United States Department of Labor
Employees' Compensation Appeals Board

D.P., Appellant	)	
and	)	
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, MUSKEGON AIR TRAFFIC CONTROL TOWER, Muskegon, MI, Employer	)	**Docket No. 06-1797** **Issued: December 21, 2006**

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 1, 2006 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated September 12, 2005 and May 11, 2006, which denied his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, 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 causally related to his federal employment.

FACTUAL HISTORY

On March 1, 2005 appellant, then a 57-year-old air traffic control specialist, filed an occupational disease claim alleging that chronic depression, anxiety, fatigue, high blood pressure and irritable bowel disease were caused by his employment. He first realized this was related to

his employment through therapy on February 27, 2005. Appellant stopped work on September 15, 2004 because he was taking a disqualifying medication. He also submitted a Form CA-7 claim for compensation beginning September 15, 2004. By letters dated May 10 and June 13, 2005, the Office informed appellant of the evidence required in support of his claim.

Appellant submitted several statements in which he noted that he worked as an air traffic controller and was fired in 1981 during the Professional Air Traffic Controllers Organization (PATCO) strike. He was rehired in June 1997 and alleged that anti-PATCO sentiment existed nationwide. Appellant transferred, at his request, from the Livermore tower to Grand Rapids late in 2000 and reported problems encountered with his transfer request. He failed training at Grand Rapids, noting that traffic dropped off after September 11, 2001. Appellant "had some reservations about management intentions" and that, on January 10, 2002, he failed a skill check and his training was terminated, after which he negotiated a transfer to Muskegon. After his transfer was approved, he alleged that he was improperly called into a manager's office and was told to clean out his locker, turn in his keys and report to Muskegon in the morning, arguing that there was no need for the urgency. Appellant contended that his stress-related condition was caused by the techniques and practices used in his training at both the Grand Rapids and Muskegon facilities. He alleged that he was given conflicting training instructions from different trainers. Appellant stated that Mark Stoll, one of his trainers at Muskegon, consistently humiliated him and that his training was excessively long. He failed a skill check in September 2003 and his training was terminated but was restarted in March 2004. Appellant alleged that the training was improperly conducted because a supervisor was "gunning" for him. He stated that his high level of performance confidence began to wane in the summer of 2004.

Appellant contended that he was not reimbursed promptly for expenses incurred while training in Oklahoma or for required medical testing and this affected his credit rating. He reported being cursed at on several occasions, that he was called the "old man" and was subjected to disparaging comments, including that he would be fired. Appellant alleged that the conference room where he studied was improperly used for poker games and that he was improperly denied a spot leave request in the summer of 2003. He was subjected to a widespread environment of hostility daily with passive aggressive disrespect. Appellant's health began to deteriorate in 2002 when his blood pressure increased and, in 2003, he realized he was depressed and was referred to a psychologist by the Employee Assistance Program. He also developed irritable bowel syndrome and fatigue. Appellant's condition worsened to the degree that the psychologist recommended a change in medication and medical leave.

In an April 1, 2004 report, Dr. Steven C. Griffioen, psychologist, noted that he began treating appellant in October 2003. He reported appellant's employment history and performance anxiety and other stress-related symptoms "that appear to be directly related to work expectations, his work environment, as well as training and supervisory concerns." By report dated September 9, 2004, Dr. Griffioen advised that appellant had been prescribed Lexapro and needed four to six weeks' leave. In a March 10, 2005 report, he noted appellant's report of stress at work and that he was on medical leave. Dr. Griffioen provided psychological test results and diagnosed dysthymic disorder, generalized anxiety disorder, adjustment disorder with depressed mood, high blood pressure, diarrhea, fatigue and irritable bowel syndrome. He described appellant's treatment with counseling and medication and stated that "per his own report, he was dissatisfied with his work productivity and felt that the stress at work was building

to the point of considering the Family and Medical Leave Act option he implemented in the fall of 2004." Dr. Griffioen concluded that a return to work would exacerbate appellant's symptoms. In a December 8, 2005 report, he described appellant's treatment regimen, advising that he had further testing on October 19, 2005 and showed no improvement. Appellant also submitted a record of his blood pressure test results from March 26, 2001 to December 6, 2004.

