

supervisor, Jay Edwards, spoke in a loud voice and was very rude. As a result of this behavior, appellant was “stressed out mentally.”

The employing establishment controverted the claim. Mr. Edwards stated that appellant refused his work assignment on August 19, 2002. He further indicated that, when appellant was told that he would be considered absent without leave (AWOL) until he went back to work, appellant demanded a union steward and stated that he was “stressed out.”

In a witness statement received by the Office on August 26, 2002, Russell Gwynn reported that on August 19, 2002 at approximately 7:00 a.m. Supervisor Edwards informed appellant that he was sending him to work for the E&S work group for a short period of time in order to catch up on carpentry tickets. Appellant stated that he could not work E&S because it was too stressful. Mr. Gwynn indicated that both parties spoke in a normal tone of voice and that the supervisor was not rude in any way.

In supplemental answers to the supervisor’s report, received by the Office on August 26, 2002, Mr. Edwards stated that appellant had been seen by a union representative taking a “handful of pills,” including valium and Zoloft. Appellant was merely asked to work for a while in another office to help reduce backlog, but “flew off the handle” and refused the work assignment. Mr. Edwards stated that he had spoken to appellant in the same tone and manner in which he spoke to the rest of his crew and that he was not rude in any way.

Appellant submitted an August 19, 2002 dispensary permit signed by Dr. Marco Garcia, a treating physician, reflecting “undue work stress” and appellant’s inability to work. In a memorandum dated August 19, 2002, Dr. Garcia stated that appellant suffered from depression, which was being treated with valium. In a statement dated August 19, 2002, Dr. Richard Poe, a Board-certified psychiatrist, indicated that appellant’s depression, anxiety and emotional liability were so severe that he was unable to work at that time.

By letter dated September 25, 2002, the Office advised appellant that the information submitted was insufficient to establish his claim and requested additional information, including a physician’s opinion explaining how his alleged injury resulted in a diagnosed condition.

In an October 14, 2002 work capacity evaluation, Dr. Poe provided a diagnosis of bipolar disorder, mixed, with psychotic features. Dr. Poe indicated that there was no reason appellant could not work eight hours per day but that his “psychological condition was best and most stable when he worked in the waterfront department.” In a separate report dated October 14, 2002, Dr. Poe related that he had treated appellant since December 17, 1999 for his bipolar condition. Appellant became depressed and anxious on August 19, 2002 and was no longer able to perform his job. He stated that appellant’s most recent department represented a hostile work environment.

In an October 16, 2002 memorandum, Dr. Garcia related appellant’s history of depression and anxiety, as diagnosed by Dr. Poe. He stated that appellant complained about his position as a carpenter under the supervision of Mr. Edwards. Dr. Garcia also expressed his

concern about appellant's use of medication and Mr. Edwards' "noticeable antagonizing and aggravating behavior towards [appellant]."

By letter dated October 25, 2002, the employing establishment controverted appellant's claim, citing the statements of Mr. Edwards and Mr. Gwynn. It was contended that appellant had provided no factual evidence to support that an emotional condition had been caused by a factor of employment.

By decision dated October 24, 2002, the Office denied appellant's claim, finding that the job assignment was administrative in nature and not within the scope of the Act.

Appellant requested an oral hearing, which was held on June 24, 2003. At the hearing, appellant's representative contended that appellant had a preexisting medical condition that had been aggravated by his supervisor's actions. Appellant testified that, because he was a senior carpenter, it was unfair for him to be sent to ENS. He alleged that Mr. Edwards had gone out of his way to whisper in his ear; started "hollering" at him; told him that he would go the "F" where he wanted him to go; and stated, "I want you to report to this guy that I'm telling you to and I don't want to hear no s-h-i-t from you." Appellant testified that he told his supervisor that he "couldn't do it" and went to the union office. Mr. Edwards allegedly told appellant he was AWOL, followed appellant to the dispensary and raised his voice. Appellant testified that Mr. Edwards teased him about taking pills because of his bipolar disorder and tried to make him cry. He contended that he was being targeted even though he was a good employee and was the joke of the shop. Appellant claimed that in the past, Mr. Edwards had "called [him] a nigger lover." He stated that the events of August 19, 2002 pushed him over the edge. Appellant alleged that Dr. Garcia had witnessed Mr. Edwards behave in an antagonistic manner. The hearing representative left the record open for 30 days for submission of additional evidence in support of appellant's allegations.

The hearing representative advised appellant that he would review the case as a traumatic injury claim, but that appellant may want to consider filing the case as an occupational disease claim. Appellant submitted several requests for leave or approved absence, as well as a memorandum from appellant's representative contending that the Office had not reviewed all of the medical documents presented by appellant. However, no additional witness statements were submitted.

By decision dated September 11, 2003, the hearing representative affirmed the October 24, 2002 decision, finding that the work assignment was an administrative function and that there was no evidence of abuse. Accordingly, appellant failed to establish a compensable factor of employment.

