

depression, anxiety and panic attacks due to factors of his employment. He first became aware of his employment-related condition on August 8, 2003.

Appellant stated that he worked for the employing establishment approximately 18 years and maintained good relationships with his supervisors until March 12, 2003 when Jorge Smith, his current supervisor, decided to change his schedule. Appellant explained that he had been on the same schedule for the past 15 to 16 years and it had worked very efficiently. When he questioned Mr. Smith about the change, he allegedly became very hostile and angry and threatened appellant with punishment for disobedience. The following day, Mr. Smith allegedly told appellant that he was nonproductive and he needed to account for all of his time. Appellant stated that he began to question Mr. Smith again, but was interrupted and again threatened with punishment.

Appellant identified a third incident on June 24, 2003 when he was reportedly doing his job and Mr. Smith became verbally abusive. According to appellant, Mr. Smith's point was that appellant was not working. Appellant also indicated that a woman who was working next to him asked what had happened and she reportedly provided a statement indicating that appellant had been working the mail continuously. He stated that he panicked and his body began shaking. Appellant sought medical treatment on June 27, 2003 and was later referred to a mental health specialist. He stated that he was fearful of losing his job and when Mr. Smith "just looks at [him]" he felt anxiety and panic. Appellant further noted that Mr. Smith had a history of being abusive and harassing other employees.

In an August 8, 2003 report, Dr. Ira G. Warshaw, a Board-certified family practitioner, noted that he saw appellant on June 27, 2003 at which time appellant identified problems consistent with severe anxiety and panic attacks. Dr. Warshaw prescribed medication to help appellant deal with his symptoms. He indicated that he believed the problem was the direct result of negative interactions with appellant's supervisor. Dr. Warshaw recommended that appellant be placed on a different shift for six months.

Appellant's clinical psychologist, Dr. Janet Hibel Tarpell, Ph.D., reported on August 18, 2003 that he had symptoms of general anxiety, panic attacks and depression with obsessional worries. She noted that appellant reported stressors at work beginning March 12, 2003, which included difficulties with evaluators of his work. Dr. Hibel indicated that the difficulties resulted in his experiencing symptoms of anxiety. She stated that placing appellant on a different shift with a new evaluator would likely result in immediate improvement of his symptoms.

On September 5, 2003 the Office requested additional factual and medical information. The Office asked appellant to provide additional information regarding the allegations of verbal abuse.

In a September 23, 2003 supplemental statement, appellant reiterated his earlier allegations concerning Mr. Smith. With respect to the March 13, 2003 incident when he was instructed to account for his time, appellant indicated that he provided Mr. Smith with a detailed schedule of his daily duties. Robin McKie, a coworker, reportedly witnessed the incident. Appellant also stated that no other employee had ever been asked to account for his time and duties. Concerning the June 24, 2003 incident of alleged verbal abuse, appellant did not provide

any additional details other than identifying Debbie Taylor as the employee working next to him at the time.

Appellant provided statements from three coworkers; Ms. McKie, Ms. Taylor and Jeffrey Greenberg. In a September 12, 2003 statement, Ms. McKie noted that she did not recall the exact date of the incident, but remembered that Mr. Smith told appellant that he was not productive with his collection mail pickups and he needed to follow a schedule so that Mr. Smith could know where appellant was and if he was working.

Ms. Taylor provided a June 27, 2003 statement regarding the June 24, 2003 incident. She noted that around 8:50 p.m. appellant dumped some mail on the belt at which she was working and he asked her about Helen L. Stone. Ms. Taylor indicated that she and appellant were both working when Mr. Smith called appellant. When he returned, appellant said “do you believe George [sic] said that I wasn’t working.” Ms. Taylor told appellant that if he had not been working she would have been yelling at him for dumping all the mail on the belt and not working it.

In an undated statement, Mr. Greenberg indicated that Mr. Smith was abusive and exhibited prejudicial behavior towards certain employees. He stated that Mr. Smith ignored job performance and treated employees according to their race and if you were a white male you were at a major disadvantage. Mr. Greenberg indicated that every time Mr. Smith and he spoke, Mr. Smith exhibited aggression, anger and a negative attitude. He stated that he also observed this type of behavior with most of the other white employees. However, when Mr. Smith spoke to any other type of employee, he acted in a civilized and gentlemanly manner. Mr. Greenberg added that management had observed Mr. Smith’s conduct and it appeared as if they fully supported his abusive and unprofessional behavior.

