

Appellant alleged that Ms. Jones “cornered” him on several occasions and accused him of telling lies about her. He alleged that when he attended a job interview for another position at the employing establishment, interviewer Shari Aughtry told him that he would be promoted if he “did not pursue” the matters involving Ms. Jones. Appellant alleged that he was harassed after he reported a fight between two coworkers to Ms. Aughtry.¹ Appellant alleged that in 1997 he performed the duties of a coworker who talked on the telephone instead of performing her job.

In an April 26, 2005 report, Dr. Carrie P. Ogorek stated that appellant was under extreme mental duress and should be off work until May 17, 2005. In a May 20, 2005 report, Dr. Michael F. Gliatto stated that appellant had a mood disorder and anxiety disorder due to problems with his supervisor which began in 2003, his son’s death in September 2003 and a motor vehicle accident in May 2004.

In a June 16, 2005 statement, Ms. Aughtry stated that on February 13, 2003 appellant advised her that Ms. Jones followed him into a storeroom on an unidentified date and began to counsel him regarding his behavior. He acknowledged that the conversation “got out of control” and both of them began yelling. Appellant apologized to Ms. Aughtry for his behavior during the incident. Ms. Aughtry spoke to Ms. Jones about the incident and was told that appellant had demonstrated mild disrespect toward her in front of other employees and she used the storeroom as a location to counsel him, rather than call him into her office for a formal meeting. Ms. Jones acknowledged that the storeroom incident got out of hand and she and appellant yelled at each other. Ms. Aughtry advised her that a better location to conduct future discussions with employees would be in her office or a conference room. Ms. Aughtry denied that she promised to promote appellant if he did not pursue the incident with Ms. Jones. She stated, “I have never, nor do I ‘promise’ employees promotions in exchange for not pursuing an issue they present.” Ms. Aughtry stated that appellant did not witness the fight between two coworkers as he alleged but, instead, was told about the altercation from one of the employees involved. After Ms. Aughtry learned of the fight from appellant she ordered an investigation but he was not privy to any further matters concerning the investigation. She stated that she was not aware of any harassment of appellant regarding the fight.

By decision dated July 7, 2005, the Office denied appellant’s claim on the grounds that he failed to establish that his emotional condition was causally related to a compensable factor of his employment.

LEGAL PRECEDENT

The Federal Employees’ Compensation Act² provides for the payment of compensation benefits for injuries sustained in the performance of duty. To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying compensable employment factors or incidents

¹ The Board notes that in a February 2005 report of contact, appellant stated that he learned of the fight from one of the men involved, John Bowser, two weeks after the fight occurred. Appellant then reported the incident to Ms. Aughtry.

² 5 U.S.C. §§ 8101-8193.

alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.³

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*,⁴ the Board explained that there are distinctions in the type of employment situations giving rise to a compensable emotional condition under the Act. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the coverage under the Act.⁵ When an employee experiences emotional distress 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 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 an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.⁶ 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.⁷ Generally, actions of the employing establishment in administrative matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act.⁸ 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.⁹

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.¹⁰ 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

³ *George C. Clark*, 56 ECAB ____ (Docket No. 04-1573, issued November 30, 2004).

⁴ 28 ECAB 125 (1976).

⁵ *George C. Clark*, *supra* note 3.

⁶ *Lillian Cutler*, *supra* note 4.

⁷ *Id.*

⁸ *Michael L. Malone*, 46 ECAB 957 (1995).

⁹ *Charles D. Edwards*, 55 ECAB ____ (Docket No. 02-1956, issued January 15, 2004).

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

record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.¹¹

ANALYSIS

Appellant made several allegations of harassment by supervisors and coworkers. 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 a compensable employment factor.¹² However, for harassment and 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.¹³

Appellant alleged that on one occasion he walked into a storeroom to obtain supplies and Ms. Jones followed him and locked the door behind her against his will. He alleged that she shouted at him, "you do n[o]t go anywhere and tell anyone on me." Ms. Aughtry stated that appellant advised her that Ms. Jones went into a storeroom to counsel appellant regarding his disrespectful behavior towards her in front of other employees. He stated that the conversation "got out of control" and both he and Ms. Jones began yelling. Appellant apologized to Ms. Aughtry for his behavior. Ms. Jones told Ms. Aughtry that appellant had demonstrated disrespect toward her in front of other employees and she used the storeroom as a location to counsel him, rather than call him into her office for a formal meeting. Ms. Jones acknowledged that the incident got out of hand and she and appellant yelled at each other. Ms. Aughtry resolved the matter by suggesting that it would be preferable for Ms. Jones to speak to employees in her office or a conference room in the future. While both appellant and Ms. Jones acknowledged yelling during the incident in the storeroom, the record is insufficient to establish that Ms. Jones harassed appellant or that there was verbal abuse. The facts do not establish that this incident rises to the level of a compensable factor of employment.

Appellant also alleged that Ms. Jones "cornered" him on several occasions and accused him of telling lies about her. However, he did not provide specific examples and dates when these alleged instances of harassment occurred and there are no witness statements supporting these allegations. Therefore, this allegation is not found a compensable factor of employment.

Appellant alleged that during his job interview with Ms. Aughtry she indicated that she would promote him if he did not pursue any matter involving Ms. Jones. However, Ms. Aughtry denied the allegation. There is insufficient evidence to support appellant's allegations that she conditioned a promotion if he kept silent about any matter involving Ms. Jones. Therefore, this allegation is not found a compensable employment factor.

¹¹ *Id.*

¹² *Charles D. Edwards, supra note 9.*

¹³ *Donna J. DiBernardo, 47 ECAB 700 (1996).*

Appellant indicated that he was harassed by coworkers after he witnessed a fight and reported the incident to Ms. Aughtry. However, in the report of contact concerning the fight, appellant stated that he learned of the fight from one of the men involved two weeks after it occurred and then reported the incident to Ms. Aughtry. She directed an investigation of the fight but appellant was not privy to any further matters concerning the investigation. Ms. Aughtry indicated that she was not aware of any harassment of appellant regarding this incident. Appellant failed to provide any specific information regarding incidents of harassment such as dates, the names of the individuals involved and what occurred. Therefore, this allegation of harassment is not deemed a compensable employment factor.

Appellant alleged that in 1997 he performed the duties of a coworker who talked on the telephone instead of performing their job. However, there is no supporting evidence, such as witness statements, concerning this allegation. Therefore, it is not deemed a compensable factor of employment.

Appellant has failed to establish that his emotional condition was causally related to a compensable factor of employment. Therefore, the Office properly denied his claim.¹⁴

CONCLUSION

The Board finds that appellant failed to establish that he sustained an emotional condition causally related to a compensable factor of employment.

¹⁴ Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence. See *Barbara J. Latham*, 53 ECAB 316 (2002); *Garry M. Carlo*, 47 ECAB 299 (1996).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 7, 2005 is affirmed.

Issued: December 2, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

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