



## **FACTUAL HISTORY**

On March 3, 2000 appellant, then a 54-year-old electrical worker, filed an occupational disease claim alleging that his preexisting PTSD was aggravated by factors of his federal employment.<sup>2</sup> Appellant claimed that he was subjected to intimidation, aggressive behavior, name calling, insults and physical threats directed at him by his coworkers, which caused aggravation of his PTSD, panic attacks, paranoia, depression, sleeplessness, loss of concentration and homicidal ideation.

In support of his claim, appellant submitted evidence regarding his work-related illness claims and Merit Systems Protection Board (MSPB) claims.

The Board, on February 11, 2003, found that appellant received an Order Dismissing Appeal and Reinstating petition from the Board.

Appellant implicated the following factors of employment in the aggravation of his preexisting emotional condition, which was predetermined occupational illness, causally related to his birthday and hip.

- (1) He claimed that in November 1995 he injured his rib on a steam table in the canteen and was given a choice of light duty or sick leave. Appellant claimed that he had chosen sick leave so that he could heal.
- (2) In the fall of 1995 Larry Shepard, a nonphysician and an employing establishment coworker of appellant's, allegedly made a verbal threat against appellant, which caused him to be off work for about a week. During the time away from the employing establishment, appellant sought treatment for PTSD.
- (3) In October 1995 Larry Shepard allegedly made a threat against appellant for reporting misconduct besides which caused fear, panic attacks and paranoia.
- (4) In December 1995 appellant claimed that he could not write any complaints against Larry Shepard as he was on probation, and would be terminated.
- (5) In the summer of 1997 due to harassment, unfair labor practices and violence in the workplace, appellant's PTSD condition was allegedly aggravated and he filed an Equal Employment Opportunity (EEO) complaint. The EEO complaint was settled without a finding of fault.
- (6) On June 9, 1997 appellant checked himself into the psychiatric unit when his coworker was talking about a .45 caliber automatic pistol and making eye contact with him. Appellant alleged that the talk about the pistol was 30 days after he had filed an EEO complaint against the coworker for criminal/sexual assault.

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<sup>2</sup> Appellant had a 100 percent service-connected disability due to PTSD related to his experience in Vietnam.

(7) In the break room his coworker Rune Erickson submitted further evidence which reported that Michael Shepard was an engineering supervisor and added in support that Michael Shepard was snapping newspapers and throwing things, despite his knowledge that this behavior aggravated appellant's PTSD.

(8) In 1997 and 1998 Michael Shepard, his supervisor,<sup>3</sup> was advised of his PTSD and the need to accommodate his condition, but one afternoon he was scheduled to work, which exposed him to sick behavior of a coworker. Appellant was allegedly also not able to take time-outs as needed.

(9) Appellant alleged that Michael Shepard had threatened to blow people up, bring guns into the employing establishment and kill electricians. He claimed that his PTSD was getting worse and that he was emailed by Michael Shepard not to give names of coworkers who harmed his emotions.

(10) He alleged that he sustained: bullet shrapnel in his left knee, left hip, upper leg and lower leg with arthritis, and his right upper leg and lower leg and right knee, muscle and nerve damage in both lower extremities, permanent damage to his groins bilaterally, a left shoulder and collarbone injury, bilateral eye impairment, a heart attack, combat-related PTSD and domestically-related PTSD, Agent Orange damage, an explosive disorder, a dysthymic disorder, an anxiety disorder with social phobias, including authority phobias and addiction to nicotine.

(11) Appellant alleged that in 1999 due to the hostility at work he was electrocuted and knocked off a ladder causing him to be unable to work. He claimed that Michael Shepard was notified of the incident but did nothing about it.

(12) Appellant also alleged that Michael Shepard got tired of his requests for time out and became hostile toward him when he complained about his coworkers being able to do as they pleased while he had to remain professional at all times.

(13) Appellant alleged that in December 1999 Joe Stark, a coworker, set up trip wires under the break room table which reminded him of the trip wires that the Viet Cong would set in the bush in Vietnam and which bothered him deeply. Appellant claimed that he asked for the wires to be removed, which was ignored.

