

alleged that there was a group of people who were trying to get him fired for sticking up for his right to a promotion. He claimed compensation from March 25, 2003 and ongoing.

Appellant submitted statements written during May 2003, in which he alleged that he had applied for a position several times, but that he was lied to by human resources personnel who withdrew his application and gave someone else the job. Appellant claimed that human resources personnel were trying to ruin his future. He alleged that human resources personnel harassed him and stressed him out by asking him to submit new security paperwork and fingerprints. Appellant alleged that he worked in a hostile work environment with unrelenting stress due to short staffing. He claimed that a new clerk asked him how to do things and did not know how to use the computer. Appellant also claimed that two different patients were given incorrect information about where they were to be seen, and got mad at him because of it. Appellant claimed that management caused him to feel stress, fear, depression and betrayal. Appellant claimed Steven Scheiber, a supervisor, embarrassed him in front of human resources staff causing him unnecessary stress about 20 months prior. He alleged that Mr. Scheiber was rude and used an expletive, which was embarrassing and demeaning and showed a lack of respect. Appellant claimed that he was told that a person made his reputation during the first six months that he was there, which he claimed was demeaning and caused additional stress. Appellant applied for a position for which he was not qualified, which caused him stress. Appellant alleged that in applying for another position he found out that there was no paperwork in his file, which demonstrated that he had been in Grade GS-6 for one year. Finally, appellant alleged that a select few were on the fast track for promotion and he felt that management should be accountable to the portion of the staff that had been ignored.

In a July 18, 2003 memorandum, Mr. Scheiber noted that appellant had applied for 13 positions, for which he was considered but not selected and 1 position for which he was not qualified. He noted that appellant had worked a year at a GS-6 position in Boston. Multiple nonselection letters were included, but the reasons for nonselection were not indicated.

In a July 17, 2003 memorandum, a human resources specialist noted that appellant's security clearance information was missing from his file, which necessitated that he complete new paperwork. She did not remember making a statement to appellant about his being fired for noncompliance.

In a July 21, 2003 memorandum, Denise Ramsey, acting head of ambulatory care, responded to appellant's allegations noting that his description of an increased workload was not accurate, as the clerk positions were the lowest grade with the greatest turnover and where newly hired personnel began and were trained. She noted that these positions were being upgraded to a GS-5/6 level. Ms. Ramsey indicated that during the spring of 2002 staffing was at its lowest due to personnel on extended leave and that appellant created a hostile work environment by verbally intimidating the newly hired dermatology secretary. Ms. Ramsey stated that appellant was counseled in December 2001 for disrespectful conduct and statements made to a patient.

In a July 24, 2003 memorandum, appellant's supervisor noted that he was assigned to the dermatology clinic because of numerous complaints from clerks, staff and patients about his attitude and mediocre job performance. The supervisor noted that appellant had difficulty

working in a team environment, *i.e.*, a clinic with other clerks and voiced his discontent and stress to staff and patients equally. The supervisor indicated that appellant was counseled concerning his conduct and was reassigned to dermatology in a less stressful environment. The supervisor noted that appellant's performance deteriorated in December 2002 and he was again reassigned to a subspecialty clinic.

Appellant submitted an April 2, 2003 report from Dr. Michael C. Ware, a clinical psychologist, who noted that on Tuesday, March 25, 2003 appellant became so stressed at work and felt the need to take leave. Dr. Ware noted that appellant felt significant stress regarding an ongoing issue at work and that he learned on that day that a recently hired colleague had complained about the assistance he had offered her. Appellant indicated that this additional complaint could not have come at a worse time and he felt anxious and could not focus properly on his work. Dr. Ware indicated that appellant was feeling overwhelmed by the stress at work and that his frequency of therapeutic visits should be increased and his medication reviewed.

Appellant submitted a May 1, 2003 note from a nurse practitioner cosigned by Dr. Bakul Parikh, a Board-certified psychiatrist. Appellant was seen on that date and was not ready to return to work due to emotional and physical problems. The anticipated date for returning appellant to work was June 2, 2003. In a May 21, 2003 medical progress note, Dr. Adam Tremblay noted that appellant reported increasing stress levels at work because other employees had gotten jobs he had bid on. It was noted that appellant was working in a "hostile environment" with "inadequate staffing" and had tried to commit suicide on August 22, 2002 by taking an overdose of insulin.

