



November 27, 2002. He explained that he filed both types of claims because he was unsure which one was appropriate to file.<sup>1</sup>

In several statements, appellant explained that his agency had recently undergone reorganization and in October 2002 he was assigned the additional duty of responding to Freedom of Information Act (FOIA) requests. Appellant perceived the FOIA assignment as a downgrade in responsibility and he questioned his supervisors as to why this work was not assigned to a lower grade employee as it had been in the past. Appellant also questioned why other high-grade work suitable for a GS-14 procurement analyst was being assigned to other employees who normally did not perform those duties. Appellant characterized the work assignments as a “poor personnel practice,” but acknowledged it was his supervisors’ prerogative. However, he sought assurances that he would receive sufficient high-grade work in order to maintain his GS-14 grade. He also claimed to have been promised a backup for when more appropriate work was available or when he was out or otherwise unable to perform his assigned duties. According to appellant, the amount of FOIA work grew rapidly and he saw this as an impediment to performing high-grade work. Appellant viewed the FOIA assignment as providing the employing establishment with a basis for downgrading his GS-14 position.

On November 27, 2002 Rick Sturgis, a coworker, reportedly referred to appellant as the “FOIA guy.” This comment allegedly caused additional stress. Appellant explained that he perceived Mr. Sturgis’ remark as degrading because the individuals who previously processed FOIA requests were either GS-12 or GS-13 employees. That same day Deborah Ramirez, a supervisor, reportedly advised appellant that her staff would not be available to assist him in preparing a cost estimate related to a pending FOIA request. Ms. Ramirez allegedly told appellant that he would have to prepare the cost estimate on his own. Appellant did not see why he should compile cost information that was normally the responsibility of a GS-8 employee. He said he was left to “twist in the wind” and he believed these duties affected his professional reputation and personal credibility with coworkers.

Appellant’s next scheduled workday was December 2, 2002, at which time he filed a grievance. Because he planned to take sick leave, appellant organized his work so a backup employee could complete any work already in progress. Appellant returned to work on December 12, 2002 and found that no one had processed FOIA requests in his absence. He learned from Michael Farrell, a coworker, that no one had been assigned as FOIA control officer in his absence. Concerned that some responses might be untimely, appellant worked on a few requests and provided his supervisor with a status report on all pending requests. Appellant was also concerned that he was being set up for failure. He resumed his leave of absence on December 13, 2003 and did not return to duty until mid-January 2003.<sup>2</sup>

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<sup>1</sup> Appellant provided additional background information regarding a previously filed claim for employment-related hypertension. In his prior claim he alleged that his hypertension was caused by the imposition of new performance standards in January 1997 (A25-0518188). Appellant explained that the Office denied the claim because he failed to identify a compensable employment factor as the cause of his claimed hypertension.

<sup>2</sup> Appellant briefly returned to the employing establishment on December 23, 2002 to attend a meeting with management concerning his December 2, 2002 grievance.

In a December 2, 2002 grievance, appellant outlined a number of complaints relevant to his work assignments and his position description. Appellant questioned the work he had been assigned and alleged that the employing establishment improperly assigned work to two other employees. He also claimed to have been denied access to various customers and other employees within the employing establishment, which contacts were allegedly necessary to properly discharge his duties. Appellant asked that the FOIA work be reassigned to an appropriate lower grade employee and that he be assigned to a specific business process group and be permitted to participate in creating his own performance plan.

Appellant met with his supervisors for several hours on December 23, 2002 to discuss his grievance. The employing establishment submitted a January 29, 2003 memorandum addressed to appellant regarding the meeting and actions it proposed in response to appellant's stated concerns. Appellant's FOIA duties were not reassigned as requested, but management agreed to amend his position description to include those specific duties. The employing establishment indicated that its personnel office determined that the inclusion of such duties would not affect appellant's current grade or position. With respect to specific job assignments that had allegedly been withheld, the employing establishment responded that tasks appropriate to appellant's position had been assigned in the past and would continue to be assigned in the future. In response to appellant's concern about appropriate access to information and individuals, the employing establishment noted that appellant was not prohibited from contacting other agency personnel or customers in the process of discharging his assigned duties. Appellant's concerns about the work assigned other employees was considered a matter not subject to grievance by him. It was explained that placement within the organization was a managerial prerogative and, because of the recent reorganization, a number of decisions regarding the organizational structure had yet to be determined. Although relocation within the organization might be possible at a later date, appellant was advised that any future placement was purely speculative.

