

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**E.F., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
North Lauderdale, FL, Employer**

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**Docket No. 06-1533  
Issued: December 4, 2006**

*Appearances:*

*G. William Allen, Jr., Esq.*, for the appellant

*Thomas G. Giblin, Esq.*, for the Director

Oral Argument November 7, 2006

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge

MICHAEL E. GROOM, Alternate Judge

JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 28, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' March 29, 2006 merit decision denying his stress-related condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met his burden of proof to establish that he sustained a stress-related condition in the performance of duty.

**FACTUAL HISTORY**

This is the third appeal in this case. In the first appeal,<sup>1</sup> the Board issued a decision on February 9, 2004 affirming the Office's determination that appellant did not establish that he sustained a stress-related condition in the performance of duty. On December 12, 2001 appellant

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<sup>1</sup> Docket No. 03-1391 (issued February 9, 2004).

filed an occupational disease claim alleging that he sustained hypertension and the onset of diabetes mellitus due to his work. Appellant claimed that he sustained stress because he was wrongly accused of forging a physician's signature on a compensation form and for improperly using an employing establishment vehicle for personal needs. He contended that he was unfairly disciplined in connection with these allegations and that his supervisors wrongly failed to place him on limited-duty work recommended by his physicians. Appellant asserted that Patti Lynn, a supervisor, wrongly took him off the clock for four days because of the forgery allegation and stated that she did not want to see him anymore at the employing establishment. He also claimed that supervisors subjected him to harassment and discrimination in connection with these matters. By decision dated September 24, 2002, the Office denied appellant's stress claim on the grounds that he did not establish any compensable employment factors.

By letter dated February 1, 2005, appellant requested reconsideration of his claim. He submitted the transcripts of depositions given in December 2004 by Ms. Lynn and himself taken in connection with a legal proceeding he filed against the employing establishment in the U.S. District Court for the Southern District of Florida. By decision dated May 16, 2005, the Office denied appellant's request for merit review of his claim.

In the second appeal,<sup>2</sup> the Board issued a decision on January 9, 2006 setting aside the Office's determination that appellant was not entitled to further merit review of his claim. The Board determined that the December 2004 depositions constituted new and relevant evidence. The Board remanded the case to the Office in order to conduct a merit review of appellant's stress-related condition claim, including a proper consideration of the evidence he submitted in connection with his February 2005 reconsideration request. On remand the Office conducted a merit review of appellant's claim to include evaluation of the evidence he submitted in connection with his February 1, 2005 reconsideration request.

In his December 2004 deposition, appellant testified regarding his belief that he had been discriminated against at the employing establishment, including the occasions when he had been accused of forging a physician's signature on a compensation form and improperly using an employing establishment vehicle for personal needs. He asserted that it was improper for the employing establishment to suspend him from work and place him in nonpay status while it conducted an investigation of the discrepancies in the compensation form. Appellant indicated that he was ultimately cleared of the allegation that he forged the compensation form and asserted that other employees were not punished when they used employing establishment vehicles to drive to medical appointments. After he was accused of forging the form, Ms. Lynn stated that she "got" him and told him that he would be fired. Appellant asserted that he was discriminated against due to his race and country of origin and noted that he had filed a claim with the Equal Employment Opportunity (EEO) Commission.

In her December 2004 deposition, Ms. Lynn testified regarding the investigations pertaining to appellant's submission of a compensation form and his use of an employing establishment vehicle. She asserted that it was employing establishment procedure to suspend an employee from work whenever an investigation was initiated. Ms. Lynn stated that once she

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<sup>2</sup> Docket No. 05-1913 (issued January 9, 2006).

became aware of the apparent discrepancies in the compensation form she had a duty to further investigate the matter. After appellant was cleared of wrongdoing, he was paid for the days that he was suspended. She advised him to not use an employing establishment vehicle to drive to a medical appointment beyond a prescribed area, but that appellant ignored her instructions. Ms. Lynn denied that he was disciplined in a discriminatory manner with respect to either the compensation form or postal vehicle matter and asserted that she did not make any abusive comments to appellant.