Appellant submitted a December 27, 1999 letter he wrote to Chief Engineer John Boucek who discussed his allegations against his coworkers and supervisors. Mr. Boucek's response was also provided.

Appellant further submitted a copy of his MSPB appeal submitted May 6, 2000 alleging harassment.

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<sup>3</sup> Michael Shepard is also not a physician.

Dr. James V. Wojcik, appellant's clinical psychologist at the doctoral level, advised the employing establishment that, although his coworkers allegedly feared him because of the alleged arsenal of guns he had and was going to use against them, such was not the case.

On January 6, 2000 appellant claimed that he was assigned to help repair an overhead light in an operating room, which was not repaired because the work leader showed up late for work and drunk, which aggravated his PTSD causing him flashbacks due to operating room lighting not being repaired in Vietnam.

Appellant claimed that on February 10, 2000 Mr. Boucek and Michael Shepard conspired against him to defame his character. He alleged that during February 2000 he was attacked with character insults claiming that he was a homicidal maniac with an arsenal of guns, and was going to kill employing establishment personnel who had offended him. He alleged that Mr. Boucek attempted to get electrical shop workers.

Appellant claimed that on February 11, 2000 Chief Boucek held a meeting where coworkers claimed that they felt physically threatened by him and wanted him to be terminated.

By letter dated March 19, 2000, appellant identified 86 incidents which should have been found as fact and upheld as causative of his aggravation of PTSD.

By decision dated February 13, 2001, the Office rejected appellant's claim finding that the evidence of record failed to demonstrate that his PTSD was aggravated "in the performance of duty." The Office rebutted most of appellant's accusations. In the body of the memorandum of decision, the Office did explain that, "[a]s the evidence of record does not establish any compensable factors of employment, there is no basis to discuss the medical evidence," and "unless appellant alleges a compensable factor of employment which was substantiated by record, it is unnecessary for the Office to address the medical evidence."<sup>4</sup>

On September 20, 2001 appellant requested reconsideration. Following appellant's requested reconsideration, he submitted multiple pages of argument, and two booklets containing various letters, statements and documents.

The first booklet contained 42 entries, including correspondence, untitled statements, a removal letter dated May 5, 2000, EEO complaints and related material and an MSPB complaint and supporting material. The entries were as follows:

1. A duplicate February 3, 2000 letter to Senator Wellstone.
2. An undated statement regarding appellant's medical retirement.
3. A statement from a coworker Eva Dyal about workplace rules and morality.

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<sup>4</sup> *Effie O. Morris*, 44 ECAB 470 (1993).

4. More statements from Ms. Dyal pertaining to her working environment.
5. An undated statement regarding Senator Wellstone.
6. Documents regarding Larry Scheel and his conduct.
7. A May 5, 2000 removal letter addressed to appellant from the Acting Director.
8. Equal Employment Opportunities Commission (EEOC) material.
9. MSPB material.
10. A May 6, 2000 letter to the Director of the employing establishment.
11. A January 6, 2000 conversation between appellant and Mr. Boucek.
12. A February 10, 2000 letter to appellant from Mr. Boucek.
13. A report of a conversation between appellant and Rock Foss dated March 3, 2000.
14. A statement regarding leave usage for PTSD.
15. A January 25, 2000 letter to Mr. Boucek requesting 90 days of leave.
16. A February 9, 2000 memorandum from Dr. Wojcik.
17. A March 10, 2000 memorandum from Mr. Boucek regarding appellant's leave request.
18. A March 30, 2000 letter to Mr. Boucek.
19. A statement alleging slanderous hearsay and a report of contact dated on February 11, 2000, a coworker was snapping pictures.
20. An April 25, 2001 letter from Dr. Wojcik.
21. A statement directed to Rita Schoenike HRMS Minneapolis VA February 18, 2000.
22. Report of contact signed by Rita Schoenike.
23. A statement entitled, "Slanderous hearsay and rumors."
24. An April 27, 2000 statement from Candyce L. Olson.

