

grievances “swept under the carpet”; not being selected for a safety captain position and being mistreated by supervisor Hayward Washington.¹ He alleged that Mr. Washington forged another supervisor’s signature on a document so that he could tell appellant that the safety captain position was filled; Mr. Washington made slanderous comments about him to his new supervisor, Vincent Arrijoa, when he started work at another post office and Mr. Arrijoa commented about appellant’s grievances filed at his former workplace. Appellant noted that Mr. Arrijoa screamed at him on February 7, 2002 regarding a pay adjustment form and supervisor Jesse Kwong screamed obscenities at him in 1987. He alleged discrimination because of his race (Hispanic), being closely monitored by Mr. Washington and Mr. Arrijoa and having his work criticized. He was asked to clean sewers, storm drains and tunnels, being denied overtime, not being informed about a grievance meeting and charged with absence without official leave (AWOL). Appellant stated that he received harassing “hang up” telephone calls from the employing establishment at home when he was on sick leave, that management failed to investigate his allegation of being assaulted three times in 2001 by Mr. Washington and being harassed by him during the Thanksgiving 2001 holiday week, and being taunted by supervisor Ken Carney with comments such as, “They’re talking about you,” “I heard about you” and “Troublemaker.” Appellant had to sign his annual performance review on the workroom floor, was assigned to clean desk drawers while an area that was roped off with yellow caution tape and his compensation claim was handled improperly. Appellant indicated that he first became aware of his emotional condition on April 27, 1999.

Appellant submitted witness statements indicating that Mr. Washington told him that he would not last long at the employing establishment and checked his work frequently; Mr. Arrijoa would not permit appellant to ask a question about attendance at a February 15, 2002 meeting and Mr. Carney made comments about appellant such as, “Here comes trouble,” and “I heard about you.”

Appellant submitted medical evidence in support of his claim.

A February 28, 2000 grievance settlement agreement indicated that appellant’s allegation that management created a hostile work environment was settled when the parties mutually agreed that the issue was resolved and, therefore, moot.

By decision dated June 10, 2002, the Office denied appellant’s claim on the grounds that the factual and medical evidence failed to establish that his emotional condition was causally related to a compensable factor of employment.

Appellant requested reconsideration.

By decision dated December 15, 2003, the Office modified the June 10, 2002 decision to incorporate specific findings of fact regarding appellant’s allegations against the employing establishment. It affirmed the denial of appellant’s emotional condition claim on the grounds that he failed to establish that his emotional condition was caused by a compensable factor of employment.

¹ Appellant alleged that Mr. Washington screamed at him in front of others, told him he would not last long at the employing establishment, tore up his notes and snatched a radio from his hands.

Appellant requested reconsideration and submitted additional evidence. An April 4, 1988 final decision by the employing establishment regarding appellant's Equal Employment Opportunity (EEO) Commission complaint indicated that appellant alleged discrimination on the basis of race (Hispanic). In a settlement agreement, appellant's supervisor agreed that appellant would be treated with dignity and respect and no reprisal would be taken against him for seeking EEO counseling. Appellant refused the proposed settlement agreement and the employing establishment denied further processing of his complaint on the grounds that he was not an aggrieved person within the meaning of the EEO regulations because his complaint had been fully remedied and/or he failed to allege an unresolved specific personal injury. The employing establishment informed appellant of his right to appeal its decision to the EEO Commission or to federal district court.

By decision dated March 11, 2004, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant further merit review.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act² provides for the payment of compensation benefits for injuries sustained in the performance of duty. To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying compensable employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.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 in the type of employment situations giving rise to a compensable emotional condition under the Act. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the coverage under the Act.⁵ When an employee experiences emotional distress in carrying out his employment duties and the medical evidence establishes that the disability resulted from his 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 an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.⁶ On the other hand, the disability is not

² 5 U.S.C. §§ 8101-8193.

³ *George C. Clark*, 56 ECAB ____ (Docket No. 04-1573, issued November 30, 2004).

⁴ 28 ECAB 125 (1976).

⁵ *George C. Clark*, *supra* note 3.

⁶ *Lillian Cutler*, *supra* note 4.

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.⁷ Generally, actions of the employing establishment in administrative matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act.⁸ However, 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.⁹

In cases involving emotional 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.¹⁰ 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.¹¹

ANALYSIS -- ISSUE 1

Appellant alleged that he had an emotional reaction to management failing to implement suggestions he submitted, not being allowed to participate in an ideas and safety programs, not being selected for a safety captain position, being closely monitored by Mr. Washington and Mr. Arrijoja and having his work criticized, being asked to redo work, being asked to clean sewers, storm drains and tunnels, being denied overtime, not being informed about a grievance meeting, being charged with being AWOL, having to sign his annual performance review on the workroom floor, having a supervisor assign him to clean desk drawers and an area that was roped off with yellow caution tape and having his compensation claim handled improperly. These allegations involve administrative or personnel actions that are not compensable under the Act absent evidence of error or abuse.¹² The Board has held that mere disagreement or dislike of a supervisory or management action will not be compensable without a showing, through supporting evidence, that the incidents or actions complained of were unreasonable.¹³ In this case, appellant did not provide sufficient evidence establishing that his supervisors erred or acted abusively in these administrative matters. There is insufficient evidence of record to establish that management acted unreasonably in making job assignments, monitoring appellant's work

⁷ *Id.*

⁸ *Michael L. Malone*, 46 ECAB 957 (1995).

