

FACTUAL HISTORY

On March 13, 2003 appellant, then a 41-year-old letter carrier, filed an occupational disease claim, (Form CA-2), for stress occurring before March 11, 2003.¹ Appellant stated that since requiring surgery for a job-related injury, he received conflicting and fraudulent information. Appellant alleged that he was denied pay, leave and leave without pay (LWOP) and had not received requested copies of Forms 3971, request for notification of absence. Appellant stated that he had been threatened with discipline and that documentation was being refused and not adhered to.

Appellant's supervisor, Rowena Batac, stated that appellant would not respond to questions regarding his injury and accident claim. Ms. Batac stated that during an investigation on March 14, 2003 appellant refused to comment or elaborate on the allegations on his Form CA-2 and, therefore, the cause of the alleged job-related stress could not be determined.

Appellant submitted a medical report dated April 21, 2003 from Dr. Robert A. Kaplan, a clinical psychologist, who stated that appellant had anxiety and depression stemming from "on[-]the[-]job harassment," discrimination and a hostile work environment. Dr. Kaplan diagnosed major depression and opined that appellant was temporarily totally disabled as of March 15, 2003.

By letter dated April 25, 2003, the Office requested that appellant submit additional information, describing his allegations and the specific instances he was denied leave or LWOP.

In a February 25, 2002 memorandum, Larry Liu, the acting supervisor of customer service, advised appellant that he had been carried in an absent without leave (AWOL) status since February 25, 2002, with no acceptable documentation for his unscheduled absence. Mr. Liu instructed appellant to return to work immediately or provide justification for his absence. Appellant was notified that he might be subject to disciplinary action, such as being removed for cause. In a May 13, 2002 memorandum, Mr. Liu informed appellant that if he did not report to work or provide justification for his AWOL status since May 11, 2002 within five days he might be subject to disciplinary action.

By letter dated December 18, 2002, the employing establishment notified appellant that his request for family/medical leave was pending as he had not submitted medical certification of his incapacity for work. Appellant was advised that his request would not be considered until the Form WH-380 was received. It was noted that appellant's wage-loss compensation was terminated by the Office on August 30, 2002 and that he would be placed in a LWOP status for four hours daily as of January 3, 2003.

¹ In a decision dated September 4, 2003, the Board affirmed the Office's August 30, 2002 and January 7, 2003 decisions. *See* Docket No. 03-1139 (issued September 4, 2003). On January 15, 2004 the Board denied appellant's request for reconsideration. The Office accepted appellant's traumatic injury claim for bilateral shoulder strain of June 6, 1997, claim No. 13-2040659. On June 6, 2002 the employing establishment offered appellant the job of full-time modified letter carrier based on the work restrictions recommended by Dr. Eugene M. Wolf, an attending Board-certified orthopedic surgeon. By decision dated August 30, 2002, the Office terminated appellant's compensation benefits on the grounds that he refused an offer of suitable work. In a merit decision dated January 7, 2003, the Office denied modification of the August 30, 2002 decision.

By letter dated January 3, 2003, the employing establishment found that appellant did not submit documentation to support his Family Medical Leave Act (FMLA) leave request and that the Office determined that appellant could work eight hours a day. It stated that appellant's request for four hours of leave under the FMLA would be treated as a request for LWOP.

On March 5, 2003 appellant filed an Equal Employment Opportunity (EEO) complaint alleging discrimination because he was Hispanic, male and disabled due to his bilateral shoulder condition.

In a May 5, 2003 statement, appellant alleged that the employing establishment dealt with his paperwork for his injury with malice and punitive actions. He alleged receiving a misleading job offer that was changed without notice. Appellant stated that postal managers, Joanne Schunter, Mark Shio, Mr. Liu and Ms. Batac, were instrumental in harassing him and violating his rights as an injured employee. Appellant stated that he had been denied four hours a day of compensation, his requests for LWOP were denied and ignored and he was threatened with AWOL even though he supplied the required medical documentation.

Appellant stated that on March 11, 2003 he gave Ms. Batac a copy of medical documentation for a leave of absence request. In a meeting with Ms. Batac, Mr. Liu, Ms. Schunter and a union representative, he was informed that none of the medical documentation for his request was acceptable because there were no approved records for his bilateral shoulder injury. Appellant alleged that on March 13, 2003 Ms. Batac instructed him to wait in a conference room to receive copies of the forms he had requested, noting that he waited for hours and it was only at the end of the day that Ms. Batac told him that she would provide the documentation he requested the following day. Appellant stated that he had "to beg" management to take care of his paperwork, that he never received copies of leave forms in a timely manner and that he still had not received forms following his surgery in 2001.