25. An email to managers and supervisors regarding affirmative action.
26. Appellant's July 7, 1999 letter regarding his perception of coworkers and his workplace.
27. A statement entitled, "Perjury in Affidavit" regarding Michael Shepard.
28. A proposal to terminate appellant's employment dated April 28, 2000.
29. Proposed discharge letter.
30. A rebuttal statement from appellant.
31. A statement regarding fitness and conduct reports.
32. An employment history.
33. A response to the Office's November 28, 2000 request.
34. Pictures dated 1999.
35. A statement regarding PTSD treatment during 1999 to 2000.
36. Entries from appellant's diary.
37. An April 11, 1999 letter from Dr. Brown, a physician of unlisted in the specialty.
38. A statement about Joe Stark's letter of January 7, 2000.
39. A Pulmonary Function Test (PFT) report.
40. A statement on sinus problems.
41. Medical records.
42. Statement on muscle and nerve damage of the lower extremities and low back.

The second booklet contained entries as follows:

1. A duplicate of a previously submitted settlement agreement.
2. An EEOC proceeding from 1997.
3. Pictures.

4. An August 4, 1997 EEOC meeting.
5. A June 23, 1997 EEOC meeting.
6. A complaint of harassment, differential treatment and assault.
7. A letter from the Secretary of Veterans Affairs dated March 20, 1997.
8. A September 6, 1996 letter from the Secretary of Veterans Affairs.
9. Memoranda and newsletters
10. Veterans Administration Medical Center (VAMC) sexual harassment policy.
11. A whistleblower protection memorandum.
12. A newspaper article.
13. Employee health record information.
14. Letters to the Veterans Administration (VA) from 1996 to 1997.
15. A service-connected rating.
16. A letter from Shakopee Police Department.
17. Appellant's letter to the Bureau of Criminal Affairs.
18. Susan's work schedule.
19. A copy of a 1986 IRS 1040 form.

Neither booklet contained reports or statements which supported that any of appellant's implicated employment incidents occurred as alleged or were compensable under the Federal Employees' Compensation Act.

Appellant alleged that employing establishment management harmed him physically, sexually and emotionally, such that all he could do was claim medical retirement. In support he submitted a June 6, 2000 letter in which he alleged that the employing establishment aggravated his previously asymptomatic PTSD due to threats by Larry Shepard. He referred to a platoon sergeant from Vietnam, against whom appellant brought charges in 1966 for criminal behaviors including murder of an innocent boy and sexual molestation of his little sister. Appellant claimed that he was told that he would never live to see the charges prosecuted, and that one month later he was nearly killed by machine gun ambush where the sergeant had placed him. Appellant claimed that in October 1995 when Lawrence Shepard made his threats against him, he flashed back to Vietnam and he reacted as if he had been threatened with death. Appellant

restated his previous allegations and alleged that others similarly situated were treated differently. Appellant claimed that he developed a persecution complex and paranoia from working in the electrical shop, and he claimed that the months of November through March were particularly difficult for him due to anniversaries of serious traumas. He claimed that in late 1995 Michael Shepard, his supervisor, let out his homicidal fantasy regarding Lawrence Shepard.

By decision dated December 19, 2001, following a merit review, the Office denied modification of the prior February 13, 2001 decision finding that the evidence submitted in support was insufficient to warrant modification of the prior decision. The Office found that the documents submitted in the two booklets did not establish that appellant's allegations on his CA-2 claim form regarding aggravation of his preexisting PTSD were factual or were compensable factors of employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>5</sup>

To establish appellant's occupational disease claim that he has sustained an aggravation of a preexisting emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to aggravation of his condition; (2) rationalized medical evidence establishing that he has an aggravated emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his aggravation of a preexisting emotional condition.<sup>6</sup> Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.<sup>7</sup>

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 illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. These injuries occur in the course of employment and have some kind of

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<sup>5</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>6</sup> *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>7</sup> *Id.*

causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Act. Generally speaking, when an employee experiences an emotional reaction to his or her regular or special assigned employment duties or to a requirement imposed by his or her employment or has fear or anxiety regarding his or her ability to carry out assigned duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.<sup>8</sup> Conversely, if the employee's emotional reaction stems from employment matters which are not related to his or her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment, and does not come within the coverage of the Act.<sup>9</sup> Noncompensable factors of employment include administrative and personnel actions, which are matters not considered to be "in the performance of duty."<sup>10</sup>