Appellant filed a second, similar grievance on February 20, 2003 challenging the January 29, 2003 response to his grievance.<sup>3</sup> The employing establishment formally denied appellant's grievance on April 28, 2003.

In an April 28, 2003 letter to the Office Stephen J. Carrano, appellant's supervisor, noted his disagreement with appellant's basic assertions regarding the work assignments made as well as the type of work that should be assigned to other employees. Mr. Carrano indicated that he was unaware of any events that occurred on November 27, 2002 or any other date that would cause appellant's claimed work-related injury. He commented that there were no known aspects of appellant's job that could be perceived as stressful. Appellant's FOIA duties were not inherently rigorous or otherwise hazardous and Mr. Carrano noted that appellant had not been asked to work overtime nor had he identified a need for overtime. He further stated that there was nothing in appellant's work assignments that was inherently more stressful than the work assigned other employees in similar positions and grades.

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<sup>3</sup> Appellant included several additional allegations which he characterized as a "medical matters grievance." He essentially argued that the employing establishment's January 29, 2003 decision was rendered without the benefit of appropriate medical expertise. Appellant also claimed the action was premature and the employing establishment should have awaited the Office's decision on the current claim.

Mr. Carrano also indicated that he was unaware of any personal conflicts that appellant had with coworkers. All of appellant's complaints were directed to his supervisors and dealt entirely with the nature of his work assignments. Appellant was asked on several occasions to describe what accommodations he would like the agency to make and he reportedly told Mr. Carrano that he wanted work assignments he believed to be more appropriate to his level of expertise. Mr. Carrano's assessment was that the assignments were appropriate for a GS-14 procurement analyst and he noted that the personnel office had reviewed appellant's position description and concurred that the assignments were, in fact, appropriate for a GS-14 employee. Mr. Carrano characterized the work currently assigned appellant as important to the success of the organization. He further indicated that the level of complexity required that the work be performed by an individual highly skilled in acquisition-related matters.

In a December 6, 2002 note, Dr. Richard A. Schwartz, a Board-certified internist, indicated that he had treated appellant for hypertension for many years and there was a strong occupational stress component to appellant's condition. When he reevaluated appellant on October 28, 2002, he noted that the stress-related component persisted. Dr. Schwartz advised that appellant should avoid work-related stressful situations. In an April 25, 2003 report, Dr. Andrew B. Molchon, a Board-certified psychiatrist, diagnosed acute and chronic stress reaction due to work-related stressors. He also noted Dr. Schwartz' earlier diagnosis of arterial hypertension.

In a decision dated September 12, 2003, the Office denied appellant's claim as he failed to establish a compensable employment factor as the cause of his hypertension or psychiatric condition. The Office explained that appellant's complaints regarding the work assignments he received were administrative in nature and noncompensable.

Appellant requested an oral hearing, which was held on August 26, 2004. He also submitted additional medical evidence, including a September 23, 2004 report from Dr. Molchon, who indicated that appellant's hypertension and psychiatric symptoms were directly related to his difficulties at work. Dr. Molchon also stated that since being transferred to a new position, appellant was now asymptomatic.

By decision dated November 10, 2004, the Office hearing representative affirmed the September 12, 2003 decision. The hearing representative found that appellant had not actually performed any FOIA duties and his emotional reaction to being assigned the additional duties was not compensable.

On December 9, 2004 appellant requested reconsideration. In support of his request he submitted copies of FOIA responses he prepared in November 2002. The Office reviewed the merits of appellant's claim and denied modification in a decision dated March 1, 2005.

#### **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.<sup>4</sup>

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.<sup>5</sup> 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 his allegations with probative and reliable evidence.<sup>6</sup>

### ANALYSIS

The essence of appellant's claim is that, beginning in October 2002, he was assigned FOIA work and was not permitted to perform appropriate work within his grade. Appellant indicated that other employees were assigned work that should have been assigned to him. His primary concern was that his supervisors' work assignments would expose him to a possible future downgrade.

