

alleged that Ms. Broda retaliated complaints against appellant filed by forging documents, disciplining him, requiring drug tests, making schedule assignments that displeased appellant, denying overtime and refusing to assist him with an oversized pallet in August 2000. Appellant alleged that he was improperly placed on nonwork emergency placement status on March 29, 2004 for making a threat to a coworker on March 26, 2004 and being removed from his job effective June 25, 2004 due to the threat.¹ The employing establishment denied his allegations.

In a statement dated September 29, 2004, Willie Santiago indicated that management disciplined appellant due to infractions for which other employees were not disciplined, followed appellant as he performed his job, gave him additional assignments, scheduled him to work on holidays and filed false charges against appellant.

In a September 13, 2004 report, Dr. Edwin W. Hoepfer, an attending psychiatrist, diagnosed chronic post-traumatic stress disorder and major depression due to “recent work stressors and stressors from serving in Viet Nam.” He stated:

“In March ... 2004, [appellant] had difficulty with a supervisor at work which worsened his symptoms of post-traumatic stress disorder.... He allegedly threatened his supervisor which ... would not have happened if [appellant] were post-traumatic stress disorder free.... This encounter with his supervisor definitely agitated and worsened his symptoms of post-traumatic stress disorder....

“Because of [appellant’s] service-connected post-traumatic stress disorder, high anxiety and anger levels, [he] can no longer sustain work or social relationships. Therefore, I consider him permanently and totally disabled....”

By decision dated November 10, 2004, the Office denied appellant’s claim on the grounds that he failed to establish that his emotional condition was causally related to a compensable factor of his employment.

Appellant requested reconsideration and submitted additional evidence.

In an arbitration award dated December 3, 2004, the arbitrator found that the employing establishment failed to establish that appellant’s comments to a coworker on March 26, 2004 constituted a threat. The arbitrator found that the employing establishment did not have just cause to issue the April 22, 2004 notice of proposed removal to him and directed that he be reinstated with full back pay benefits and seniority.

¹ On April 22, 2004 appellant received a notice of proposed removal for verbally threatening a coworker on March 26, 2004. The employing establishment indicated that he told a coworker that, “If I was [not] a religious person I would kick your butt.” Effective June 25, 2004 the employing establishment removed appellant from his position for the incident on March 29, 2004. Prior to the April 22, 2004 notice of proposed removal, disciplinary actions against appellant included: a 14-day suspension in October 2002 for delay of mail, a 14-day suspension in January 2002 for improper conduct, a 7-day suspension in August 2000 and a letter of warning in May 2000 for failure to follow a supervisor’s instructions.

In a February 15, 2005 report, Dr. Hoepfer stated that the false allegations made by the employing establishment were the major cause for the worsening of appellant's post-traumatic stress disorder. He stated:

“On March 26, 2004 [appellant] was falsely accused of threatening a fellow employee.... Thus, the [employing establishment's] false allegation was the reason he was unable to return to work.”

* * *

“When the [employing establishment] chose to place [appellant] in an off[-]duty status around March 29, 2004, he began having worsening delusions, hallucinations, anger outbursts, deteriorating recent memory and distressing nightmares accompanied with poor sleep. When I treated him on April 5, 2004 his post-traumatic stress disorder symptoms were so much worse I had to immediately place him on sick leave from his employment....

“Within a reasonable degree of medical certainty, the relapse of his post-traumatic stress disorder is directly related to the described actions that the [employing establishment] initiated against him.”

By decision dated July 28, 2005, the Office denied modification of the November 10, 2004 decision.²

LEGAL PRECEDENT

The Federal Employees' Compensation Act³ 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.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 in the type of employment situations giving rise to a

² Appellant submitted additional evidence subsequent to the July 28, 2005 decision. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. See 20 C.F.R. § 501.2(c). The Board has no jurisdiction to consider this evidence for the first time on appeal.

³ 5 U.S.C. §§ 8101-8193.

⁴ *George C. Clark*, 56 ECAB ____ (Docket No. 04-1573, issued November 30, 2004).

⁵ 28 ECAB 125 (1976).