When working conditions are alleged as factors in causing 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.<sup>11</sup> When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.<sup>12</sup> When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.<sup>13</sup> If the evidence of record failed to establish that any compensable factor of employment was implicated in the development of the claimant's emotional condition, then the medical evidence of record need not be considered.<sup>14</sup>

With regard to appellant's allegations of harassment, it is well established that for harassment to give rise to a compensable disability under the Act there must be some evidence that the implicated incidents of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable.<sup>15</sup> An employee's charges that he or she was harassed or

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<sup>8</sup> *Donna Faye Cardwell*, *supra* note 6; *see also Lillian Cutler*, 28 ECAB 125 (1976).

<sup>9</sup> *Id.*

<sup>10</sup> *See Joseph DeDonato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

<sup>11</sup> *See Barbara Bush*, 38 ECAB 710 (1987).

<sup>12</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>13</sup> *See Gregory J. Meisenberg*, 44 ECAB 527 (1993).

<sup>14</sup> *See Donna Faye Cardwell*, *supra* note 6; *see also Lillian Cutler*, *supra* note 8.

<sup>15</sup> *Helen Casillas*, 46 ECAB 1044 (1995); *Ruth C. Borden*, 43 ECAB 146 (1991).

discriminated against are not determinative of whether or not harassment or discrimination occurred. Under the Act, to establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>16</sup> Words and actions that appellant implicated as being harassment must be confirmed by supporting evidence that they did, in fact, occur as alleged.

### ANALYSIS

In the present case, appellant has either not established that the implicated events and circumstances occurred as alleged, or that they were not compensable factors of employment under the Act.

Several of appellant's allegations of employment factors that caused or contributed to his condition fall into the category of administrative or personnel actions. The Board notes, however, that coverage under the Act will attach if the factual circumstances surrounding the administrative or personnel action establishes error or abuse by the employing establishment superiors in dealing with the claimant.<sup>17</sup> Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. The incidents and allegations made by appellant which fall into this category of administrative or personnel actions include: appellant's use of leave being required;<sup>18</sup> working on the shift desired;<sup>19</sup> assignment of repair team duties;<sup>20</sup> and his filling of numerous EEO and MSPB complaints.<sup>21</sup> Appellant has presented no evidence of administrative supervisory error or abuse in the performance of these actions and, therefore, they are not now compensable under the Act.

The Board finds that employment factors found to have occurred as alleged but not to be compensable under the Act included his leave usage in November 1995,<sup>22</sup> which was administrative and the requirement of which demonstrated no error or abuse, and his 1997 EEO complaint, which was resolved without any party accepting blame or any liability found.<sup>23</sup> The Board notes that there has been no admission of wrongdoing by the employing establishment, to establish error or abuse.

With regard to the alleged harassment to which appellant was subjected, the Board notes that, due to the nonsubmission of corroborating evidence, none of the harassing incidents are

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<sup>16</sup> See *Anthony A. Zarcone*, 44 ECAB 751 (1993).

<sup>17</sup> See *Richard J. Dube*, 42 ECAB 916 (1991).

<sup>18</sup> See *John Polito*, 50 ECAB 347 (1999) (leave matters are administrative functions of the employer).

<sup>19</sup> See *Ronald C. Hand*, 49 ECAB 113 (1997).

<sup>20</sup> *Id.*

<sup>21</sup> See *Dinna M. Ramirez*, 48 ECAB 308 (1997); *Blondell Blasingame*, 49 ECAB 130 (1996).

<sup>22</sup> *Id.*

<sup>23</sup> See *Garry M. Carlo*, 47 ECAB 299 (1996).

established as occurring as alleged.<sup>24</sup> The evidence suggests that Mr. Erickson and Michael Shepard were both Marines and were discussing current events in the implicated conversation, which had nothing to do with appellant. The Board also notes that there was no evidence that snapping newspapers was specifically directed at appellant. The Office had indicated that Mr. Erickson was implicated for throwing missiles over the row of lockers, which was playful and without the intent to injure anyone nor directed at appellant, and Mr. Erickson stopped when the supervisor found out. The Board therefore finds that, as it was not directed at appellant or any other specific person, it was not a compensable factor of employment.