Appellant submitted a number of additional medical reports from Dr. Warshaw and Dr. Alejandro Villalobos, a Board-certified psychiatrist, who diagnosed panic disorder and adjustment reaction with mixed emotional features. He also submitted a September 9, 2003 letter from the employing establishment’s Equal Employment Opportunity (EEO) specialist and a July 23, 2003 grievance settlement. The grievance pertained to a June 26, 2003 incident. Appellant alleged that Mr. Smith was discriminatory, had treated him different from other employees and harassed him over doing his job properly. The grievance was settled on July 23, 2003 without an admission of fault. The parties mutually agreed that “All employees, management and craft, will treat each other with and will be treated with dignity and respect from all.”

The September 9, 2003 letter from the EEO specialist advised appellant of management’s response to his complaint regarding the June 24, 2003 incident. According to the letter, Mr. Smith allegedly told appellant that he was talking and not working and after a few words were exchanged, Mr. Smith threatened to take appellant to the office. Mr. Smith responded that on or about June 24, 2003 he approached appellant about talking to other employees and not working. He observed appellant talking and he was not moving any mail at the time. Mr. Smith took appellant to the side and asked that he continue to work as he talked. The letter advised appellant of his various options and the time limitations involved should he wish to pursue the matter further.

In a decision dated February 18, 2004, the Office denied appellant's claim finding that he failed to establish any compensable employment factors.

Appellant requested an oral hearing, which was held on July 22, 2004. He submitted statements from previous supervisors who attested to the good quality of his work. Appellant also submitted another statement from Ms. McKie dated July 11, 2003. She did not provide any information specific to appellant's interactions with Mr. Smith, but observed that Mr. Smith believed he was smarter than most and how he distrusted other employees' judgments. Ms. McKie also indicated that Mr. Smith targeted her and others for disciplinary action as a means of showing that he was in charge. Ms. Stone provided an undated statement regarding her September 4, 2003 efforts to obtain a transfer for appellant. Mr. Smith reportedly denied the request as did another supervisor, Sonia Lebel. After being informed of the denial appellant left work upset and exasperated.

The employing establishment reviewed the July 22, 2004 hearing transcript and in an August 12, 2004 response noted that the agency had dismissed appellant's EEO complaint regarding the alleged incidents on March 12 and 13 and June 24, 2003. A copy of the October 29, 2003 agency decision was provided. It was noted that appellant did not exercise his appeal rights. Appellant responded on August 19, 2004 and acknowledged that he did not have a pending EEO complaint against the employing establishment.

In a June 25, 2003 statement regarding the June 24, 2003 incident appellant indicated that at 8:52 p.m., he was standing next to Ms. Taylor at the CC1 belt throwing mail when he asked her about another employee, Ms. Stone, who had undergone surgery. Appellant noticed Mr. Smith approaching from behind as he continued to work and talk with Ms. Taylor. Mr. Smith called appellant over to his desk and asked what he was doing. Appellant explained what he had been doing and Mr. Smith replied "You have to cull mail not just talk." Appellant responded that he had been culling mail and told Mr. Smith that he could ask Ms. Taylor for verification. Mr. Smith was quoted as saying "I do [no]t have to ask [Ms. Taylor] anything." Appellant then asked how long Mr. Smith had been watching and he responded "That's not important." He also allegedly told appellant that he was "not productive." Appellant noted that he had worked with many supervisors over the past 18 years and Mr. Smith interrupted stating that he was "not like any of [appellant's] past supervisors." He allegedly threatened to take appellant to the office. Appellant left and later returned to request to speak with a shop steward. Mr. Smith denied the request. Appellant again left but returned to inquire what it was that Mr. Smith did not like about him. At that point, Mr. Smith told appellant to go talk to his shop steward.

By decision dated November 10, 2004, the Office hearing representative affirmed the February 18, 2004 decision.

LEGAL PRECEDENT

To establish that he sustained an emotional condition causally related to factors of his federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional condition or psychiatric

disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.¹

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.² Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.³

ANALYSIS

Appellant alleged that his emotional condition was due to several interactions with Mr. Smith, a supervisor. The first incident occurred on March 12, 2003 when Mr. Smith advised appellant of a proposed change in his work schedule. Appellant did not believe the change was necessary, noting that he had been on the same schedule for the prior 15 to 16 years and, in his opinion, it had worked very efficiently. When appellant questioned Mr. Smith about the change he allegedly became angry and threatened appellant with punishment for disobedience. Appellant acquiesced, stating "fine, I'll do it your way." Whether appellant believed the schedule change was necessary or appropriate is not dispositive. An employee's frustration from not being permitted to work in a particular environment or hold a particular position is not a compensable factor.⁴ Appellant's emotional response to the March 12, 2003 proposed change in his work schedule is not compensable.

