

stress disorder had been aggravated by an employment incident, which occurred in January 2002 and which he learned about in the middle of June 2002. The incident involved a supervisor taking appellant's photograph with his name on it to a restaurant to identify the individual who had stolen gift certificates from the employing establishment and used them at the restaurant. Appellant described the use of his badge as "like a police line-up" and a violation of his civil rights. He noted that he found it unbelievable that the employing establishment would believe that he "would steal or lie." In support of his claim appellant submitted a July 12, 2002 Family Medical Leave Act form by Dr. Orlando B. Lightfoot, a treating Board-certified psychiatrist, who diagnosed a long history of post-traumatic stress disorder, which was due to appellant's Viet Nam service. Dr. Lightfoot indicated that appellant "is frequently angry and easily upset." He noted appellant's current exacerbation of his condition began June 25, 2002 and that appellant was "presently incapacitated and unable to work effectively."

On September 12, 2002 the Office received a discrimination complaint filed by appellant and 11 other male supervisors with Robert F. Burns, customer relations coordinator, as the complainant. The complaint was based upon the January 2002 investigation in which photograph identifications of appellant and the 11 other male supervisors "were compiled for identification purposes" and no female supervisors were included in this compilation.

In attending physician's reports dated January 10 and April 8, 2003, Dr. Lightfoot diagnosed post-traumatic stress disorder which he checked "yes" as caused or aggravated by appellant's "difficult situation with demanding supervisors." Dr. Lightfoot indicated that appellant was totally disabled due to this condition beginning June 25, 2002 to the present.

On June 24, 2003 the Office received a copy of a discrimination complaint filed by appellant and other plaintiffs in federal court regarding the use of their photograph identifications during an investigation into the theft of gift certificates to a local restaurant.

In a July 14, 2003 decision, the Office denied appellant's claim for compensation on the grounds that the evidence was insufficient to establish his condition arose in the performance of his federal duties. Upon reviewing appellant's allegation and the employing establishment's response, the Office found that the use of appellant's photograph identification during a postal investigation occurred. However, the Office found that this was not considered to have occurred in the performance of duty as the evidence did not establish that the employing establishment had erred or acted abusively.

Appellant disagreed with the decision and requested an oral hearing on July 27, 2003 which was held on March 15, 2004, at which he was represented by counsel and testified.

In an April 2, 2004 letter, the employing establishment reviewed appellant's testimony at the hearing. The employing establishment disputed appellant's allegations that the identification badges were posted for everyone to see at the workstation in the restaurant and attached a copy of the badges used. It stated that the restaurant supervisor spread out the badges "and before finishing the waitress immediately made a positive identification." The badges did not contain any identifying numbers and only noted the name of the employee. The employing establishment stated that the suit filed in federal court had been dismissed and the Equal Employment Opportunity complaint had been withdrawn.

In progress notes dated April 9, 2004, Dr. Lightfoot opined that appellant was totally disabled due to his service-connected post-traumatic stress disorder since September 2001. With regard to the employment incident, Dr. Lightfoot indicated that appellant became very distressed and uncomfortable while relating the incident to him and that it caused appellant to have flashbacks to his Viet Nam experience. He opined “that the ‘line up’ experience at the [employing establishment] greatly aggravated his previous [p]ost[-][t]raumatic [s]tress [d]isorder” and contributed to appellant’s inability to work.

By decision dated June 14, 2004, the Office hearing representative affirmed the July 14, 2003 decision, finding that appellant had not established that he sustained an emotional condition arising out of his employment.

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 his emotional condition.¹

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 or coverage of workers’ compensation. Where the medical evidence establishes that the disability results from an employee’s emotional reaction to his regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees’ Compensation Act.² The same result is reached when the emotional disability resulted from the employee’s emotional reaction to the nature of appellant’s work or his fear and anxiety regarding his ability to carry out his duties.³ By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers’ compensation law because they are not found to have arisen out of employment, such as when disability results from an employee’s fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.⁴ Moreover, although administrative and personnel matters are generally related to employment, they are functions of the employer and not duties of the employee. Thus, the Board has held that

¹ *Leslie C. Moore*, 52 ECAB 132 (2000).