Regarding appellant's schedule and working conditions being modified to accommodate his PTSD condition, the Office had noted that a mattress had been set up for his time-outs and the members of the electrical shop were briefed as to appellant's situation. The Board therefore finds that appellant was accommodated, and notes that his not being able to work on a particular shift was not a compensable factor of employment.<sup>25</sup>

The Board finds that appellant being instructed not to include specific names of personnel on his computer in memoranda containing complaints was an administrative action that showed no evidence of error or abuse, and hence was not compensable under the Act.<sup>26</sup> The December 1999 "trip wire" set up by a coworker was done to prevent the coworker's chair from being removed from the table and, therefore, it was not directed at appellant, nor did it involve him.

The Board further notes that the light that was out in the operating room was not appellant's responsibility, and designation of a repair crew did not involve him in any way. Therefore, this is not compensable under the Act.<sup>27</sup> The letter from Mr. Boucek was written in response to appellant's request, and therefore was not directed at his actions or behavior.

Ultimately, according to several incidents alleged, the employing establishment attempted to accommodate appellant's special needs. Therefore there was no conspiracy to get appellant dismissed, that appellant was not defamed and that his allegations are not compensable under the Act. The Office indicated that coworkers were briefed as to how to deal with appellant due to his PTSD.

Additionally, the Board finds that many of the other factors implicated by appellant were not established as having occurred as alleged, and hence were not compensable under the Act.

No evidence was presented that Michael Shepard made any verbal threats against appellant. Appellant's description of the incident was vague and generalized and insufficient to establish that it occurred as alleged. He did note that electrical shop workers were addressed

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<sup>24</sup> See *supra* note 16.

<sup>25</sup> See *Helen P. Allen*, 47 ECAB 141 (1995).

<sup>26</sup> See *Helen Casillas*, 46 ECAB 1044 (1995).

<sup>27</sup> *Id.*

mostly by their nicknames. However, no factual evidence was presented that established that Michael Shepard made any threats against appellant as alleged. His complaints were vague and unsupported by other evidence by witness statements or other evidence.<sup>28</sup>

Regarding appellant's allegations of electrocution, the Board finds that it was not supported by factual information sufficient to establish that it occurred as alleged.

There was no evidence submitted of Mr. Boucek's alleged conspiracy against appellant and no evidence that he was called a liar or victimized him due to PTSD. Appellant's allegations regarding Mr. Boucek trying to get the electrical shop to provide written reports against him was not supported by the evidence. The alleged meeting where coworkers claimed they were afraid of appellant's homicidal rage was not proven to have occurred as alleged.

The personnel did note that appellant was volatile, threatening and made various untrue accusations which caused them to fear for their safety.

The Office found that appellant's allegations of factors he implicated in aggravating his PTSD were either established as occurring but not compensable under the Act, or were not established as occurring as alleged.

Following the first denial of appellant's aggravation claim, he had submitted further evidence, none of which appeared to be pertinent to his PTSD aggravation

Initially the Office reviewed, and the Board took jurisdiction over these documents on their merits and determined that none of them established or even addressed appellant's allegations of compensable work factor-related aggravation of his preexisting PTSD. The Board has reviewed reviews these submissions and notes that some of them are duplicate submissions that have been previously considered by the Office. The Board further notes that many of the statements submitted address other personnel and not appellant and hence do not pertain to his claim. None of the evidence submitted specifically addresses any factor implicated by appellant in the causation of the aggravation of his PTSD and, therefore, none of the evidence submitted is sufficient to warrant modification of the prior decision.

### **CONCLUSION**

Appellant has not met his burden of proof to establish that he sustained an aggravation of preexisting PTSD, causally related to compensable factors of his federal employment.

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<sup>28</sup> See Anthony A. Zarcone, *supra* note 16.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 19, 2001 is hereby affirmed.

Issued: January 3, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member