

requested sick leave from his supervisor, Howard Kearney, and afterwards Mr. Kearney allegedly stalked him down the hall and used his body to block the doorway, thus preventing appellant from leaving. Appellant submitted several medical reports, which included varying diagnoses of situational reaction with anxiety, acute anxiety reaction, panic attack, adjustment disorder with anxiety and hypertension.¹

In a statement dated February 7, 2001, appellant described in greater detail the events of January 29, 2001. He stated that Mr. Kearney entered his office at 8:10 a.m. and inquired whether appellant had certified his time and leave record. Appellant reportedly told Mr. Kearney that he had just arrived and was in the process of reading his email and that he would certify the time and leave records next. Appellant stated that Mr. Kearney responded "You will do it NOW!" He described Mr. Kearney's demeanor as demanding, disrespectful, provoking, loud, intimidating and threatening. Appellant indicated that, while it was customary to certify the time and leave sheets by 10:00 a.m., he immediately ceased what he had been doing and completed the time and leave sheets while Mr. Kearney reportedly stood over him. Appellant stated that the incident caused his pulse to race and left him emotionally distraught, light-headed, tense, irritable and nauseous. After submitting the time and leave sheets to the timekeeper, appellant decided to request sick leave and he went to Mr. Kearney's office to inform him of his condition. Appellant stated that he requested sick leave and left Mr. Kearney's office. Mr. Kearney allegedly followed appellant out of the office and down the hall yelling for appellant to wait. Appellant stated he responded that he was sick and was going home. Mr. Kearney reportedly followed appellant back to appellant's office and stood in the doorway. Appellant stated that he twice asked Mr. Kearney to get out of his way, but Mr. Kearney allegedly placed his hands on the door frame preventing appellant's departure. He also allegedly bumped into appellant causing appellant to spill his coffee. Appellant stated that he told Mr. Kearney to get out of his face and Mr. Kearney moved slightly out of the doorway and then ordered appellant to clean up the spilled coffee. He indicated that he went to get a mop, but later decided to leave the coffee spill as it was and filed an incident report with the employing establishment police.

On the Form CA-1, Mr. Kearney indicated that, after requesting sick leave, appellant was asked to ensure that his assignment was completed prior to leaving. In a January 29, 2001 report of contact, Mr. Kearney stated that he had approached appellant regarding his time and leave sheets and appellant advised that he was reading his email and would get to it later. Mr. Kearney stated that he told appellant that he needed to prioritize the time and leave sheets and finish reading his email later. Appellant was reportedly angered by the request. Mr. Kearney further stated that appellant later came to his office and requested sick leave. When Mr. Kearney inquired as to whether appellant had completed his time and leave sheets, appellant reportedly did not respond to the specific question, but merely reiterated that he was leaving. Mr. Kearney stated that he repeated the question as appellant was walking toward his own office. Appellant reportedly began talking about how Mr. Kearney had been disrespectful and that he was leaving. Mr. Kearney stated that appellant had some items and a cup of coffee in his hands and while appellant approached him to leave, appellant spilled the coffee. Additionally, Mr. Kearney stated there was an exchange of words about disrespecting appellant. He also indicated that he asked appellant to make sure that he cleaned up the coffee spill in the hallway. Mr. Kearney stated that he returned to

¹ Appellant stopped work on January 29, 2001 and resumed his regular duties on February 28, 2001.

his office and the timekeeper informed him that appellant had submitted his paperwork for certification. He later noticed that an employing establishment police officer was talking with appellant. Mr. Kearney also noticed that the coffee had not been cleaned up and again advised appellant that he needed to clean up the spill. Appellant reportedly stated that he would take care of it. Mr. Kearney stated that the police officer later informed him that appellant filed an incident charge against him for impeding his progress in leaving the building. He denied the allegation.

Officer James E. Sheppard reported on January 29, 2001 that he responded to a request to meet with an employee regarding a dispute between the employee and his supervisor. When he arrived at appellant's office he observed a coffee spill on the floor near the door and the hallway. Soon after his arrival, Mr. Kearney reportedly knocked on the door, entered the office and asked appellant whether he was going to clean up the coffee. Appellant said "yes" and Mr. Kearney stated, "I want it cleaned up" and went back down the hallway. Upon investigating the alleged disorderly conduct, the officer closed the case based on his determination that it was a management issue and should be referred to management for any further action.