LEGAL PRECEDENT

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.¹ The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of his work or his fear and anxiety regarding his ability to carry out his duties.² 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.³ Although administrative and personnel matters are generally related to employment, they are functions of the employer and not duties of the employee. The Board has held that 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.⁴

The Board has recognized the compensability of verbal altercations or abuse in certain circumstances; however, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.⁵ For harassment or discrimination to give rise to a compensable disability, there must be evidence that the alleged actions did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable.⁶ When an employee alleges harassment and cites specific incidents, the Office or other appropriate fact finder must determine the truth of the allegations. The issue is not whether the claimant has established harassment or discrimination under Equal Employment Opportunity Commission standards. Rather, the issue is whether sufficient evidence has been submitted to factually support the claimant's allegations.⁷

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.⁸ When the matter asserted is a compensable factor of

¹ 5 U.S.C. §§ 8101-8193.

² *Lillian Cutler*, 28 ECAB 125, 129 (1976).

³ *Id.* See also *Peter D. Butt, Jr.*, 56 ECAB ____ (Docket No. 04-1255, issued October 13, 2004).

⁴ See *Charles D. Edwards*, 55 ECAB ____ (Docket No. 02-1956, issued January 15, 2004); see also *Ernest J. Malagrida*, 51 ECAB 287, 288 (2000).

⁵ See *Charles D. Edwards*, *supra* note 4.

⁶ See *Peter D. Butt, Jr.*, *supra* note 3.

⁷ *Id.*

⁸ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

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.⁹ 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.¹⁰

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition was caused or adversely affected by her employment.¹¹ 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.¹²

ANALYSIS

Appellant alleged that on August 19, 2002 the actions of his supervisor, Mr. Edwards, caused or aggravated his emotional condition. As noted, workers' compensation law does not cover an emotional reaction to an administrative or personnel action unless the evidence establishes error or abuse on the part of the supervisor.¹³ The Board finds that appellant's allegation that Mr. Edwards improperly required him to make a job transfer relates to administrative or personnel matters, unrelated to appellant's regular or specially assigned work duties and does not fall within coverage of the Act. Although the handling of disciplinary actions, leave requests, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.¹⁴

The Board further finds that appellant did not submit sufficient evidence to establish that his supervisor committed error or abuse with regard to this matter. Mr. Edwards stated that when he informed appellant that he was assigning him to work for the E&S group for a short period of time in order to catch up on carpentry tickets. Appellant refused this work assignment and demanded to see a union steward. Although appellant claimed that his supervisor spoke in a loud voice and was very rude, his assertions are not corroborated by the evidence of record. Mr. Edwards stated that he spoke to appellant in the same tone and manner in which he spoke to the rest of his crew and that his tone had not been rude. In a witness statement, another employee, Mr. Gwynn, reported that when Mr. Edwards informed appellant of the job assignment, both parties spoke in a normal tone of voice and that Mr. Edwards was not rude in any way. In an October 16, 2002 memorandum, Dr. Garcia referred generally to Mr. Edward's

⁹ See *Charles D. Edwards*, *supra* note 4.

¹⁰ *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 corroborated such allegations).

¹¹ See *Charles D. Edwards*, *supra* note 4.

¹² *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

¹³ See *Charles D. Edwards*, *supra* note 4.

¹⁴ See *Cyndia R. Harrill*, 55 ECAB (Docket No. 04-399, issued May 7, 2004).

antagonizing and aggravating behavior towards appellant. However, he cited no specific example, did not indicate whether or not he was referring to the alleged August 19, 2002 incident, and did not specify whether he had actually observed the alleged behavior. At the oral hearing, appellant testified that Mr. Edwards followed him to the dispensary and raised his voice. He alleged that Dr. Garcia had witnessed the supervisor behave in an antagonistic manner. However, appellant submitted no witness statement in support of this allegation, although the hearing representative allowed him 30 days to do so. Appellant has submitted insufficient evidence to corroborate his claim that Mr. Edwards acted in an abusive manner. Although appellant disagreed with his job assignment, he has not established that such action was administratively erroneous. Appellant argued on appeal that Mr. Edwards violated a union contract by requiring him to transfer to a different location, rather than asking for volunteers. However, the record does not contain any evidence pertaining to the terms of the contract or its potential violation.

Appellant's psychiatrist, Dr. Poe, reported that appellant was most stable when he worked in the "waterfront department." Mr. Gwynn related that appellant claimed that he could not work for the E&S work group because it was too stressful. But appellant's frustration from not being permitted to work in a particular environment is not a compensable factor under the Act.¹⁵

The Board notes that appellant testified at the oral hearing before the Office hearing representative that Mr. Edwards had harassed him on numerous occasions in the past. However, these general allegations are not relevant to the present traumatic injury claim.¹⁶

Appellant has submitted insufficient evidence in this case to support his allegation that his supervisor committed error or abuse in discharging his supervisory duties. Therefore, the Board finds that he has failed to establish a compensable factor of employment with regard to these allegations.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

¹⁵ *Id.* (The Board noted that claimant's reaction to perceived poor management must be considered self-generated in that it resulted from her frustration in not being permitted to work in a particular environment.)

¹⁶ *See* 20 C.F.R. §§ 10.5(ee) (2002) (traumatic injury defined). ("Traumatic injury means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift....")

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 11, 2003 is affirmed.

Issued: October 26, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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