

inclusive. He submitted an Office Form CA-20, an attending physician's report, in which Dr. Tomas Hernandez, a neurologist, reported a history that appellant injured his back while unloading a mail pack. He diagnosed a bulging lumbar disc with radiculopathy and severe recurrent depression. He checked the "yes" box, indicating that the conditions were employment related, stating that appellant was required to carry and lift heavy objects.

By letter dated July 8, 2003, the Office informed appellant of the evidence needed to support his claim. In response, he alleged stress while working in Midland, Texas in 1986 where he was harassed by supervisors every day for five months. Appellant stated that he filed an Equal Employment Opportunity (EEO) complaint, but did not get a response and reported that, after he transferred to Puerto Rico, he required psychiatric treatment. He stated that severe back pain caused a major depression and anxiety which he characterized as memory loss, shaking and trembling, incoherency, crying spells, uncontrollable anger, cold clammy skin, rapid heartbeats, numbness in his face, hands and legs, elevated blood pressure and body weakness, adding that he first noted the condition in 1986 and was hospitalized in January 2003 and from June 28 to July 9, 2003.

Appellant submitted a note dated August 9, 2001, in which the employing establishment medical unit listed a history of anxiety and panic disorder, reported that appellant was very anxious and crying and referred him for evaluation for a nervous breakdown. In a May 29, 2002 report, Dr. Luis M. Polo, a psychiatrist, noted that appellant hurt his back while in the military, had his first anxiety attack in 1986, and diagnosed severe recurrent depression with paranoid ideation and violent thoughts against supervision. He referred appellant to the hospital. In a December 16, 2002 report, Dr. Polo diagnosed major depression, recurrent severe, with conversion disorder and described appellant's treatment regimen. Appellant submitted hospital records from both the January, June and July 2003 admissions, in which a history of lumbar trauma while in the military was reported and major depressive disorder was diagnosed. In an April 14, 2003 treatment note, Dr. Polo diagnosed major depression and chronic back problem and advised that appellant's depression was exacerbated by chronic pain and his capacity to function at work. In a July 23, 2003 report, Dr. Polo diagnosed major depression, rule out conversion disorder.

In a July 18, 2003 letter, the Office informed the employing establishment that appellant had received wage-loss compensation from December 20, 2002 to June 16, 2003 for a May 27, 1998 employment injury, file number 022032952.¹ By decision dated December 11, 2003, the Office found that appellant failed to establish that his emotional condition was causally related to factors of employment. The Office found that he failed to submit evidence to support that he was harassed in 1986 and that any claim for an emotional condition due to back pain should be adjudicated under file number 022032952.

LEGAL PRECEDENT

To establish his claim that he sustained an emotional condition in the performance of duty appellant must submit the following: (1) medical evidence establishing that he has an

¹ The instant claim was adjudicated under file number 022040202.

emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.²

For harassment or discrimination to give rise to a compensable disability, 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 Federal Employees' Compensation Act.³ 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.⁴ Grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.⁵

ANALYSIS

Regarding appellant's contention that his emotional condition was due, in part, to the pain generated by his back injury, the Board notes that the Office's December 11, 2003 decision advised that any claim for back pain should be adjudicated under his back claim, file number 022032952.

The Board further finds that appellant has not established that he was harassed by employing establishment management in 1986 while in Texas. The record is devoid of any evidence to support that such harassment occurred, as alleged. Appellant submitted no supportive documentation of harassment or evidence to show that he filed an EEO claim. He, therefore, failed to substantiate whether such harassment or discrimination occurred and thus failed to establish a factual basis that he was harassed in 1986.⁶

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an employment-related emotional condition.

² *Leslie C. Moore*, 52 ECAB 132 (2000).

³ 5 U.S.C. §§ 8101-8193.

⁴ *James E. Norris*, 52 ECAB 93 (2000).

⁵ *Id.*

⁶ *James E. Norris*, *supra* note 4.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 11, 2003 be affirmed.

Issued: July 12, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member