² 5 U.S.C. §§ 8101-8193.

³ *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁴ *Id.* See also *Peter D. Butt, Jr.*, 56 ECAB ____ (Docket No. 04-1255, issued October 13, 2004).

reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.⁵

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, which may be considered by a physician when providing an opinion on causal relationship and which are not deemed factors of employment and may not be considered. 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.⁶ 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.⁷ As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.⁸

Generally, 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.⁹ An administrative or personnel matter will be considered to be an employment factor, however, where the evidence discloses error or abuse on the part of the employing establishment.¹⁰ An employee's frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable.¹¹ Likewise, an employee's dissatisfaction with perceived poor management is not compensable under the Act.¹²

With regard to emotional claims arising under the Act, the term "harassment" as applied by the Board is not the equivalent of "harassment" as defined or implemented by other agencies, such as the Equal Employment Opportunity Commission (EEOC), which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers' compensation under the Act, the term "harassment" is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*,

⁵ See *Charles D. Edwards*, 55 ECAB ____ (Docket No. 02-1956, issued January 15, 2004); see also *Ernest J. Malagrida*, 51 ECAB 287, 288 (2000).

⁶ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁷ See *Charles D. Edwards*, *supra* note 5.

⁸ *Charles E. McAndrews*, 55 ECAB ____ (Docket No. 04-1257, issued September 10, 2004); see also *Arthur F. Hougens*, 42 ECAB 455 (1991) and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence established such allegations).

⁹ *Felix Flecha*, 52 ECAB 268 (2001).

¹⁰ *James E. Norris*, 52 ECAB 93 (2000).

¹¹ *Barbara J. Latham*, 53 ECAB 316 (2002).

¹² *Id.*

mistreatment by coemployees or workers. Mere perceptions and feelings of harassment will not support an award of compensation.¹³

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. 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.¹⁴

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused or adversely affected by his employment.¹⁵ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.¹⁶

ANALYSIS

Appellant alleged that his preexisting post-traumatic stress disorder was aggravated by a supervisor taking the photograph from his identification badge with his name on it to a restaurant during an investigation into the theft of gift certificates. Appellant described the use of his photograph during the investigation as “like a police line-up” and a violation of his civil rights. The employing establishment’s use of appellant’s identification badge during the investigation is an administrative function of the employer and not a duty of the employee and is only considered compensable if the employing establishment acts unreasonably or abusively.¹⁷ The Board finds that appellant has submitted insufficient evidence to establish that the employing establishment erred or acted abusively in this administrative function as the record establishes that the photograph identification badges contained names only and no other identifying features. The record reflects that a waitress “immediately made a positive identification” before the restaurant supervisor could complete his display of all of the supervisors’ badges. Under the circumstances of this case, the Board finds that appellant’s contentions that the investigation surrounding the theft of gift certificates was abusive or in error are not established and do not constitute a compensable factor of employment.

Appellant alleged sexual discrimination during the January 2002 investigation as the photographs of appellant and 11 other male supervisors “were compiled for identification purposes,” and no female supervisors were included. With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee’s supervisors or

¹³ *Beverly R. Jones*, 55 ECAB ____ (Docket No. 03-1210, issued March 26, 2004).

¹⁴ *James E. Norris*, *supra* note 10.

¹⁵ *See Charles D. Edwards*, *supra* note 5.

¹⁶ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

¹⁷ *See generally Dennis J. Balogh*, 52 ECAB 232 (2001).

coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.¹⁸ An employee's allegation that he was harassed or discriminated against is not determinative of whether or not such incidents occurred.¹⁹ The Board finds that the record contains no decision from the EEOC or other court decision supporting appellant's allegations of discrimination. In an April 9, 2004 letter, the employing establishment stated that the EEOC complaint had been withdrawn and the federal court case dismissed. The Board finds no evidence of record to support appellant's allegation of discrimination, as factually established.

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 employment.²⁰

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 14, 2004 is affirmed.

Issued: July 13, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹⁸ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

¹⁹ *Helen P. Allen*, 47 ECAB 141 (1995).

²⁰ As appellant has not established a compensable factor of employment, it is unnecessary to review the medical evidence of record. *See Margaret S. Krzycki*, 43 ECAB 496 (1992).