By decision dated October 8, 2003, the Office denied appellant's claim finding that his allegations were unsubstantiated or not compensable factors of employment.

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.

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 particular environment or hold a particular position.¹ Perceptions and feelings alone are not compensable. To establish

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.²

ANALYSIS

Several of appellant's allegations of employment factors that caused or contributed to his condition fall into the category of administrative or personnel actions. As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Federal Employees' Compensation Act.³ 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.⁴

The incidents and allegations made by appellant, which fall into this category of administrative or personnel actions include: appellant being asked to update his security file with paperwork and fingerprints; his interactions with human resources personnel about other possible positions; his multiple applications for other positions being rejected; his withdrawal of an application for a certain position; his application for a position for which he was not qualified; and his finding that paperwork on his previous employment was missing from his personnel file. Appellant has presented no evidence of administrative, supervisory or human resources error or abuse in the conduct or performance of these actions and, therefore, they are not compensable now under the Act.

Many of appellant's allegations of emotional stress and abuse stem from his desire to hold and to work in a different position or job. As noted above, disabling emotional conditions resulting from an employee's feelings of job insecurity or from the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.⁵ Appellant alleged that he was wrongfully denied a promotion by human resource personnel who conspired against him. However, no supporting evidence was presented of any conspiracy against him. Appellant applied for 13 positions and was not selected for any of them. There was no evidence that he was not fairly considered for each position prior to nonselection.

Appellant's unsubstantiated allegations also include incidents where he claimed that he was lied to by human resources personnel. Appellant alleged that he was not told about the qualifications for a position, or the availability of a position, that false information was given about him and his qualifications and that human resources actions were unfairly subjective. These incidents, however, were specifically denied by the human resources personnel allegedly involved and no other evidence supporting the allegations was submitted. In answer to his

² *Ruthie M. Evans*, 41 ECAB 416 (1990).

³ *Id.*

⁴ *Id.*

⁵ *Lillian Cutler*, *supra* note 1.

questions about positions, human resources personnel indicated that appellant was referred to the posted job advertisements. They denied that there was any concerted effort to deny him a promotion.

Appellant also alleged that his working environment was hostile, that human resources personnel were trying to harass him, to ruin his future and to get him fired, that another employee complained about the assistance he offered her, that he was overworked and that staffing was short, that patients got mad at him for misinformation given them by others and that Mr. Scheiber embarrassed him and demeaned him in front of others.

The Board has held that actions which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.⁶ However, in order for harassment to give rise to a compensable disability under the Act, there must be some evidence that such harassment did in fact occur. Mere perceptions of harassment alone are not compensable under the Act.⁷ Appellant alleged harassment on the part of human resources and that his supervisor verbally abused, embarrassed and humiliated him in front of others. Words and actions that appellant implicated as being harassment must be confirmed by supporting evidence that they did, in fact, occur as alleged. However, in this case such corroboration was not forthcoming from appellant. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Difficult relationships with supervisors or coworkers leading to a hostile environment may be compensable if there is objective factual evidence supporting such allegations of mistreatment in relationships at work or of conduct or language. However, appellant has submitted sufficient evidence supporting his allegations of verbal altercations or difficult, hostile relationships. While overwork could be a compensable factor of employment if proven,⁸ the acting head of ambulatory care controverted appellant's claim of overwork.

Appellant has failed to submit any sufficient evidence substantiating his allegation. The Board finds that appellant has failed to establish that any emotional condition he may have is causally related to compensable factors of his federal employment.

CONCLUSION

Appellant has not established that he sustained a disabling emotional condition, causally related to compensable factors of his employment. Therefore, he has not met his burden of proof to establish his claim and the medical evidence need not be addressed.⁹

⁶ *Sylvester Blaze*, 42 ECAB 654 (1991).

⁷ *Ruthie M. Evans*, *supra* note 2.

⁸ *See Frank A. McDowell*, 44 ECAB 522 (1993).

⁹ *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).

ORDER

IT IS HEREBY ORDERED THAT the October 8, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 19, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member