

**United States Department of Labor
Employees' Compensation Appeals Board**

EDDIE W. HALL, Appellant

and

**DEPARTMENT OF THE NAVY, NAVY
AVIATION DEPOT, Cherry Point, NC,
Employer**

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**Docket No. 04-2074
Issued: February 23, 2005**

Appearances:
Eddie W. Hall, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On August 20, 2004 appellant filed a timely appeal of a merit decision of the Office of Workers' Compensation Programs dated August 5, 2004, denying his claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this emotional condition claim.

ISSUE

The issue is whether appellant has established that he sustained an emotional condition causally related to compensable factors of his federal employment.

FACTUAL HISTORY

On December 9, 2003 appellant, then a 54-year-old production controller (aircraft), filed an occupational disease claim alleging that he sustained an emotional condition due to factors of his federal employment. He first became aware of his mental stress on February 14, 2002 and realized that it was caused or aggravated by his employment on February 15, 2003.

In a separate statement, appellant alleged that his supervisors in the paint shop, cleaning shop and production control had made complaints against him without allowing him the opportunity to respond and, when he finally spoke up, tempers almost got out of hand. He stated that his nerves became unraveled after he spoke to the division director and nothing was done to correct the actions of the supervisors. He stated that Dr. Michael K. Nunn, a Board-certified psychiatrist, diagnosed him with post-traumatic stress syndrome and that the harassing actions of his supervisors did not help. Appellant submitted medical notes from the Naval Hospital in support of his claim. The employing establishment noted that appellant first sought medical care on April 25, 2002 and stopped work for mental stress during 2002.

In a January 16, 2004 letter, the Office requested additional factual and medical information from appellant.

In a February 1, 2004 letter, appellant stated that he worked under George Winberry in packaging and preservation and had to work many different jobs, such as canning engines, sandblasting and steam cleaning. He alleged that Ricky Newsome, the paint shop supervisor, was constantly trying to do his job as the production controller and appellant was blamed when things did not go right. He alleged that L.A. Jones, the cleaning shop supervisor, Deborah Bell, a production control supervisor and Ray Smith, a production control general foreman, discussed his job performance, threatened to fire him and attempted to give him a below average performance appraisal. He alleged that Mr. Jones told other employees not to associate with appellant. He stated that the NDI shop contained all white employees who did not like a “nigger” telling them what to work and when to work it. Appellant stated that he was an African-American and did not allow anyone to call him the “N” word. Appellant submitted progress notes from May 2002 through April 2003 and a May 1, 2002 psychological test from Dr. Nunn, which diagnosed post-traumatic stress disorder and noted psychotic events.

By decision dated August 5, 2004, the Office denied appellant’s emotional condition claim on the grounds that he had failed to establish a compensable factor of employment.

LEGAL PRECEDENT

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 factors of his federal employment.¹ To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.²

¹ *Edward C. Heinz*, 51 ECAB 652 (2000); *Martha L. Street*, 48 ECAB 641, 644 (1997).

² *Ray E. Shotwell, Jr.*, 51 ECAB 656 (2000); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

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.³ 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.⁴

Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act.⁵ However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.⁶ Where appellant alleges compensable factors of employment, he must substantiate such allegations with probative and reliable evidence.⁷

The Board has held that actions of an employee's supervisor, which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.⁸ 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.⁹ Appellant has the burden of establishing a factual basis for his allegations, however, when the allegations in question are not supported by specific, reliable, probative and substantial evidence and have been refuted by statements from appellant's employer, they cannot be considered to be compensable factors of employment since appellant has not established a factual basis for them.

In *Thomas D. McEuen*¹⁰ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act, as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment's superiors in dealing

³ 5 U.S.C §§ 8101-8193.

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Michael L. Malone*, 46 ECAB 957 (1995); *Gregory N. Waite*, 46 ECAB 662 (1995).

⁶ *Elizabeth Pinero*, 46 ECAB 123 (1994); *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁷ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁸ *Sylvester Blaze*, 42 ECAB 654 (1991).

⁹ *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹⁰ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon*, 42 ECAB 566 (1991).

with the claimant.¹¹ Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated.

ANALYSIS

The Board finds that appellant has failed to establish any compensable factors of employment. Appellant alleged that he had to work many different jobs when Mr. Winberry was his supervisor; however, he did not provide sufficient detail regarding any specific employment duties that he found stressful. Instead, appellant indicated a general dissatisfaction with his supervisors.¹² However, he did not describe specific events or specific dates any of the matters of which he addressed arose. Rather, he made only general allegations concerning his supervisors. The record is devoid of evidence that would establish error or abuse by his supervisors. Accordingly, these allegations do not rise to the level of compensable employment factors.

Appellant generally attributed that his emotional condition was caused by supervisory harassment. The implicated employment factors that appellant alleged caused or contributed to his condition, however, fall into the category of administrative or personnel actions. These include: discussions pertaining to his job performance and performance evaluations.¹³ However, no evidence of administrative error or abuse in conducting these actions was provided. Although appellant alleged that he was threatened with termination and a below average performance appraisal, there is no evidence of record which addresses these allegations or supports his characterization of events. As there was nothing submitted to the record which supported these allegations, they have not been established as occurring as alleged. Appellant generally attributed a racial animus to white coworkers but did not identify or describe any individual or incident in which a racial epithet was made against him.

As none of appellant's allegations of supervisory harassment are established as having occurred as alleged or as being administratively erroneous or abusive. He has not established a compensable factor of employment arising in the performance of duty. Therefore, the medical evidence need not be addressed.¹⁴

¹¹ See *Richard J. Dube*, 42 ECAB 916 (1991).

¹² See *Marlon Vera*, 54 ECAB ____ (Docket No. 03-907, issued September 29, 2003) (an employee's complaints concerning the manner in which a supervisor performs his or her 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 Act; this principle recognizes that a supervisor or manager in general must be allowed to perform their duties, which employees will at times dislike, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse).

¹³ See *Sherry L. McFall*, 51 ECAB 436, 439 (2000); *John Polito*, 50 ECAB 347, 348 (1999).

¹⁴ 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).

CONCLUSION

In this case, as appellant has failed to implicate any compensable factors of his employment in the development of his alleged emotional condition, he has not met his burden of proof to establish his emotional condition claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 5, 2004 is affirmed.

Issued: February 23, 2005
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member