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.⁶ 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.⁷ 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.⁸ 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.⁹ 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.¹⁰

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.¹¹ 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.¹²

ANALYSIS

Appellant alleged that Ms. Broda closely monitored him, scheduled him for less than an eight-hour day on one occasion, scheduled assignments that displeased him, denied overtime, selected a white employee for an acting supervisor position, disciplined him and required drug tests. These allegations involve administrative or personnel actions that are not compensable under the Act, absent evidence of error or abuse. The Board has held that mere disagreement or dislike of a supervisory or management action will not be compensable without a showing

⁶ *George C. Clark*, *supra* note 4.

⁷ *Lillian Cutler*, *supra* note 5.

⁸ *Id.*

⁹ *Michael L. Malone*, 46 ECAB 957 (1995).

¹⁰ *Charles D. Edwards*, 55 ECAB ___ (Docket No. 02-1956, issued January 15, 2004).

¹¹ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹² *Id.*

through supporting evidence that the incidents or actions complained of were unreasonable.¹³ The employing establishment denied appellant's allegations. Although Mr. Santiago indicated the management acted abusively in disciplining appellant, monitoring his work, giving him additional assignments and in making scheduling assignments, he provided insufficient detail regarding these matters to establish error or abuse by the employing establishment. The Board finds that he has not provided sufficient evidence that the employing establishment acted unreasonably in handling these administrative matters. Therefore, the allegations regarding administrative matters do not establish a compensable factor of employment.

Appellant has made several allegations of harassment by Ms. Broda. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers, are established as occurring and arising from his 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 Ms. Broda harassed and discriminated against him when she assigned unsafe tasks, threatened to fire African-American employees, forged documents and refused to assist him with an oversized pallet. However, he provided insufficient evidence to establish these allegations as factual. Mr. Santiago indicated that the employing establishment harassed appellant by filing false charges against him. However, he provided insufficient detail concerning this allegation. Therefore, the allegations of harassment are not sufficient to establish a compensable factor of employment.

Appellant also alleged that the employing establishment erred or acted abusively when it placed him on nonwork emergency placement status on March 29, 2004 for making a threat to a coworker, issued a notice of proposed removal on April 22, 2004 and removed him from his job effective June 25, 2004. In the arbitration award dated December 3, 2004, the arbitrator found that the employing establishment failed to establish that his comments to a coworker on March 26, 2004 constituted such a significant threat that the employing establishment was justified in issuing the April 22, 2004 notice of proposed removal to him. The Board finds that this arbitration award establishes that the employing establishment erred or acted abusively in issuing the notice of proposed removal.

However, appellant's burden of proof is not discharged by the fact that he has established an employment factor which may give rise to a compensable disability under the Act. As noted above, he must also submit rationalized medical evidence establishing that his claimed emotional condition is causally related to an accepted compensable employment factor.¹⁶

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

¹⁴ *Charles D. Edwards*, *supra* note 10.

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

¹⁶ *Brian E. Flescher*, 40 ECAB 532 (1989); *Ronald K. White*, 37 ECAB 176 (1985).

Dr. Hoeper, an attending psychiatrist, opined that the false allegations made by the employing establishment were the major cause for the worsening of appellant's post-traumatic stress disorder. He stated: "On March 26, 2004 [appellant] was falsely accused of threatening a fellow employee.... Thus, the [employing establishment's] false allegation was the reason he was unable to return to work." However, Dr. Hoeper's opinion is not based on a complete and accurate factual background. The evidence of record, including the arbitration decision, reflects that appellant did make a statement which could be construed as a threat but the proposed removal was not an appropriate resolution of the matter. Therefore, he was not "falsely accused" by the employing establishment of making a threat. Due to the inaccurate factual background upon which Dr. Hoeper's opinion was based, his medical report is not sufficient to establish that appellant's post-traumatic stress disorder was causally related to the incident on March 26, 2004.

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.

CONCLUSION

The Board finds that appellant failed to establish that he sustained an emotional condition causally related to a compensable factor of employment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 7, 2005 and November 10, 2004 are affirmed.

Issued: January 23, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board