The employing establishment submitted a September 22, 2004 report in which Dr. Robert E. Liska, deputy regional flight surgeon, noted that appellant's medical clearance was withdrawn because a prescribed medication was incompatible with safety-related duties. A notice of personnel action indicated that appellant was given an "organization success increase" effective January 9, 2005. In an undated statement, Michael L. Grocky, facility manager, countered appellant's allegations. He stated that, when appellant first transferred to the Muskegon facility, he explained the training program and noted that appellant did not always follow the instructions of his supervisors. In training reports Mr. Stoll, a lead instructor for training, praised correct responses and explained specific errors made by appellant and that appellant's primary trainer was a PATCO rehire. Mr. Grocky explained that in June 2003 appellant was given written notice that he was not consistently performing at a level needed for certification on local control, which cited to specific examples and advised him of the specific areas that needed improvement. On July 16 and August 4, 2003 certification skill checks were conducted which demonstrated areas needing improvement. Mr. Grocky noted that the information and recommendations of the training review boards from both Grand Rapids and Muskegon were so similar that in October 2003 he proposed that appellant's training be discontinued. Appellant disagreed and a lengthy review process at the regional level was undertaken. In late February 2004, it was decided that appellant could begin the complete training process again and on March 31, 2004 he began training anew. Mr. Grocky noted that it should take approximately 150 hours to certify on the local control position. However, appellant had been in training for two years and had amassed in excess of 250 training hours. His training was started at zero hours but again he had difficulty with various training requirements, all of which were documented in training reports. Mr. Grocky reported that by the end of July 2004 appellant had utilized 85 of his allotted 150 additional hours and was still not progressing, making serious mistakes that could result in errors or accidents.

Mr. Grocky also noted that, when employees brought in a card table, he informed them that no gambling was allowed but that they could play cards, read, etc. while on break as long as it did not interfere with training.[1] The reimbursement delay for appellant's expenses in Oklahoma was caused by a change in procedures, which was explained to appellant. Mr. Grocky stated that no spot annual leave was approved for the air fair in the summer of 2003 and advised that he had received a number of complaints concerning appellant from pilots and the fixed base operator.

By decision dated September 12, 2005, the Office denied the claim, finding that appellant failed to establish that he sustained an injury in the performance of duty. On October 11, 2005 he requested a hearing, that was held on February 23, 2006. At the hearing appellant testified that he had not worked since September 2004, was still under treatment with Dr. Griffioen and

[1] A second controller was in training with appellant.

had filed for a disability retirement. He stated that he was confident at Grand Rapids but that after his transfer to Muskegon, he began to have self-doubt while undergoing training and acknowledged that he was not doing the job correctly. Appellant also alleged that he was not given proper keyboard training at Muskegon. In a May 11, 2006 decision, an Office hearing representative affirmed the September 12, 2005 decision, as modified to find that appellant failed to establish a compensable factor of employment and, therefore, his injury was not sustained in the performance of duty.

LEGAL PRECEDENT

To establish appellant's claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his 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.[3] 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.[4]

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*,[5] 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.[6] There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.[7] 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

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

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

[4] *Id.*

[5] 28 ECAB 125 (1976).

[6] 5 U.S.C. §§ 8101-8193.

[7] *See Robert W. Johns*, 51 ECAB 137 (1999).

work.[8] A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.[9]

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.[10] Where 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.[11] Administrative and personnel matters include matters involving the training of employees[12] and although the handling of leave requests and attendance matters are generally related to employment, they are administrative functions of the employer and not duties of the employee.[13] Denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment absent a showing of error or abuse as they do not involve the employee's ability to perform his or her regular or specially assigned work duties but rather constitute a desire to work in a different position.[14]

For harassment or discrimination to give rise to a compensable disability, 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. A claimant must establish a factual basis for his or her allegations that the harassment occurred with probative and reliable evidence.[15]

ANALYSIS

The Board finds that appellant failed to establish that he sustained a stress-related condition in the performance of duty because he did not establish his allegations as factual.[16] Appellant contended that the training he received at the Grand Rapids and Muskegon facilities was not done properly. Training, however, is an administrative function of the employing establishment and absent error or abuse is not compensable.[17] Mr. Grocky explained that

[8] *Lillian Cutler, supra* note 5.

