possible that appellant was using sick leave in order to avoid the official discussion, he requested that appellant provide medical documentation for his work absence upon return. Mr. Adams stated that, on January 1, 2000, appellant returned to work with medical documentation from his physician stating that he was excused from work from December 29, 1999 to January 3, 2000 for employment-related stress. He explained to appellant that, as his physician had not released him back to work until January 3, 2000 and because the absence was due to work stress, he could not return to work early and was required to provide additional medical documentation that he was fit-for-duty without danger to himself or others. Mr. Adams explained that, when on January 4 and 5 2000, appellant returned to work without

[3] Mr. Adams stated that he was not involved in any incidents prior to December 23, 1999, and, therefore, could not comment on them.

the requested documentation, he was sent home. Later, on January 5, 2000 appellant returned with the proper documentation and was allowed to return to work.

With respect to the seven-day suspension issued on September 21, 2000 Mr. Adams stated that, on September 6, 2000, appellant returned to work after being out on sick leave, alleging that he had hurt his back on September 1, 2000. Mr. Adams stated that, because appellant had failed to report the September 1, 2000 work injury and had previously received an official discussion and a letter of warning for failure to follow instructions regarding the reporting of work injuries, he was placed on a seven-day suspension in accordance with employing establishment policy.

Regarding the events of September 28, 2000, Mr. Adams acknowledged telling appellant to return to his work area, but denied yelling at him, putting his finger in appellant's face or making any derogatory statements to him. Mr. Adams concluded that at no time was appellant treated any differently from other employees or treated unfairly as retaliation for his EEO complaints. He stated that he was not even aware of the complaints until contacted by the EEO investigator in January 2001.

In a decision dated September 21, 2001, the Office denied appellant's claim on the grounds that he failed to establish any compensable factors of employment.

Following an oral hearing held on April 17, 2002 at appellant's request, in a decision dated June 27, 2002, an Office hearing representative affirmed the Office's prior decision, finding that appellant had not established any compensable factors of employment.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,[4] the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.[5] There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under the Act.[6] When an employee experiences emotional stress in carrying out his employment duties or has fear and anxiety regarding his ability to carry out his duties, and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.[7] The Board in *Cutler*,

[4] 28 ECAB 125 (1976).

[5] 5 U.S.C. §§ 8101-8193.

[6] *See Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

[7] *Lillian Cutler, supra* note 4 at 130.

then noted that other cases established that a disabling condition resulting from an employee's feelings of job insecurity were insufficient to constitute a personal injury sustained while in the performance of duty. Similarly, if the employee is unhappy doing inside work, desires a different job, broods over the failure to be given the kind of work he desires or secure a promotion, such is insufficient to constitute a personal injury sustained in the performance of duty.[8]

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.[9] This includes matters involving the training or discipline of employees. However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.[10] In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of the case to determine whether the employing establishment acted reasonably.[11]

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[12] Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and EEO complaints do not establish that work place harassment or unfair treatment occurred.[13] Where an employee alleges harassment and cites specific incidents, the Office or other appropriate fact finder must determine the truth of the allegations. The issue is not whether the claimant has established harassment or discrimination under EEO standards. Rather, the issue is whether the claimant, under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[14]

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 employment factors.[15] This burden includes the submission of a detailed

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[8] *Id.* at 131.

[9] *See Gregory N. Waite*, 46 ECAB 662 (1995); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

[10] *See Jose L. Gonzalez-Garced*, 46 ECAB 237 (1994); *Norman A. Harris*, 42 ECAB 923 (1991).

[11] *Ruth S. Johnson*, 46 ECAB 237 (1994); *David W. Shirey*, 42 ECAB 783 (1991).

[12] *See Michael Ewanichak*, 48 ECAB 354 (1997); *Martha L. Cook*, 47 ECAB 226 (1995).

[13] *See Parley A. Clement*, 48 ECAB 302 (1997).

[14] *See Michael Ewanichak*, *supra* note 12.

[15] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions which he believes caused or adversely affected the condition or conditions for which compensation is claimed.[16]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in 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 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.[17] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[18]

ANALYSIS

In the present case, appellant alleged that he sustained an emotional condition as a result of several employment incidents. By decisions dated September 21, 2001 and June 27, 2002, the Office denied his emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

On appeal, appellant, through counsel, asserted that the requirement that appellant undergo a psychiatric fitness-for-duty examination should be considered a compensable factor of employment, alleging that the employing establishment committed error and abuse in requiring him to undergo a psychiatric examination after engaging in horseplay.

The Board notes that, under certain circumstances, the requirement that an employee undergo a fitness-for-duty examination can become a factor of employment. In *Raymond H. Schulz, Jr.*,[19] the Board held that the circumstances under which the employing establishment imposed a requirement that the employee undergo a psychiatric examination arose within the performance of duty to become a factor of employment. The Board found that the deterioration of the employee's emotional condition occurred only after being informed that he would be required to undergo a psychiatric examination to determine whether he would be permitted to continue his employment. The Board held that the requirement imposed by the employing establishment to undergo examination constituted a factor of employment and remanded the case for further development.[20] The evidence showed that the decision to require the employee to undergo a

[16] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[17] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[18] *Id.*

[19] 23 ECAB 25 (1971) (Schwartz, T.M., dissenting).

