

in response and that he might soon be out of a job as causes of his condition. He stopped work on October 2, 2003.

By letters dated October 14, 2003, the Office informed appellant of the type evidence needed to support his claim and requested that the employing establishment furnish information regarding his allegations.

Appellant submitted a September 3, 2003 medical report in which Drs. Samuel Mathai, a Board-certified psychiatrist and Scott R. Bartley, a resident physician, noted that pain was increasing from a 1988 injury which occurred when appellant picked up 100 pounds of ammunition. Since January 2001, he missed work due to pain which led to stress and also noted marital stress and financial strains. In an October 1, 2003 report, Dr. Bartley noted that the 1988 back injury led to chronic back pain, stated that appellant was constantly angry at his boss and diagnosed major depression, recurrent severe. He indicated by a checkmark "yes" that this was employment related, stating that job stress aggravated the depression. Dr. Bartley recommended that appellant be off work for six weeks while new medication was instituted. In treatment notes dated August 25 and September 22, 2003, Dr. Marvin Van Hal, Board-certified in orthopedic surgery, noted that appellant had a "constellation" of symptoms including continued back discomfort.

In a statement dated October 21, 2003, appellant advised that he suffered pain from an accepted back injury, Office file number 160266704 and neck and shoulder injury, Office file number 160342020.¹ He further alleged that he was harassed by Mr. Williams, who would seek him out, had written him up, had taken his job away and that he had a confrontation with Mr. Williams. Appellant also noted that he had to file a Form CA-17 every 30 days and that rumors were circulating regarding threats to future employment.

By decision dated December 1, 2003, the Office denied the claim finding that, as appellant failed to establish a compensable factor of employment, his emotional condition did not occur in the performance of duty. The Office noted that this claim was not the appropriate vehicle for filing consequential injuries of his previously accepted back and neck claims.

On December 17, 2003 appellant requested reconsideration and further described employment incidents which he characterized as degrading and insulting and thus constituted harassment. He noted that on June 11, 2003 Doris Meeks, a manager, informed him that his job would change,² that on July 25, 2003 his job was modified and that on September 22, 2003 he had a confrontation with Mr. Williams regarding a smoking break.³ Appellant also submitted a grievance resolution dated June 20, 2003 which indicated that a letter of warning for failure to follow instructions regarding clocking in before scheduled start time on May 30, 2003 would be kept in appellant's personnel record for 90 days and then destroyed if no further incidents were reported, a statement regarding the September 22, 2003 incident in which appellant characterized

¹ The Office adjudicated the instant claim under file number 162064980.

² Appellant noted that he consulted with the union which informed him that the job change was permitted.

³ Appellant also filed a number of Form CA-7, claims for compensation. In a letter dated December 11, 2003, the Office informed him that these claims could not be processed because the underlying claim had been denied.

Mr. Williams' questioning about a smoking break as harassment and medical reports dated November 5 and 26, 2003, from Dr. Bartley. In a letter dated January 19, 2004, appellant reported that he had been suspended because, allegedly, he was a threat to himself and others.

In a decision dated January 26, 2004, the Office denied modification of the December 1, 2003 decision. In a statement dated January 22, 2004 and received by the Office on February 2, 2004, Mr. Williams, a supervisor, advised that on May 8, 2003 appellant received a letter of warning because he began his tour two hours early on that day. Mr. Williams also explained that on July 25, 2003 appellant's job was changed to conform with his medical restrictions. In describing the September 22, 2003 incident, Mr. Williams stated that he confronted appellant about taking a smoking break shortly after his return from lunch, noting that such breaks were not to be combined. Dr. Harold Cronson, Board-certified in psychiatry, provided a fitness-for-duty examination report for the employing establishment dated January 30, 2004. He noted that appellant was not fit for duty but could return to work after his depression resolved. Dr. Cronson advised that appellant was not a threat to others and opined that his depression was caused by chronic pain.

By letter dated February 16, 2004, appellant indicated that he wanted his claim to reflect that his depression was due to the chronic back pain of his back injury, file number 160266704.

By decision dated April 13, 2004, the Office denied modification of the January 26, 2004 decision.

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 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.⁴

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁵ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁶ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁷ When an employee experiences emotional stress in carrying out his employment duties and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally

⁴ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁵ 28 ECAB 125 (1976).

⁶ 5 U.S.C. §§ 8101-8193.

⁷ See *Robert W. Johns*, 51 ECAB 137 (1999).

regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.⁸

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁹ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.¹⁰

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 Act. 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 evidence¹¹

ANALYSIS

Appellant alleged that his emotional condition was caused because his job was changed, that he was improperly given a letter of warning and was improperly reprimanded for taking a smoking break. He has also alleged that his stress was caused by pain from two prior accepted injuries and has generally alleged that he was exposed to chemicals in the workplace and was harassed by employing establishment management.

As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Act.¹² However, an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.¹³ Likewise, an employee's complaints concerning the manner in which a supervisor performs his duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, outside the scope of coverage provided by the

⁸ *Lillian Cutler*, 28 ECAB 125 (1976).

⁹ *See Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁰ *Id.*

¹¹ *James E. Norris*, 52 ECAB 93 (2000).

¹² *Roger Williams*, 52 ECAB 468 (2001).

¹³ *Dennis J. Balogh*, *supra* note 9.

Act.¹⁴ In this case, appellant submitted no evidence to indicate that the employing establishment committed error and abuse regarding appellant's job change, the letter of warning or Mr. Williams' reprimand. Mr. Williams indicated that appellant's job was changed to comport with the restrictions provided by his physician and appellant himself conceded that the job change was permissible. The June 20, 2003 grievance settlement does not indicate that the employing establishment erred in any way in giving appellant the letter of warning regarding his early start on May 30, 2003. There is also no evidence of record to indicate that Mr. Williams acted outside of supervisory guidelines in reprimanding appellant regarding the smoking break on September 22, 2003. Appellant thus failed to establish compensable factors of employment regarding these matters. Regarding his fear that he might soon be out of a job, disability is not compensable 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 to hold a particular position.¹⁵

Regarding appellant's allegation that his treatment by Mr. Williams and other employing establishment management was degrading and insulting, the Board finds that appellant has submitted insufficient evidence to establish that he was treated in a harassing manner. Mr. Williams explained that appellant took the September 22, 2003 smoking break shortly after his return from lunch and noted that such breaks were not to be combined. Appellant has submitted no probative, reliable evidence to indicate that Mr. Williams harassed him in this matter or that he or other employing establishment management harassed him in any way. The Board, therefore, finds that appellant did not establish harassment on the part of the employing establishment.¹⁶

Appellant has also alleged that his emotional condition is caused by pain from accepted back and neck injuries. The Board finds that any claim for pain related to the prior injuries should be adjudicated under appellant's previously accepted claims, files numbered 160266704 and 160342020. Finally, regarding his general allegation that he was exposed to numerous chemicals at the employing establishment, the record contains no evidence that appellant was in fact exposed to chemicals or that he suffers from an illness caused by any exposure.

CONCLUSION

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

¹⁴ *Margaret J. Toland*, 52 ECAB 294 (2001).

¹⁵ *James E. Norris*, *supra* note 11.

¹⁶ As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Roger Williams*, *supra* note 12 (2001); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs April 13, 2004 be affirmed.

Issued: November 4, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member