On March 14, 2003 Ms. Batac provided him with some of the documentation he had requested. Appellant submitted his emotional condition claim and then he was again sent to the conference room for a meeting with Ms. Batac and other members of management. He was instructed to go to the medical center for an evaluation. Appellant alleged that he wanted to see his own physician but management insisted that he see the one they chose. Appellant stated that every time he called to request leave related to his job injury, he had to be ready for a meeting in the conference room with members of management. Appellant noted that the atmosphere at the meetings was very tense and hostile.

A duty status report dated September 11, 2002, presumably initialed by Dr. Dave M. Atkin, a Board-certified orthopedic surgeon, stated that appellant could only work 4 hours a day with no lifting more than 35 pounds and no climbing or reaching above the shoulder.

In a letter dated October 4, 2002, Mr. Liu stated that it was his obligation to monitor the employee's medical progress and duty status by obtaining periodic reports. He noted that when appellant did not report to work as scheduled without calling, management placed him in an AWOL status. Mr. Liu stated that his involvement was to issue a five-day response letter

informing appellant that he would be placed in AWOL status if he failed to report to work as scheduled on May 13, 2002 and he needed to provide medical documentation for extended medical leave.

Appellant submitted forms dated from November 3, 2001 through March 11, 2003 which show that his supervisor denied his requests for either sick leave or LWOP.

In a July 11, 2003 report, Dr. Kaplan reviewed appellant's medical history, work history and circumstances of appellant's job. Dr. Kaplan noted that Dr. Wolf, an attending Board-certified orthopedic surgeon, prescribed certain restrictions but appellant felt he subsequently changed his opinion due to pressure from the Office. Dr. Kaplan stated that Dr. Wolf subsequently dismissed appellant stating that he would have to live with the pain and could not help him anymore and indicated that is when appellant began to feel depression. Dr. Kaplan stated that appellant felt abandoned by his physician and subsequently by his employer whom he felt was not protecting him with work restrictions. Dr. Kaplan stated that appellant provided his employer with a report from his treating physician, Dr. Atkin, which stated that appellant could work four hours a day with restrictions, but appellant's employer ignored Dr. Atkin's report and returned appellant to full-time work without restrictions. Dr. Kaplan stated that appellant felt that his supervisors were treating him in a hostile and discriminatory manner and he was being singled out for abuse and punishment. Dr. Kaplan diagnosed depression with excessive anxiety and stated it arose directly from his treatment at work by his supervisors and the employing establishment. He stated that appellant was totally disabled.

By decision dated July 22, 2003, the Office denied appellants claim, finding that appellant did not establish a compensable factor of employment.

By letter dated August 14, 2003, appellant requested reconsideration of the Office's July 22, 2003 decision and resubmitted Dr. Kaplan's July 11, 2003 report.

In a merit decision dated September 22, 2003, the Office denied modification of the July 22, 2003 decision.

LEGAL PRECEDENT

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 an employee's employment. There are situations where an injury or an

² See *Robert W. Johns*, 51 ECAB 137, 141 (1999).

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 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.³ 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.⁴

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.⁵ The issue is not whether the claimant has established harassment or discrimination under standards applied the EEO 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.⁶ To establish entitlement to benefits, the claimant must establish a factual basis for the claim by supporting allegations with probative and reliable evidence.⁷

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.⁸ 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.⁹

ANALYSIS

Regarding appellant's allegations that he was unfairly refused leave and LWOP family/medical leave, the Board has held that the handling of leave requests are administrative functions of the employer, not duties of the employee and as such are only compensable if management acts unreasonably or abusively in denying the requests.¹⁰ In this case, appellant alleged that his supervisor unfairly denied his requests for sick leave or LWOP dated from November 3, 2001 through March 11, 2003.

In the December 18, 2002 letter, however, the employing establishment informed appellant that his request for family/medical leave was pending as he had not submitted medical

³ 5 U.S.C. §§ 8101-8193.

⁴ *Clara T. Norga*, 46 ECAB 473, 480 (1995); *Lillian Cutler*, 28 ECAB 125, 129-30 (1976).