⁹ *Charles D. Edwards*, 55 ECAB ____ (Docket No. 02-1956, issued January 15, 2004).

¹⁰ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹¹ *Id.*

¹² *Michael A. Salvato*, 53 ECAB 666 (2002); *Lorna R. Strong*, 45 ECAB 470 (1994).

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

and leave usage, handling the employee suggestions program, denying overtime and handling appellant's grievances and compensation claim. Therefore, these allegations regarding administrative and personnel matters are not deemed compensable factors of employment.

Appellant has made several allegations of harassment by his supervisors. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute a compensable employment factor.¹⁴ However, for harassment and 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.¹⁵

Appellant alleged that he was ignored and mistreated during meetings and not allowed to ask questions, that his grievances were "swept under the carpet" by management, Mr. Washington screamed at him in front of others, told him he would not last long at the employing establishment, tore up his notes and snatched a radio from his hands, that Mr. Washington forged another supervisor's signature on a document so that he could tell appellant a safety captain position was filled, that Mr. Washington made slanderous comments about him to Mr. Arrijoja, that Mr. Arrijoja commented about grievances appellant filed at his former workplace, that Mr. Arrijoja and Mr. Kwong screamed at him, that he was discriminated against based on race that he received harassing telephone calls from the employing establishment when he was on sick leave, that management failed to investigate his allegation that Mr. Washington assaulted and harassed him and that Mr. Carney taunted him with comments such as, "They're talking about you," "I heard about you" and "Troublemaker." Appellant has not submitted sufficient probative evidence to support his allegations of discrimination and harassment, such as a formal finding of error or abuse by an appropriate adjudicatory agency such as the EEO Commission or Merit Systems Protection Board, to establish these allegations of harassment as factual. A February 28, 2000 grievance settlement agreement indicated that appellant's allegation that management created a hostile work environment was settled when the parties mutually agreed that the issue was resolved and therefore, moot. The settlement agreement did not make any finding of error, abuse or wrongdoing by the employing establishment. Therefore, it does not establish appellant's allegations of harassment as factual. Appellant submitted witness statements indicating that Mr. Washington told appellant that he would not last long at the employing establishment and behaved in an unprofessional manner and Mr. Carney made derogatory comments regarding appellant. However, it appears that the witnesses merely signed statements prepared by appellant and did not provide sufficient detail of the incidents they purportedly observed for a determination to be made as to whether the incidents occurred as alleged. Consequently, the witness statements are of reduced probative value and do not establish a compensable factor of employment.

¹⁴ *Charles D. Edwards, supra* note 9.

¹⁵ *Donna J. DiBernardo, 47 ECAB 700 (1996).*

Appellant has failed to establish that his emotional condition was causally related to a compensable factor of employment. Therefore, the Office properly denied his claim.¹⁶

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation.¹⁷ The Act states:

“The Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application. The Secretary, in accordance with the facts found on review may --

(1) end, decrease, or increase the compensation awarded; or

(2) award compensation previously refused or discontinued.”

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent evidence not previously considered by the Office.¹⁸ When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.¹⁹

ANALYSIS -- ISSUE 2

In support of his request for reconsideration, appellant submitted an April 4, 1988 final decision by the employing establishment regarding an EEO complaint of racial discrimination. The employing establishment denied further processing of his complaint on the grounds that a remedy had been provided to appellant. The employing establishment informed appellant of his right to appeal its decision to the EEO Commission or federal district court. There is no copy of record of a final EEO decision or court decision with a finding that the employing establishment discriminated against appellant.²⁰ Further, this 1988 employing establishment decision does not address appellant’s other allegations in his emotional condition claim. Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument or submit relevant and pertinent evidence not previously considered by the Office. Therefore, it properly denied his request for further merit review of his claim.

¹⁶ Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence. See *Barbara J. Latham*, 53 ECAB 316 (2002); *Garry M. Carlo*, 47 ECAB 299 (1996).

¹⁷ 5 U.S.C. § 8128(a).

¹⁸ 20 C.F.R. § 10.606(b)(2).

¹⁹ 20 C.F.R. § 10.608(b).

²⁰ In contrast to mere charges in an EEO complaint, a final EEO decision constitutes evidence that is instructive as it provides a substantive review of the employee’s allegations. See *Michael A. Deas*, 53 ECAB 208 (2001).

CONCLUSION

The Board finds that appellant failed to establish that appellant failed to establish that he sustained an emotional condition causally related to a compensable factor of employment. The Board further finds that the Office properly denied his request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 11, 2004 and December 13, 2003 are affirmed.²¹

Issued: January 23, 2006
Washington, DC

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

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

²¹ Willie T.C. Thomas, who participated at oral argument and in the preparation of this decision, retired as of January 3, 2006.