On March 13, 2003 Mr. Smith allegedly told appellant that he was nonproductive and he needed to account for his daily work time. Appellant questioned Mr. Smith about this requirement, but allegedly was cut off and threatened with punishment. An employee's dissatisfaction with perceived poor management is not compensable under the Federal Employees' Compensation Act.⁵ Complaints about the manner in which a supervisor performs his duties or the manner in which a supervisor exercises his discretion fall, as a rule, outside the scope of coverage provided by the Act.⁶ This principle recognizes that a supervisor or manager in general

¹ See *Kathleen D. Walker*, 42 ECAB 603 (1991). 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).

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁴ See *Lillian Cutler*, *supra* note 2.

⁵ *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

⁶ *Marguerite J. Toland*, 52 ECAB 294, 299 (2001).

must be allowed to perform his duties and employees will, at times, dislike the actions taken, but mere disagreement or dislike of a supervisory or managerial action will not be actionable, absent evidence of error or abuse.⁷ Mr. Smith's request that appellant provide him with a daily work itinerary is not compensable. While appellant may question the need for an itinerary, it is well within Mr. Smith's authority as a supervisor to monitor appellant's work progress.⁸ The evidence submitted to the record does not establish error or abuse on Mr. Smith's part in making the request.

Appellant took exception to the manner in which Mr. Smith addressed him on March 12 and 13, 2003. Mr. Smith allegedly interrupted appellant's remarks, called him nonproductive, became hostile and threatened appellant with punishment. He alleged that Mr. Smith was verbally abusive on June 24, 2003 when he reportedly admonished appellant for talking too much.

Verbal abuse or threats of physical violence in the workplace are compensable under certain circumstances.⁹ This, however, does not imply that every ostensibly abusive or threatening statement uttered in the workplace will give rise to coverage under the Act.¹⁰ Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute compensable factors of employment.¹¹

Appellant submitted the statements of coworkers and prior supervisors. Ms. McKie was the only individual to have witnessed a conversation between Mr. Smith and appellant. In a September 12, 2003 statement, she noted that Mr. Smith told appellant that he was not productive. However, Ms. McKie noted that she did not recall the exact date of the incident. She also did not comment on either appellant's or Mr. Smith's demeanor during the conversation. This statement alone is insufficient to constitute verbal abuse. Appellant's general characterization of Mr. Smith as being angry and hostile is insufficient to establish abuse. While Mr. Greenberg provided a statement regarding his own personal encounters with Mr. Smith, this evidence does not substantiate appellant's allegations of verbal abuse.

On June 24, 2003 Mr. Smith was quoted as saying that appellant was "not productive" and that he had "to cull mail, not just talk." When appellant offered Ms. Taylor proof of his work, Mr. Smith reportedly responded that he did not "have to ask [Ms. Taylor] anything." While Mr. Smith may have been mistaken about the amount of work appellant performed while conversing with Ms. Taylor, this mistake and the comments attributed to Mr. Smith do not

⁷ *Id.*

⁸ *Id.*

⁹ *Fred Faber*, 52 ECAB 107, 109 (2000).

¹⁰ *Id.*

¹¹ *Marguerite J. Toland*, *supra* note 6.

amount to either harassment or verbal abuse.¹² Mr. Smith may have been accusatory, terse and dismissive, but being impolite or marginally ill-tempered does not rise to the level of compensable verbal abuse.

Appellant failed to establish that he was subjected to harassment and verbal abuse and he has not otherwise established a compensable factor of employment as the cause of his claimed emotional condition. The March 12 and 13, 2003 incidents he identified were administrative in nature and the record does not demonstrate that the employing establishment either erred or acted abusively in discharging its administrative duties. Appellant filed an EEO complaint with the employing establishment, however, the complaint was denied on October 29, 2003 and appellant did not exercise his appeal rights. The record also includes a grievance settlement regarding a June 26, 2003 incident involving appellant and Mr. Smith. The parties settled the grievance on July 23, 2003 without an admission of fault. Grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.¹³ Absent a finding of fault, the settlement agreement does not establish error or abuse on the part of the employing establishment.¹⁴ Because appellant failed to establish a compensable employment factor, the Office properly denied his claim for an emotional condition.

CONCLUSION

The Board finds that appellant failed to establish that he sustained an emotional condition in the performance of duty.

¹² For harassment to give rise to a compensable disability there must be evidence that harassment did, in fact, occur. *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996). A claimant's mere perception of harassment is not compensable. *Id.* The allegations of harassment must be substantiated by reliable and probative evidence. *Joel Parker Sr.*, 43 ECAB 220, 225 (1991).

¹³ *Michael A. Salvato*, 53 ECAB 666, 668 (2002); *James E. Norris*, 52 ECAB 93, 101 (2000).

¹⁴ *Kim Nguyen*, 53 ECAB 127, 128 (2001).

ORDER

IT IS HEREBY ORDERED THAT the November 10, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 15, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member