Although the hearing representative found that appellant had not actually performed any of the duties of a FOIA control officer, the record indicates otherwise. First, Mr. Carrano did not indicate in his April 28, 2003 statement that appellant had either refused the FOIA work assignments or otherwise neglected his duties. Furthermore, appellant described specific work he performed on December 12, 2002, which was not disputed. He also provided at least three examples of work he performed in November 2002 as the designated FOIA control officer. The record establishes that appellant performed duties as a FOIA control officer. Appellant, however, did not allege that the performance of these particular duties caused or contributed to his hypertension and psychiatric condition. As noted, he questioned the assignment of the FOIA duties as causing his hypertension and acute and chronic stress reaction and characterized the work as beneath his grade.

Appellant's express concern is that being assigned FOIA work would undermine his position as a procurement analyst and affect his professional reputation. In his statements, he repeatedly noted that these duties had previously been performed by individuals at least one, if not two grades below his current GS-14 grade level. Appellant also indicated that another aspect of his FOIA duties; compiling cost estimate data, consisted of work that would normally be performed by a GS-8 employee. Although appellant believed that performing FOIA work was

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<sup>4</sup> 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).

<sup>5</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>6</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

beneath his grade level, Mr. Carrano indicated that this work was important to the success of the organization and because of the level of complexity, the FOIA work required a highly skilled individual, such as appellant. Additionally, the evidence reflects that the employing establishment consulted with its personnel office and verified that the assignment of FOIA duties was appropriate under appellant's current position description and grade level. This information was communicated to him as early as January 23, 2003.

Decisions concerning work assignments and the delegation of duties are administrative functions of the employer.<sup>7</sup> As a general rule an employee's reaction to administrative or personnel matters falls outside the scope of the Federal Employees' Compensation Act.<sup>8</sup> However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.<sup>9</sup> Appellant's concern about the work he was assigned is not compensable. He has not demonstrated that the employing establishment either erred or abused its authority in assigning him the additional duties of FOIA control officer. The grievance appellant filed with respect to his work assignments was formally denied on April 28, 2003. There is no evidence of error or abuse on the part of Ms. Ramirez in refusing to allocate additional staff to assist appellant in preparing a cost estimate on November 27, 2002.

The record reflects that appellant found his new duties as FOIA control officer to be demeaning to a person of his expertise and grade. However, an employee's frustration from not being permitted to work in a particular environment or hold a particular position is not compensable.<sup>10</sup> Accordingly, appellant's emotional response to the October 2002 change in his work assignment is not compensable. Furthermore, while appellant may believe that his talents are being under utilized, his perception that the work assignments represent a "poor personnel practice" is also not compensable.<sup>11</sup>

Appellant also took exception to a coworker's November 27, 2002 reference to him as the "FOIA guy." In his April 16, 2003 statement appellant indicated that he doubted Mr. Sturgis "intended this [remark] negatively," and it probably reflected his opinion of appellant's position. Based on appellant's description of the incident, Mr. Sturgis' single reference to appellant as the "FOIA guy" does not constitute either harassment or verbal

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<sup>7</sup> *Barbara J. Latham*, 53 ECAB 316, 318 (2002).

<sup>8</sup> *Id.* at 317-318.

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

<sup>10</sup> *See Lillian Cutler*, *supra* note 5.

<sup>11</sup> An employee's dissatisfaction with perceived poor management is not compensable under the Act. *Michael Thomas Plante*, 44 ECAB 510, 516 (1993). Complaints about the manner in which a supervisor performs his duties or exercises his discretion fall, as a rule, outside the scope of the Act. This principle recognizes that a supervisor or manager 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. *Marguerite J. Toland*, 52 ECAB 294, 299 (2001).

abuse.<sup>12</sup> As appellant failed to establish a compensable employment factor, the Office properly denied his claim.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 1, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 2, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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<sup>12</sup> 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). Additionally, the Board has recognized that verbal abuse or threats of physical violence in the workplace are compensable under certain circumstances. This, however, does not imply that every ostensibly abusive or threatening statement uttered in the workplace will give rise to coverage under the Act. *Fred Faber*, 52 ECAB 107, 109 (2000).