[20] *Id.* at 36.

psychiatric fitness-for-duty examination arose out of his correspondence with a coworker, correspondence that originated in his work activities and related to the work he was hired to perform. The Board stated that appellant's correspondence with the coworker was an "important link" in the events that led to his disability and this correspondence related to the work which he was hired to perform. The Board also noted that the employing establishment placed appellant under unwarranted pressure by telephoning him on several occasions in an attempt to force him to act quickly with respect to scheduling the psychiatric examination. The Board noted that the evidence showed that this factor greatly increased his emotional deterioration and held that, under the facts set forth in *Schulz*, the requirement that employees undergo a psychiatric examination and the circumstances under which this requirement was imposed upon him were factors of the employment.[21]

The Director contends, however, that in the instant case, the requirement that appellant undergo a psychiatric fitness-for-duty examination did not arise from his work duties, but from appellant's own behavior and, therefore, is not compensable. The Director cited the case of *Margaret M. Boyle*,[22] where the employee was required, because of eccentric and bizarre behavior at work and an unsatisfactory sick leave record, to undergo an examination to determine her fitness for duty. As a result of the examination, it was determined that she was not emotionally fit for continued federal employment. The employee based her claim for compensation on the contention that the mental anguish she sustained due to her separation from employment constituted a compensable disability. She explained that the work assigned to her was not the cause of her disability; rather, her mental anguish was caused by the loss of her position. The Board noted that there was no medical evidence showing that her employment had aggravated her emotional condition, stating: "Whatever 'mental anguish' she may have sustained was due to self-generated causes which gave rise to the termination proceeding and not to the employment itself."[23]

As the Board noted in *Anthony A. Zarcone*,[24] neither *Cutler* nor *Schulz* stands for the proposition that all requirements of employment constitute compensable factors of employment. Rather, the only requirements that will bring a claim within the scope of the Act are those that relate to the duties that the employee was hired to perform.[25]

In the present case, the reason for the psychiatric fitness-for-duty examination was that appellant was observed acting strangely by his supervisor. While walking down the hallway, he suddenly dropped to one knee and crouched under a case. Although appellant asserts that this was mere horseplay on his part and did not warrant a psychiatric evaluation, the evidence establishes that the requirement "imposed" upon appellant in the instant case does not relate to the regular or specifically assigned duties that he was required to perform. There is no "important link" between the employing establishment's fitness-for-duty requirement and appellant's assigned

[21] *Id.*

[22] 13 ECAB 172 (1961).

[23] *Id*. at 173.

[24] 44 ECAB 751 (1993).

[25] *Id*. at 756.

duties as was found in *Schulz*. Accordingly, appellant's emotional reaction to the requirements that he undergo examination is not compensable absent evidence establishing error or abuse by the employing establishment. The Board finds that, the evidence of record establishes a basis in fact for the examination request, due to appellant's behavior at work. The evidence does not establish error or abuse in light of appellant's acknowledged horseplay on several occasions. Moreover, the Board notes that there is no medical opinion evidence to support that the requirement that he undergo examination caused or contributed to appellant's claimed emotional condition. Neither appellant's treating physician, Dr. Wagner, nor the fitness-for-duty physician concluded that appellant had any diagnosed conditions causally related to the requirement that he undergo a psychiatric evaluation. On appeal, appellant's counsel specifically asserted that appellant did not contend that the fitness-for-duty examination itself caused his emotional condition. For these reasons, the Board finds that appellant failed to establish a compensable factor of employment with respect to the requirement that he undergo a psychiatric fitness-for-duty evaluation.

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions, wrongly required medical documentation for leave, improperly assigned work duties, interrupted his work, required that he move his radio and unreasonably monitored his activities at work, telling him to return to his work area, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.[26] Although the handling of disciplinary actions, evaluations and leave requests, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[27] An administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[28] In the instant case, the employing establishment has provided statements from appellant's supervisors explaining their actions as being in accordance with usual employing establishment administrative procedures. Appellant has not established a compensable employment factor under the Act with respect to these administrative matters.

Appellant alleged that the employing establishment wrongly denied him positions based on his seniority. The Board has previously held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform his regular or specially assigned work duties, but rather constitute a desire to work in a different position.[29] Thus, appellant has not established a compensable employment factor under the Act in this respect.

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[26] *See Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[27] *Id.*

[28] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[29] *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

Appellant asserted that he was verbally and physically threatened by both Ms. Godfrey and Mr. Adams, whom he alleged made derogatory statements regarding his having "learned a lesson," telling him to "be a man," pointing fingers at him and invading his personal space. The Board has recognized the compensability of physical threats or verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.[30] Mr. Adams denied making any threatening gestures or derogatory remarks towards appellant and Ms. Godfrey provided a reasonable explanation for her interactions with appellant. The Board finds that there is no evidence in the record that she ever shouted at, rather than spoke to, appellant. The Board finds that appellant has not shown how her comments or actions rise to the level of verbal abuse or otherwise fall within the coverage of the Act.[31]

To the extent that appellant asserted that the actions on the part of his supervisors constitute harassment and discrimination and contributed to his claimed stress-related condition; the Board has held that to the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[32] However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[33] In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and he has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors or coworkers.[34] The only evidence addressing discrimination and harassment is the statement of Mr. Statkus, who asserted that he felt that appellant had been discriminated against on numerous occasions. However, Mr. Statkus did not provide any specific incidents or dates upon which these alleged incidents occurred. His statement is not probative in establishing any instances alleged by appellant. The Board finds that the evidence is insufficient to establish that the employing establishment harassed or discriminated against appellant. Appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

[30] *Harriet J. Landry*, 47 ECAB 543, 547 (1996); *See Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991).

[31] *See, e.g., Alfred Arts*, 45 ECAB 530, 543-44 (1994) and cases cited therein (finding that the employee's reaction to coworkers' comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction). *Compare Abe E. Scott*, 45 ECAB 164, 173 (1993) and cases cited therein (finding that a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

[32] *David W. Shirey*, *supra* note 11; *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[33] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[34] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

CONCLUSION

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.[35] Therefore, the Board need not further address the medical evidence of record.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 27, 2002 and September 21, 2001 are affirmed.

Issued: January 15, 2004
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[35] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).