⁵ *Michael Ewanichak*, 48 ECAB 364, 366 (1997); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

⁶ *See Martha L. Cook*, 47 ECAB 226, 231 (1995).

⁷ *Barbara E. Hamm*, 45 ECAB 843, 851 (1994).

⁸ *Clara T. Noga*, *supra* note 4 at 481; *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

⁹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁰ *James P. Guinan*, 51 ECAB 604, 607 (2000); *John Polito*, 50 ECAB 347, 349 (1999).

certification of his incapacity for work. The Office noted that appellant's wage-loss compensation was terminated by the Office on August 30, 2002 and that he would be placed in a LWOP status for four hours daily as of January 3, 2003. In the January 3, 2003 letter, the employing establishment found that appellant did not submit documentation to support his FMLA leave request and the Office determined that appellant could work eight hours a day. The employing establishment therefore treated appellant's FMLA request as a request for LWOP. Appellant did not provide a clear explanation for his leave requests following the Office's August 30, 2002 decision terminating his disability benefits. He did not submit the necessary medical evidence showing that he was unable to work due to his accepted condition. Although the record contains the April 21 and July 11, 2003 medical reports of Dr. Kaplan¹¹ in which he opined that appellant was temporarily totally disabled as of March 15, 2003, due to depression and excessive anxiety arising from work, the record does not show that these reports were submitted to the employing establishment at the time he submitted his leave requests. Appellant has therefore not established that his supervisor acted abusively or unreasonably in denying his leave requests.¹²

Appellant contended that he was threatened with disciplinary action regarding his leave requests. The record shows that on February 25 and May 13, 2002, the acting supervisor of customer service, Mr. Liu, informed appellant that if he did not report to work or provide justification for his absence, he might be removed from his job. In an October 4, 2002 letter, Mr. Liu explained that it was his obligation to monitor the employee's medical progress and duty status by obtaining periodic reports. He stated that when appellant did not show up for work without informing management he was placed on AWOL status and he issued the February 25 and May 13, 2002 letters as part of his duties. The Board has held that reactions to disciplinary matters such as letters of warning and inquiries regarding conduct pertain to actions taken in an administrative capacity and are not compensable unless it is established that the employing establishment erred or acted abusively in such capacity.¹³ Appellant did not establish that the employing establishment acted abusively or unreasonably in issuing him those letters.

Regarding appellant's contentions that the employing establishment handled his paper work punitively and maliciously, that it gave him a misleading job offer and that management harassed him and violated his rights as an injured employee, appellant has not presented evidence to support them. The evidence of record does not establish his contention that whenever he asked for leave for his job injury, he was called into a meeting with management. Appellant did not establish that the meetings were hostile and tense or that after one of them he was not permitted to see his physician. He did not present evidence that on March 13, 2003 he was made to wait for hours to receive documents he requested only to have Ms. Batac tell him at the end of the day, she would give him the documentation the next day. Appellant did not

¹¹ Dr. Kaplan is a physician within the meaning of the Act because he is a licensed, clinical psychologist. *See* 5 U.S.C. § 8101(2); *Arnold A. Alley*, 44 ECAB 912, 921 (1993). Federal (FECA) Procedure Manual, Part 3 -- Medical, *Overview*, Chapter 3.01.3.a (April 1993).

¹² Moreover, in the Board's September 4, 2003 decision, Docket No. 03-1139, the Board found that the medical evidence established that appellant could perform the job of modified carrier full time and the Office properly terminated appellant's compensation on the grounds that he refused suitable work.

¹³ *Sherry L. McFall*, 51 ECAB 436, 440 (2000).

support his contention that he had “to beg” management to take care of his paperwork. He did not show that the employing establishment treated him fraudulently. Although appellant filed an EEO claim, the outcome of the claim is not in the record. Absent evidence to support his allegations of harassment, appellant has not established that management harassed him.¹⁴

CONCLUSION

The Board finds that appellant did not establish any compensable factors of employment and therefore failed to establish that he sustained an emotional condition in the performance of duty, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the September 22 and July 22, 2003 decisions of the Office of Workers’ Compensation Programs be affirmed.

Issued: July 13, 2004
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁴ See *Sherman Howard*, 51 ECAB 387, 390 (2000). Since appellant did not establish any compensable factors of employment, it is not necessary to address the medical evidence. See *Sharon R. Bowman*, 45 ECAB 187, 194 (1993).