

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

D.B., Appellant)

and)

**DEPARTMENT OF HOMELAND SECURITY,
TRANSPORTATION SECURITY
ADMINISTRATION, Syracuse, NY, Employer**)

**Docket No. 06-1906
Issued: December 27, 2006**

Appearances:
Joseph F. Shanley, 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 14, 2006 appellant filed a timely appeal of a June 29, 2006 merit decision of the Office of Workers' Compensation Programs. 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 has established an emotional or physical condition causally related to compensable work factors.

FACTUAL HISTORY

On May 6, 2005 appellant filed an occupational disease claim (Form CA-2). In January 2005, he was found to have high blood pressure that his physician related to stress in his job. Appellant alleges that the employing establishment refused to file workers' compensation paperwork on his behalf and he was told to use all his sick and annual leave before filing. He submitted a narrative statement indicating that he began work in August 2002 as an airport security screener after a career as a high school teacher. Appellant applied for various

promotions but never made it to the interview stage. He was also denied leave. Appellant alleged that management was constantly threatening its employees with disciplinary action. His last day at work was January 12, 2005, when he had difficulty getting to his duty station on time because he was delayed getting through security. Appellant arrived just before his starting time, was given permission to go to the restroom, but when he returned a supervisor threatened to write him up for being late and dock his pay by 15 minutes.¹ He indicated in a statement received on November 3, 2005 that he became very upset and was threatened with a disciplinary action for insubordination. When appellant finished his work shift he had a complete emotional collapse.

In a response received on September 23, 2005, the employing establishment indicated that, with respect to the January 12, 2005 incident, appellant was not disciplined nor was his pay docked. It indicated that all of appellant's sick leave requests were approved, and of 13 annual leave requests, 8 were authorized and 5 were denied for operational reasons. With respect to the compensation claim, appellant had been advised to come to the administrative offices to complete any necessary paperwork.

Appellant's representative submitted a July 8, 2005 letter asserting that appellant had filed complaints of discrimination based on age, religion, reprisal and union activity. The record contains a statement from a coworker, Eugene Leimer, dated October 20, 2005. Mr. Leimer stated that appellant provided an affidavit in his lawsuit for wrongful termination. About one month after this, appellant began to have problems with management.

By decision dated January 26, 2006, the Office denied the claim for compensation. It found that appellant had not established compensable work factors with respect to his claim.

Appellant requested a hearing before an Office hearing representative, which was held on May 22, 2006. At the hearing he noted that his job was not stressful. Appellant noted that there was a schedule change to be effective in January 2005 and he would no longer have Sunday as an unscheduled day. He submitted an Equal Employment Opportunity (EEO) Commission decision dated March 13, 2006. The administrative judge found that appellant did not state a claim that the employing establishment failed to accommodate his religious practices, did not submit evidence to demonstrate discrimination based on age or religion, when it denied promotion or bonuses and did not show retaliation for prior EEO activity.

The hearing representative, in a decision dated June 29, 2006, affirmed the January 26, 2006 decision. The hearing representative found that appellant had not established a compensable work factor in this case.

LEGAL PRECEDENT

To establish a 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 psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence

¹ Appellant stated that he had benign prostatic hyperplasia (BPH) which causes frequent urination.

establishing that the identified compensable employment factors are causally related to his emotional condition.²

The Board has held that 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 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. 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 work duties.³

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 reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.⁴

The Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors, 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.⁵ As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim; the claim must be supported by probative evidence.⁶

ANALYSIS

The initial question presented is whether appellant has alleged and substantiated compensable work factors with respect to his claim for compensation. He acknowledged that he did not find his actual job duties as a screener stressful. In his initial statement, appellant alleged generally that he was improperly denied promotions and requests for leave, and there were constant threats of disciplinary actions. He also alleged problems with the filing of his workers' compensation claim. It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather

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

³ *Ronald J. Jablanski*, 56 ECAB ____ (Docket No. 05-482, issued July 13, 2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁴ *Id.*

⁵ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁶ *See Charles E. McAndrews*, 55 ECAB 711 (2004).

than duties of the employee.⁷ An administrative or personnel matter may be a factor of employment only where the evidence discloses error or abuse by the employing establishment.⁸

The employing establishment explained that appellant's leave requests were generally approved, and if not it was for operational needs. Appellant referred to threats of disciplinary actions, without providing specific examples, except a January 12, 2005 incident as discussed below. As to the workers' compensation claim, the employing establishment indicated that appellant was provided an opportunity to complete the paperwork. There is no probative evidence of error or abuse regarding leave, disciplinary actions or the processing of a compensation claim.

Appellant alleged, with respect to administrative actions such as promotions and bonuses, that he was subject to age or religious discrimination. There is, however, no probative evidence of discrimination in this case. A claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁹ An employee's allegation that he was discriminated against is not determinative of whether or not harassment occurred.¹⁰ The EEO decision found no discrimination¹¹ nor is there any evidence of record sufficient to establish a compensable factor based on discrimination. With respect to a schedule change, the EEO decision noted that the change did not go into effect until after appellant had stopped working on January 12, 2005, and thus he had not shown he was harmed by the change. The Board finds no probative evidence to establish that an administrative action was the result of discrimination.

There is a witness statement from a former coworker suggesting that appellant was subject to reprisal or retaliation based on filing an affidavit in a lawsuit brought for wrongful termination. No probative evidence was presented on this allegation. The EEO decision briefly noted that there was no indication that the lawsuit involved issues relating to discrimination or prior EEO activity and therefore no evidence of reprisal based on EEO activity. Appellant has not established a compensable factor with respect to reprisal or retaliation.

Appellant did discuss a specific incident occurring on his last day of work, when he alleged that he was unfairly threatened with disciplinary action for arriving from the restroom shortly after his shift began. This is an administrative action and he has to establish error or abuse to substantiate a compensable work factor. The employing establishment reported that appellant was not disciplined for his actions on January 12, 2005. While he may have felt circumstances did not warrant even a threat of disciplinary action, the record does not establish abusive actions by the employing establishment sufficient to establish a compensable work factor.

⁷ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

⁸ *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁹ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

¹⁰ *Helen P. Allen*, 47 ECAB 141 (1995).

¹¹ The record contains a portion of a preliminary EEO decision regarding the work schedule change as a failure to accommodate religious practices but the final decision found no discrimination.

The Board finds that the record does not establish a compensable work factor in this case. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.¹²

CONCLUSION

Appellant did not establish a compensable work factor as contributing to an emotional or physical injury, and therefore the Office properly denied the claim.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 29 and January 26, 2006 are affirmed.

Issued: December 27, 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

¹² See *Margaret S. Krzycki*, *supra* note 5.