

submitted an affidavit signed by 36 coworkers attesting “[i]t is my opinion that [appellant] is being continually and relentlessly harassed by [m]anagement.”

Dr. Anit D. and Dr. Robert E. Ford, both Board-certified in family medicine, provided disability slips. In a July 15, 2004 report, Dr. Walter E. Afield, a Board-certified psychiatrist, diagnosed severe depression, anxiety with possible panic attacks and post-traumatic stress disorder. He noted that appellant described harassment by three managers at work. Dr. Afield also provided test results and, on August 27, 2004, advised that he could not return to work.

The employing establishment controverted the claim and submitted documentation regarding disciplinary actions taken against appellant, including an arbitration decision dated April 11, 2003 showing that a grievance was denied. It submitted a letter of warning for unsatisfactory performance dated April 11, 2003, a grievance agreement dated May 15, 2003,¹ a 7-day no time off suspension dated June 19, 2003, a 14-day no time off suspension dated September 15, 2003, a grievance resolution dated November 19, 2003 showing that the 14-day suspension was reduced to 7 days. Also provided were a notice of removal dated February 3, 2004 for continued unsatisfactory performance, a grievance resolution dated March 24, 2004 showing that the removal was changed to a 14-day suspension, a 14-day no time off suspension dated April 29, 2004 and a notice of removal dated May 20, 2004 for unsatisfactory performance with the removal effective June 25, 2004. In a memorandum dated June 16, 2004, Luke Romano, manager of customer service, noted that, jointly with union representation, he had interviewed the employees who had signed the statement that appellant was harassed by management. He stated that two of the interviewees advised that they had not signed the statement. Mr. Romano attached interview notes in which a coworker stated that management’s actions were justified, 17 stated that they had no first hand knowledge of the validity of the personnel actions and two stated that the signatures that appeared on the affidavit were not theirs. One coworker advised that he believed appellant was unjustly disciplined but acknowledged that he was slow in carrying out his route. In a statement dated August 17, 2004, Mr. Romano noted the interview findings and stated that the disciplinary actions against appellant included many attempts to afford him an opportunity to correct his deficiencies but that he was terminated after his performance failed to improve.

On November 12, 2004 Mr. Romano advised that, according to employing establishment records, appellant had difficulty with almost all his supervisors during 17 years as a letter carrier and his numerous performance deficiencies were addressed through discipline and corrective actions. He reiterated that appellant’s continued unacceptable work practices led to his termination which was held in abeyance pending arbitration. Appellant subsequently filed for disability retirement which was approved on October 28, 2004 and the grievance regarding his termination was closed. In a January 7, 2005 statement, Mr. Romano reiterated that appellant had a history of disciplinary problems that had been addressed by various supervisors over the years.

Appellant submitted documentation showing that, on October 9 and November 18, 2003, requests for sick leave were to be approved for August 11 through 15 and September 4 through

¹ The agreement indicated that a letter of warning dated March 12, 2003 was to be removed from appellant’s file on March 12, 2004 pending no further instances of failure to follow instructions.

9, 2003 and that a letter of warning for the latter period was rescinded. September 12 and December 19, 2003 14-day suspensions were found to be without just cause, on November 19, 2003 a 14-day suspension was changed to a 7-day suspension and on March 24, 2004 a notice of removal was changed to a 14-day suspension.

By decision dated July 8, 2005, the Office denied the claim on the grounds that appellant failed to establish a compensable factor of employment. On August 2, 2005 he requested a review of the written record and in a December 15, 2005 decision an Office hearing representative affirmed the July 8, 2005 decision.

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 such a condition; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his stress-related condition.² If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.³

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁴ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁵ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁶ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁷

As a general rule, an employee's emotional reaction to administrative or personnel actions taken by the employing establishment is not covered because such matters pertain to

² *Leslie C. Moore*, 52 ECAB 132 (2000).

³ *See Dennis J. Balogh*, 52 ECAB 232 (2001).

⁴ 28 ECAB 125 (1976).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *See Robert W. Johns*, 51 ECAB 137 (1999).

⁷ *Lillian Cutler*, *supra* note 4.

procedures and requirements of the employer and are not directly related to the work required of the employee.⁸ 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.⁹

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. Mere perceptions of harassment or discrimination are not compensable under the Act. 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.¹⁰

ANALYSIS

Appellant asserted that he was improperly disciplined and harassed by employing establishment management. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.¹¹ The Board finds that appellant has failed to establish any compensable factors of employment.

Regarding appellant's contention that he was inappropriately disciplined, although the handling of disciplinary actions is generally related to employment, it is an administrative function of the employer rather than regular or specially assigned work duties of the employee.¹² Disciplinary actions concerning such matters as discussions or letters of warning for conduct pertain to actions taken in an administrative capacity and are not compensable unless the employee shows management acted unreasonably.¹³ While appellant submitted documentation showing that in several instances, the employing establishment disciplinary actions had been changed or reduced, the mere fact that these were lessened does not establish that the employing establishment erred or acted in an abusive manner.¹⁴ The employing establishment provided documentation of other instances of discipline and Mr. Romano clearly explained that he was given numerous opportunities to correct performance deficiencies. The fact that appellant's termination grievance was dropped after his disability retirement does not establish error or

⁸ *Felix Flecha*, 52 ECAB 268 (2001).

⁹ *James E. Norris*, 52 ECAB 93 (2000).

¹⁰ *Id.*

¹¹ *Katherine A. Berg*, 54 ECAB 262 (2002).

¹² *James E. Norris*, *supra* note 9.

¹³ *See Janice I. Moore*, 53 ECAB 777 (2002).

¹⁴ *See Linda K. Mitchell*, 54 ECAB 748 (2003).

abuse. Appellant, therefore, failed to establish these as compensable factors of employment as there is no evidence that the employing establishment acted unreasonably.¹⁵

Appellant also contended that he was harassed by management. 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, 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.*, mistreatment by coemployees or workers. Mere perceptions and feelings of harassment will not support an award of compensation.¹⁶ As noted above, a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.¹⁷ Appellant provided an affidavit signed by 36 coworkers; however, the record contains evidence demonstrating that more than half of those who signed the affidavit had no first-hand knowledge of any supposed harassment and he provided no witness statements to specific examples of harassment. The Board finds that he submitted insufficient evidence to substantiate that he was harassed as alleged. Appellant has not established as factual a basis for his perceptions of discrimination or harassment by the employing establishment as he provided insufficient probative evidence to establish that harassment and/or discrimination occurred.¹⁸ He has not established a compensable employment factor with respect to harassment and discrimination.¹⁹ The evidence instead suggests that his feelings were self-generated and thus, not compensable under the Act.²⁰

As appellant failed to establish a compensable employment factor, the Office properly denied his claim without addressing the medical evidence of record.²¹

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 his federal employment.

¹⁵ See *Andrew Wolfgang-Masters*, 56 ECAB ____ (Docket No. 05-1, issued March 22, 2005).

¹⁶ *Beverly R. Jones*, 55 ECAB ____ (Docket No. 03-1210, issued March 26, 2004).

¹⁷ *Penelope C. Owens*, 54 ECAB 684 (2003).

¹⁸ *James E. Norris*, *supra* note 9.

¹⁹ See *Jamel A. White*, 54 ECAB 224 (2002).

²⁰ See *Gregorio E. Conde*, 52 ECAB 410 (2001).

²¹ *Garry M. Carlo*, 47 ECAB 299 (1996).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 15 and July 8, 2005 be affirmed.

Issued: August 18, 2006
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