In a decision dated April 26, 2001, the Office denied appellant's claim because he failed to establish that his claimed emotional condition arose in the performance of duty. Appellant requested an oral hearing, which was held on September 24, 2001. By decision dated May 1, 2003, the Office hearing representative affirmed the April 26, 2001 decision denying appellant's claim. Appellant requested reconsideration on May 15, 2003. He submitted a January 31 and March 29, 2000 equal employment opportunity (EEO) investigative summary and analysis. Appellant also submitted a March 28, 2000 affidavit from Mr. Kearney. By decision dated June 19, 2003, the Office denied appellant's request for reconsideration. The Office found that the evidence submitted was immaterial as it did not specifically relate to the alleged employment incident of January 29, 2001.

LEGAL PRECEDENT – Issue 1

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.²

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

² 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).

particular environment or hold a particular position.³ 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.⁴

ANALYSIS – Issue 1

Appellant alleged that Mr. Kearney was abusive in the manner that he requested appellant to complete his time and leave sheets on January 29, 2001. An already tense situation was reportedly exacerbated when Mr. Kearney followed appellant down the hallway and allegedly prevented him from leaving his office. With respect to the initial incident where Mr. Kearney allegedly told appellant to do his time and leave sheets “NOW!,” there is no indication from the record that Mr. Kearney erred or acted abusively in attempting to obtain appellant’s time and leave sheets.⁵ Furthermore, while appellant perceived Mr. Kearney’s words and demeanor as demanding, disrespectful, provoking, loud, intimidating and threatening, the exchange that appellant described does not rise to the level of compensable verbal abuse.⁶

Appellant also alleged that he felt threatened and intimidated when Mr. Kearney followed him down the hallway and allegedly blocked his doorway, thus preventing appellant from leaving. Mr. Kearney admitted that he followed appellant down the hallway. However, he was not stalking appellant as alleged. Mr. Kearney followed appellant down to appellant’s office because appellant refused to respond to Mr. Kearney’s question regarding the status of his time and leave sheets. As far as Mr. Kearney’s alleged blocking of appellant’s doorway, he specifically denied this allegation. Although several coworkers provided written statements regarding their recollection of the events of January 29, 2001, no one other than appellant reported having witnessed Mr. Kearney prevent appellant from exiting his office. Ernest Jones was the only witness to report having seen Mr. Kearney “standing in the doorway.”⁷ Appellant was overheard telling Mr. Kearney to get out of his face, but no one corroborated appellant’s allegation that Mr. Kearney physically prevented him from leaving the office. In view of Mr. Kearney’s denial, the Board finds that, in the absence of corroborating evidence, appellant

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁵ As a general rule, a claimant’s reaction to administrative or personnel matters falls outside the scope of the Federal Employees’ Compensation Act. *Id.* 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. *Id.* 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. *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997).

⁶ The Board has recognized that verbal abuse or threats of physical violence in the workplace are compensable under certain circumstances. This, however, does not imply that every ostensibly abusive or threatening statement uttered in the workplace will give rise to coverage under the Act. *Fred Faber*, 52 ECAB 107, 109 (2000). Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute compensable factors of employment. *Marguerite J. Toland*, 52 ECAB 294, 298 (2001).

⁷ Mr. Jones initially reported that he heard appellant ask Mr. Kearney to move out of his office and out of his doorway. In an amended statement he advised that he witnessed Mr. Kearney standing in the doorway.

has failed to substantiate his allegation that Mr. Kearney physically impeded his departure on January 29, 2001. Appellant also failed to substantiate his general allegations of harassment.⁸ Inasmuch as appellant failed to substantiate or implicate a compensable employment factor as a cause of his claimed emotional condition, the Office properly denied appellant's claim for compensation.

LEGAL PRECEDENT – Issue 2

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.⁹ Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹⁰

ANALYSIS – Issue 2

Appellant's May 15, 2003 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. He alleged a broader pattern of harassment, intimidation, discrimination and retaliation dating back to January 30, 1998. However, the instant claim was based on specific events that allegedly arose on January 29, 2001. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant submitted evidence in support of his alleged pattern of discrimination that predated the January 29, 2001 employment incident. While this evidence involves Mr. Kearney and was not previously of record, it is not relevant to the instant claim. The January 31 and March 29, 2000 EEO investigative reports and Mr. Kearney's March 28, 2000 affidavit predate the January 29, 2001 employment incident and have no direct bearing on the events that allegedly contributed to appellant's claimed emotional condition. As this evidence does not constitute "relevant and pertinent new evidence," it is insufficient to warrant modification of the prior decision. Accordingly, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).

⁸ 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).

⁹ 20 C.F.R. § 10.606(b)(2) (1999).

¹⁰ 20 C.F.R. § 10.608(b) (1999).

As appellant is not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office did not abuse its discretion in denying appellant's May 15, 2003 request for reconsideration.

CONCLUSION

The Board finds that appellant failed to establish that he sustained an emotional condition in the performance of duty. The Board further finds that the Office properly denied appellant's May 15, 2003 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the June 19 and May 1, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 20, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member