[9] *Roger Williams*, 52 ECAB 468 (2001).

[10] *Charles D. Edwards*, 55 ECAB 258 (2004).

[11] *Kim Nguyen*, 53 ECAB 127 (2001).

[12] *James E. Norris*, 52 ECAB 93 (2000).

[13] *Joe M. Hagewood*, 56 ECAB ____ (Docket No. 04-1290, issued April 26, 2005).

[14] *Hasty P. Foreman*, 54 ECAB 427 (2003).

[15] *James E. Norris, supra* note 12.

[16] *See Bobbie E. Daly*, 53 ECAB 691 (2002).

[17] *Id.*

appellant was given ample opportunity to complete his training and provided support to show why appellant did not progress. Other than appellant's testimony at the hearing that he was not provided keyboard training, the thrust of his contentions was in regard to the manner in which it was managed and the personnel who conducted the training, not that the training was inadequate *per se*. The Board finds that appellant failed to provide a sufficiently detailed explanation in support of his contention that the training was improperly conducted and he failed to establish that the employing establishment committed error or abuse with respect to his training.[18]

Similarly, there is no evidence to show that appellant's spot leave request in the summer of 2003 was improperly denied. Mr. Grocky explained that no one was granted spot leave the weekend of the air fair. Thus, there is no evidence of error or abuse in this administrative matter.[19] Appellant also generally contended that his transfers from Livermore and Grand Rapids were not handled properly. However, he provided no evidence that the employing establishment committed error or abuse regarding these transfers. In fact, both were made at his request. Appellant, therefore, failed to establish a compensable factor of employment regarding these administrative matters.

Regarding appellant's contentions that he was not promptly reimbursed for travel and medical expenses which affected his credit rating, again he submitted nothing to either document the expenses or to show that his credit rating was damaged. A claimant must establish a factual basis for his or her allegations[20] and appellant did not do so in this regard. He, therefore, failed to establish this as a compensable employment factor.

Appellant also questioned management intentions, alleged that there was an anti-PATCO sentiment at the employing establishment, that he was the subject of disparaging comments and generally alleged that he was harassed by the employing establishment. An employee's complaints concerning the manner in which a supervisor performs his or her duties as a supervisor or the manner in which a supervisor exercises supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act.[21] Although such matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[22] In this case, appellant provided no supportive evidence to support these contentions such as witness statements or grievance or Equal Employment Opportunity Commission decision documenting his allegations. He failed to establish that the employing establishment's management acted unreasonably[23] or to establish that he was treated in a harassing manner.[24] The Board, therefore, finds that appellant did not establish these as compensable.

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[18] *See Brian H. Derrick*, 51 ECAB 417 (2000).

[19] *See Charles D. Edwards, supra* note 10.

[20] *Roger Williams, supra* note 9.

[21] *Marguerite Toland*, 52 ECAB 294 (2001).

[22] *Dennis J. Balogh, supra* note 3.

[23] *Janice I. Moore*, 53 ECAB 777 (2002).

[24] *James E. Norris, supra* note 12.

As appellant did not submit sufficient probative evidence to establish a compensable factor of employment, he failed to establish that he sustained an employment-related condition.[25]

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a stress-related condition causally related to his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 11, 2006 and September 12, 2005 be affirmed.

Issued: December 21, 2006
Washington, DC

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

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

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

[25] Because appellant failed to establish a compensable employment factor, it was not necessary to consider the medical evidence. *Marlon Vera*, 54 ECAB 834 (2003).