By decision dated March 29, 2006, the Office denied appellant's stress-related claim on the grounds that he did not establish that he sustained any compensable employment factors. It found that the evidence of record, including the December 2004 depositions submitted by appellant, did not show that the employing establishment committed error or abuse with respect to administrative matters or that it engaged in harassment or discrimination.

### **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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>3</sup> On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction in force or his frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>4</sup>

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.<sup>5</sup> This burden includes the submission of a detailed description of the employment factors or conditions which the employee believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>6</sup>

In cases involving stress-related conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>7</sup> If a claimant does implicate a factor of

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>6</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>7</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

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.<sup>8</sup>

### ANALYSIS

Appellant alleged that he sustained a stress-related condition as a result of a number of employment incidents and conditions. The Office denied his claim on the grounds that he did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant claimed that he sustained stress because he was wrongly accused of forging a physician's signature on a compensation form and improperly using an employing establishment vehicle for personal needs. He alleged that he was improperly investigated and disciplined with respect to these matters. In particular, appellant asserted that it was wrong for the employing establishment to suspend him from work and place him in nonpay status while it conducted its investigation of the discrepancies in the compensation form. He also asserted that his supervisors wrongly failed to place him on limited-duty work recommended by his physicians.

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions and investigations and improperly assigned work duties, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.<sup>9</sup> Although the handling of disciplinary actions and investigations and the assignment of work duties are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>10</sup> However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>11</sup>

Appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters. In a December 2004 deposition, Ms. Lynn, a supervisor, stated that it was employing establishment procedure to suspend an employee from work whenever an investigation was initiated concerning that employee. Once she became aware of the apparent discrepancies in the compensation form she

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<sup>8</sup> *Id.*

<sup>9</sup> See *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

<sup>10</sup> *Id.*

<sup>11</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

had a duty to further investigate the matter.<sup>12</sup> Appellant has not shown that the manner in which he was investigated and disciplined was improper or that management committed wrongdoing when assigning him work duties. He filed an EEO complaint with respect to the above-described investigative and disciplinary matters, but the record does not contain any decision showing that the employing establishment committed error or abuse with respect to them. Appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant claimed that supervisors subjected him to harassment and discrimination in connection with the alleged forgery of the compensation form and misuse of a postal vehicle. He asserted that other employees were not punished when they used employing establishment vehicles to drive to medical appointments. Appellant claimed that after he was accused of forging the compensation form Ms. Lynn stated that she “got” him and told him that he would be fired and he generally asserted that he was discriminated against due to his race and country of origin.

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant’s performance of his regular duties, these could constitute employment factors.<sup>13</sup> However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.<sup>14</sup>

In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors.<sup>15</sup> Appellant alleged that supervisors made statements and engaged in actions which he believed constituted harassment and discrimination, but he provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.<sup>16</sup> Appellant submitted a December 2004 deposition in which he provided further details of his allegations, but he did not submit sufficient supporting documentation to establish these allegations. The record contains a December deposition of Ms. Lynn, but she denied that he was disciplined in a discriminatory manner with respect to either the compensation form or postal vehicle matters or that she made any abusive comments to appellant. Appellant filed an EEO complaint with respect to these matters, but the record does not contain any decision showing that harassment or discrimination occurred as alleged. Thus, appellant has not established a

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<sup>12</sup> Ms. Lynn indicated that after appellant was cleared of wrongdoing he was paid for the days that he was suspended. The Board notes that this retroactive payment would not, in itself, show wrongdoing by the employing establishment.

<sup>13</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>14</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>15</sup> See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

<sup>16</sup> See *William P. George*, 43 ECAB 1159, 1167 (1992).

compensable employment factor under the Act with respect to the claimed harassment and discrimination.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.<sup>17</sup>

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained a stress-related condition in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' March 29, 2006 decision is affirmed.

Issued: December 4, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>17</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).