

management and the Office in handling a claim caused tension and stress.¹ He first became aware of the condition on January 27, 2003 and its relationship to his employment on July 7, 2003. Appellant stopped work on September 15, 2003. In support of his claim, appellant submitted a number of form reports from Kaiser Permanente dating from September 15 to October 10, 2003. These included a disability slip dated September 23, 2003, signed by Joseph Hamilton, a licensed professional counselor, and Dr. Michael McLeod, a Board-certified psychiatrist, that listed a diagnosis of adjustment disorder with anxiety and advised that appellant was totally disability from September 15 to 23, 2003. Dr. Ellen Ferguson² provided an undated form report in which she noted dates of treatment and diagnosed stress anxiety.

By letters dated November 28, 2003, the Office requested that the employing establishment respond to the claim, and advised appellant of the type evidence needed to support his claim. Appellant submitted CA-7 forms, claims for compensation, for the period September 15 through October 17, 2003. In letters dated December 15, 2003, he alleged that he had been harassed regarding another claim that had been approved on May 21, 2003, that he had been stressed due to financial problems, and that he had filed a claim with the Equal Employment Opportunity (EEO) Commission but had subsequently withdrawn it.

On December 30, 2003 Dr. McLeod noted a history of chronic pain and job stress due to missing work. He diagnosed depression and checked the “yes” box indicating that the condition was employment related, stating that chronic pain and work demands aggravated appellant’s condition.

By decision dated February 23, 2004, the Office denied the claim. The Office noted that the processing of a workers’ compensation claim was not a compensable factor and found no evidence of error or abuse on the part of the employing establishment. On March 10, 2003 appellant requested a review of the written record, and in a decision dated May 21, 2004, an Office hearing representative affirmed the February 23, 2004 decision.

On January 25, 2005 appellant requested reconsideration and submitted a statement in which he indicated that his stress was caused by the Office and employing establishment management regarding a change in his schedule following his return to work in March 2003. He also submitted a number of medical reports that did not pertain to his emotional condition claim.³ Appellant also submitted copies of the EEO complaint and withdrawal.

By decision dated February 11, 2005, the Office denied modification of its prior decisions, noting that the medical evidence submitted was irrelevant and, as appellant had not

¹ Appellant had a previous claim before the Board. By decision dated January 1, 1998, Docket No. 96-328, the Board adopted a September 27, 1995 decision in which an Office hearing representative denied that appellant sustained a recurrence of disability for an employment-related lumbar strain.

² Dr. Ferguson’s credentials could not be ascertained.

³ The medical reports were, in the most part, regarding appellant’s diagnosis of hepatitis C and included diagnoses of a 10-year history of hypertension, palpitations, aortic systolic murmur, chronic tendinitis of the right shoulder, kidney stones and an audiology consultation.

established a compensable factor of employment, his emotional condition did not occur in the performance of duty.

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 her 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 or her employment duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally 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 a emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁸ 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 or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁹

In emotional condition claims, 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. 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

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).

⁸ *Lillian Cutler*, *supra* note 5.

⁹ *Kim Nguyen*, 53 ECAB 127 (2001).

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

As a general rule, an employee's emotional reaction to administrative or personnel actions taken by the employing establishment is not covered because such matters pertain to procedures and requirements of the employer and are not directly related to the work required of the employee.¹¹ 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.¹² An employee's frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable.¹³ Similarly, an employee's dissatisfaction with perceived poor management is not compensable under the Act.¹⁴

For harassment or discrimination to give rise to a compensable disability under the Act, 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. Rather, the issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹⁵

ANALYSIS

In this case, appellant alleged that the handling of previous workers' compensation claims by both the Office and the employing establishment caused stress. The development of any condition related to such matters would not arise in the performance of duty because the processing of these claims bears no relation to appellant's day-to-day or specially assigned work duties and are therefore not compensable factors of employment.¹⁶ Regarding any other general contentions appellant made regarding employing establishment administrative matters such as scheduling, these would fall into the realm of administrative or personnel matters, and absent error or abuse, such factors do not arise with the performance of duty,¹⁷ and there is no evidence to substantiate any type of error or abuse in the instant case. Appellant has also cited financial

¹⁰ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹¹ *Felix Flecha*, 52 ECAB 268 (2001).

¹² *James E. Norris*, 52 ECAB 93 (2000).

¹³ *Barbara J. Latham*, 53 ECAB 316 (2002).

¹⁴ *Id.*

¹⁵ *James E. Norris*, *supra* note 12.

¹⁶ *See Matilda R. Wyatt*, 52 ECAB 421 (2001).

¹⁷ *Id.*

stresses. This, too, bears no relation to appellant's day-to-day or specially assigned work duties and, as thus, would not be a compensable factor of employment.¹⁸

Appellant also indicated that he had filed an EEO claim. In assessing the evidence, the Board has held that grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred,¹⁹ and in this case, appellant withdrew his EEO claim.

Appellant also generally alleged that he was harassed by the employing establishment. Mere perceptions of harassment or discrimination are not compensable under the Act,²⁰ and 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.²¹ In the case at hand, the Board finds that appellant has provided nothing to substantiate that he was harassed by the employing establishment.²²

Inasmuch as appellant failed to implicate a compensable employment factor, the Office properly denied his claim without addressing the medical evidence of record.²³

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty causally related to factors of his federal employment.

¹⁸ *Lillian Cutler*, *supra* note 5.

¹⁹ *Michael L. Deas*, 53 ECAB 208 (2001).

²⁰ *James E. Norris*, *supra* note 12.

²¹ *Id.*

²² *See Barbara J. Latham*, *supra* note 13.

²³ *Garry M. Carlo*, 47 ECAB 299 (1996).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 11, 2005 and May 21, 2004 be affirmed.

Issued: August 11, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board