

was not allowed to work a full day. Appellant stopped work on March 11, 2003. He submitted medical evidence in support of his claim.

In undated statements received by the Office on July 14 and 21, 2003, appellant alleged that Supervisor Elizabeth Green required him to work on a letter sorting machine that required constant lifting, bending and turning and this job exceeded his doctor's recommendations, increasing his back pain. When he complained, Ms. Green assigned him manual separation of the mail but this task also exceeded his physical restrictions because it required heavy lifting and frequent bending. Appellant stated that he performed this job from October 26, 2002 to March 12, 2003. He alleged that Ms. Green yelled at him and requested more medical documentation than was required from other light-duty employees. Appellant alleged that on November 19, 2002 Ms. Green called him to her office to discuss grievances he had filed and stood up in a "menacing" manner and told him to shut up and go home because she did not have any more light-duty work for him. Appellant alleged that, following this incident, he was generally not allowed to work a full day. Appellant alleged that on November 21, 2002 Ms. Green again yelled at him and that on November 23, 2002 she told him there was no work for him.

Appellant alleged that on November 5, 2002 another supervisor, Frank Stanco, moved a mail container away from him, stating that he did not want appellant to "have it easy" and so that he could better observe appellant. Later a coworker moved the container closer to appellant but Mr. Stanco moved it away again and threatened him with a suspension. Appellant alleged that he asked to change his schedule to drive his wife for some medical tests and was told by Mr. Stanco to put an explanation for his request in writing. Appellant alleged that other employees were not required to provide medical documentation. He alleged that Mr. Stanco closely monitored his work in a threatening and intimidating manner and sometimes walked directly toward appellant, forcing him to step aside.

Appellant submitted a copy of an undated petition in which workers at the employing establishment complained generally of harassment from Ms. Green and demanded her removal from her position.

In statements dated April 24 and 25, 2003, Ms. Green denied that she ever discriminated against appellant or yelled at him. She indicated that he was asked to leave work when he refused to perform certain assignments or failed to follow instructions.

In an April 25, 2003 statement, Mr. Stanco denied that he ever discriminated against appellant. He stated that appellant refused to perform certain tasks while on light duty and this was the reason he sometimes did not work a full day. Mr. Stanco stated that on November 5, 2002 appellant was denied a change in schedule because he refused to provide a written explanation.

In statements signed and dated July 9 through 14, 2003, four coworkers stated that they had witnessed supervisors harassing and discriminating against appellant by yelling at him and not allowing him to work.

In a December 5, 2003 statement, Ms. Green stated that appellant's restrictions were honored and she created a position specifically for him that involved sorting mail. She stated that when appellant finished sorting mail he would ask to go home and refused to perform other tasks within his restrictions. Ms. Green stated that as long as there was light-duty work available appellant was allowed to work. She indicated that light-duty employees were required to provide updated medical documentation every 30 days but appellant did not want to comply with this policy.

In a statement dated December 9, 2003, the employing establishment indicated that appellant did not work between September 6 and October 26, 2002 due to a nonwork-related neuromuscular condition and between October 26, 2002 and March 11, 2003 he was assigned duties within his physical restrictions.

The record shows that appellant filed an Equal Employment Opportunity (EEO) complaint alleging discrimination by the employing establishment.

By decision dated February 10, 2004, the Office denied appellant's emotional condition claim on the grounds that he had failed to establish 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. There are situations where an injury or an 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 his 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.¹ 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 his frustration from not being permitted to work in a particular environment or to hold a particular position.²

Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act.³ However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.⁴ Where appellant alleges compensable factors of employment, he must substantiate such allegations with probative and reliable evidence.⁵

¹ 5 U.S.C. §§ 8101-8193.

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Michael L. Malone*, 46 ECAB 957 (1995); *Gregory N. Waite*, 46 ECAB 662 (1995).

⁴ *Elizabeth Pinero*, 46 ECAB 123 (1994); *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁵ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

ANALYSIS

Appellant alleged that the employing establishment acted abusively in requiring him to provide medical documentation to support his absences, did not allow him to work a full day and closely monitored his work. These supervisory actions are administrative matters of the employing establishment and are covered under the Act only when a showing of error or abuse is made.⁶ In this case, appellant did not provide evidence establishing that his supervisor erred or acted abusively in these administrative matters. His supervisors explained that all light-duty workers were required to provide documentation for their absences, not just appellant. They explained that appellant was only sent home when light-duty work was unavailable. Regarding the allegation of close monitoring, the monitoring of an employee's job performance is a supervisory function and there is no evidence that the employing establishment erred or acted abusively in this matter. Due to insufficient supporting evidence, these allegations are not deemed compensable employment factors.

Appellant also alleged that he was required to perform work that exceeded his physical restrictions. The Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if such activity was substantiated by the record.⁷ However, the employing establishment stated that appellant was provided with light-duty work in accordance with his medical restrictions and he has provided insufficient evidence to support his allegation. Therefore, this allegation is not deemed a compensable employment factor.

Appellant further alleged that he was harassed and discriminated against by his supervisors, Ms. Green and Mr. Stanco, who yelled at him and closely monitored his work. He alleged that Mr. Stanco sometimes walked directly toward him and forced him to step aside. Appellant indicated that he felt threatened by his supervisors. 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.⁸ 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.⁹ Appellant's supervisors denied that they harassed him or discriminated against him and appellant has submitted insufficient evidence to establish these allegations. The witness statements indicated that appellant's supervisors harassed him and discriminated against him but no specific details were provided such as dates, individuals involved and what occurred. Therefore, these witness statements are of limited probative value and are insufficient to establish that appellant was harassed or discriminated against by his supervisors. Appellant submitted evidence that he had filed an EEO complaint but there is no final EEO decision of

⁶ *Lorna R. Strong*, 45 ECAB 470 (1994).

⁷ *See Diane C. Bernard*, 45 ECAB 223 (1993).

⁸ *David W. Shirey*, 42 ECAB 783 (1991); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁹ *Donna J. DiBernardo*, 47 ECAB 700 (1996); *Jack Hopkins, Jr.*, 42 ECAB 818 (1991).

record indicating any finding of harassment or discrimination by the employing establishment. Furthermore, the findings of other administrative agencies are not determinative with regard to proceedings under the Act.¹⁰ Appellant's allegations of harassment and discrimination are not established by the evidence and they are not deemed compensable factors of employment.

CONCLUSION

The Board finds that appellant has failed to establish that his emotional condition was causally related to compensable factors of his employment.¹¹

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 10, 2004 is affirmed.

Issued: July 22, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹⁰ *Daniel Deparini*, 44 ECAB 657 (1993).

¹¹ Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence. *Garry M. Carlo*, 47 ECAB 299 (1996).