



employment on May 30, 2002. H attributed his condition to harassment and false accusations by his supervisors. Appellant stopped work on May 26, 2002 and has not returned.<sup>1</sup>

In support of his claim, appellant submitted treatment notes and reports for the period February 26, 1998 through December 12, 2002 by Dr. Vincent Tomasino, an attending Board-certified psychiatrist. He diagnosed paranoid schizophrenia, cocaine abuse, legal problems, job stress and school stress.

In a July 25, 2002 letter, appellant alleged that he was “a target for people who need or want advancement” and he was “always getting bashed” because of his sexual orientation. He alleged that coworkers had conspired to taint one of his drinks with the human immunodeficiency virus (HIV) because he acknowledged being gay. He related fellow employees complained about him to his supervisor because he commented on frightening issues. Appellant was counseled on this behavior. Appellant stated: “people seem to hate me for no reason” and that sometimes he lashes “out at the innocent because of my delusions of imagining that they are being mean, rude or just anti-social.”

The employing establishment controverted the claim and submitted materials regarding appellant’s position description, statements from Major Sally A. Richards, head nurse; Staff Sergeant Scott M. O’Brien, wardmaster; Staff Sergeant Reginald T. Suries; Staff Sergeant David Marlin; wardmaster, Major Jody S. Nicholson; Captain Edwin Rosado; and Sergeant Anthony J. Mangano, Assistant wardmaster.

In a letter dated March 18, 2003, the Office informed appellant that the evidence was insufficient to support his claim and advised him of the factual and medical evidence required to support his emotional condition claim. Appellant did not respond.

By decision dated June 25, 2003, the Office found that the evidence was insufficient to establish an emotional condition arising in the performance of duty. The Office found the record devoid of any evidence supporting appellant’s allegations of harassment based on his sexual orientation, that he was targeted by coworkers seeking career advancement, that coworkers had had tainted his drink with HIV virus due to his sexual orientation and/or his being subject to false accusations.

On July 11, 2003 appellant requested an oral hearing. A hearing was held on December 1, 2003 at which he testified. Appellant alleged that he was harassed for being gay and that other gay employees were also harassed. He felt threatened by Mr. Chambers’ statement that he would put all homosexuals on an island and then blow it up. Appellant could not recall the date Mr. Chambers allegedly made this statement.

The Office received progress notes for the period July 20 through October 24, 2002, a return to work certificate dated July 2, 2001, medical evaluation of work status dated April 29 and May 10, 2002, reports dated April 3 and 10 and July 20, 2001 and December 11 and 12, 2002 and a September 6, 2001 return to work slip from Dr. Tomasino, a May 28, 2003 letter

---

<sup>1</sup> The Office of Personnel Management approved appellant’s application for a disability retirement in a May 28, 2003 letter.

approving his disability retirement by the Office of Personnel Management and letters from appellant. In the December 11, 2002 report, Dr. Tomasino opined that appellant had been totally disabled since May 2002 but had improved and would be capable of working without restrictions.

The employing establishment submitted evidence, including an April 21, 2001 letter of warning issued to appellant, a February 12, 2001 performance plan objectives signed by appellant and a performance evaluation dated April 8, 2002.

The Office also received a decision by the employing establishment which denied appellant's request to increase his disability rating due to paranoid schizophrenia.

By decision dated February 25, 2004, the Office hearing representative affirmed the denial of appellant's claim. The hearing representative found that the evidence of record was insufficient to support appellant's allegation that he was sexually or physical harassed or that his employment aggravated his preexisting paranoid schizophrenia condition.

### **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.<sup>2</sup> 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.<sup>3</sup>

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.<sup>4</sup> This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>5</sup>

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

---

<sup>2</sup> *Roger W. Robinson*, 54 ECAB \_\_\_\_ (Docket No. 03-348, issued September 30, 2003).

<sup>3</sup> *Id.*

<sup>4</sup> *Phillip L. Barnes*, 55 ECAB \_\_\_\_ (Docket No. 02-1441, issued March 31, 2004).

<sup>5</sup> *Jamel A. White*, 54 ECAB \_\_\_\_ (Docket No. 02-1559, issued December 10, 2002).

factors of employment and may not be considered.<sup>6</sup> 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.<sup>7</sup>

### ANALYSIS

In the present case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents. By decision dated June 25, 2003, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. By decision dated February 25, 2004, the Office hearing representative affirmed the June 25, 2003 decision. The Board must, thus, initially review whether these alleged incidents are compensable employment factors under the terms of the Act.

Appellant alleged that harassment and false accusations on the part of his supervisors aggravated his paranoid schizophrenia. Appellant alleged that he was a target of people who wanted advancement and was "getting bashed" due to his sexual orientation. He alleged that coworkers had conspired to taint his drinks with the HIV virus and related that fellow employees complained to his supervisor about his commenting about frightening issues.

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.<sup>8</sup> However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that the alleged incidents of harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act.<sup>9</sup> In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and he has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors or coworkers.<sup>10</sup> Appellant alleged that supervisors made statements and engaged in actions which he believed constituted harassment and discrimination, but he provided no corroborating evidence, such as witness statements, to

---

<sup>6</sup> *Charles D. Edwards*, 55 ECAB \_\_\_\_ (Docket No. 02-1956, issued January 15, 2004).

<sup>7</sup> See *Marlon Vera*, 54 ECAB \_\_\_\_ (Docket No. 03-907, issued September 29, 2003); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>8</sup> *Paul L. Stewart*, 54 ECAB \_\_\_\_ (Docket No. 03-1107, issued September 23, 2003); *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>9</sup> *Charles D. Edwards*, *supra* note 6; *Marlon Vera*, *supra* note 7. (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).

<sup>10</sup> *Kathleen A. Donati*, 54 ECAB \_\_\_\_ (Docket No. 03-1333, issued August 13, 2003) (A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

establish that the statements actually were made or that the actions actually occurred.<sup>11</sup> Thus, appellant has not established a compensable employment factor under the Act with respect to these above-described allegations of harassment and discrimination.

For the foregoing reasons appellant had not established any compensable factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.<sup>12</sup>

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty.<sup>13</sup>

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 25, 2004 is affirmed.

Issued: September 24, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

---

<sup>11</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>12</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Fred Faber*, 52 ECAB 107 (2001); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>13</sup> The Board notes that appellant submitted additional evidence with his appeal. However, the Board is precluded from reviewing evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Judith A. Cariddo*, 55 ECAB \_\_\_\_ (Docket No. 03-2270, issued February 24, 2004).