



In a statement dated August 29, 2004, appellant alleged that he sustained stress due to the difficulty of performing his work as a claims examiner. He indicated that he began working as a claims examiner on September 30, 1996 and, beginning in late 2000 and early 2001, he began to feel increased stress and anxiety over his ability to perform his work duties. Appellant asserted that he experienced an increase in his workload due to such factors as his promotion to more demanding positions and the departure of coworkers. He claimed that the employing establishment management did not want to listen to employees' concerns about the increased workload and prematurely ended a meeting several years earlier when the issue was raised. Appellant asserted that when he raised workplace issues, management told him that he would not have a problem if he talked less at work and used less leave. He alleged that the fiscal officer would get upset about the duties of his job or the actions of a given claims examiner and would shout, pound his fists on a desk or wall and gnash his teeth.

Appellant indicated that he was upset by the fact that a coworker was unfairly placed on a performance improvement plan (PIP) several years prior and that management told him the matter was none of his business. He claimed that management was not responsive to his concerns that he could not deal with higher caseloads and increased standards without compromising the quality of his work and the impartiality of the decisions he drafted. Appellant alleged that during a meeting when he raised such concerns, employing establishment officials advised him that his attitude would not have been tolerated "in their day" and "warned me about the consequences of ever having to call me in the office again."

Appellant stated that in November 2001, he was transferred to the post-adjudication unit and asserted that the transfer was a deliberate attempt to ensure that he would be placed on a PIP. He claimed that the unit had a reputation as a "dumping ground" and an undesirable place to work. Appellant indicated that his new supervisor, James Andrews, was known as the "axe man" for finding ways to eliminate undesirable employees. He wondered which employee would be placed on a PIP next, whether it would be himself or another coworker who had performance problems. Appellant asserted that between 2002 and 2004 his caseload and work standards continued to increase and that management increasingly looked for ways to deny claims by shortening the periods claimants could respond to information requests. Appellant asserted that the volume of mail he had to handle began to increase and that delays in receiving documents made his job more difficult.

Appellant claimed that he often had to work through his lunch period or after the formal end of the workday in order to complete his assignments and asserted that his coworkers also found it difficult to meet their work standards. Beginning in February 2003, his workload increased because his work unit received cases from Maryland, which it had not previously been required to handle. Appellant alleged that there was an "increase in bickering" between work units regarding such matters as deadlines. He indicated that a good number of claims examiners had been hired since January 2004 but that he was already "burnt out" by the time they began training. Appellant had a number of nonwork stresses of a personal and familial nature, but emphasized that his work stresses were predominant.<sup>1</sup>

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<sup>1</sup> The record contains other statements in which appellant discussed these nonwork stresses.

Appellant submitted several memorandums and email transmissions, dated between May 2002 and May 2004 and addressed to employing establishment officials, in which he discussed difficulties in competing his work in a timely matter. He also submitted documents from 2001 concerning a notice of suspension issued to a coworker and a September 2000 statement of a union representative before Congress.

In an August 25, 2004 report, Dr. Gretta Leopold, an attending Board-certified psychiatrist, indicated that appellant sustained major depression and generalized anxiety disorder. She stated: “[Appellant’s] illness is related to work stress, especially demands for increasing quantity of work made of a person who is too conscientious to sacrifice quality of work, who feels that his complaints mark him as a troublemaker.”

By decision dated September 17, 2004, the Office denied appellant’s emotional condition claim on the grounds that he did not establish any compensable employment factors.

Appellant requested reconsideration of his claim on September 4, 2005 and submitted a September 4, 2005 statement, which was similar to his August 29, 2004 statement. He alleged that when he raised concerns over work matters, management made such statements as “There [i]s the door,” and “If you do n[o]t like it here, leave!” Appellant alleged that when he expressed concern about a disciplinary action taken against a coworker, a supervisor told him that he would be “squashed like a bug.” He further alleged that the Office failed to accommodate his medical condition and improperly terminated him. In an August 26, 2005 statement, he further discussed the course of his medical treatment, several documents from 2002 through 2004, in which he discussed problems in completing his work and a copy of a 2005 document concerning his claim before the Merit System Protection Board (MSPB) which challenged his termination. Appellant submitted additional medical evidence from Dr. Leopold.

In a May 26, 2005 statement, Charlotte Green, coworker, noted that she worked with appellant between September 2000 and May 2002. She asserted that appellant was a hardworking employee who made sure that he returned the telephone calls of claimants and fully addressed their concerns. Ms. Green claimed that this conscientious approach to his work made it difficult for appellant to meet the time constraints of management. She indicated that management emphasized the quantity of the work performed rather than its quality and that this approach often caused stress in employees who wanted to serve the interests of the claimants. Ms. Green alleged that examiners often worked on their own time to meet standards and asserted that telephone calls made in response to claimants’ calls were often cut short or not made at all.

In a statement dated August 12, 2005, Kenneth Gallashaw stated that, since he began working at the employing establishment in 1994, the Office had experienced a constant understaffing of claims examiners. No provisions were made for examiners who missed time from work for illnesses, emergencies or vacation. Mr. Gallashaw stated that he worked closely with appellant since he started at the employing establishment and observed that he did not take shortcuts in completing decisions and conscientiously took the time to advise claimants regarding their claims. He asserted that a number of employees had to work through lunches and after the formal end of the day and discussed problems dealing with large volumes of mail, which were often delivered in a tardy manner. Mr. Gallashaw claimed that Mr. Andrews acted

in a “harassing” and “intimidating” manner and asserted that Mr. Andrews treated him unfairly with respect to various work assignment and leave usage matters.

By decision dated January 19, 2006, the Office affirmed its September 17, 2004 decision.

### **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>2</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>3</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>4</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>5</sup>

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.<sup>6</sup> 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.<sup>7</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>5</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>6</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>7</sup> *Id.*

## ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. By decisions dated September 17, 2004 and January 19, 2006, the Office denied appellant's emotional condition 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 alleged that the employing establishment failed to accommodate his medical condition and improperly terminated him. He also claimed that the employing establishment failed to listen to his concerns about the increased workload at the office and his difficulties in completing his work. Regarding appellant's allegations that the employing establishment engaged in unfair disciplinary actions, improperly handled work accommodation requests and mishandled or ignored employee inquiries about workload issues, 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>8</sup> Although these types of matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>9</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>10</sup> Appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters. The record contains a document concerning an MSPB claim appellant filed regarding his termination, but it does not establish that the employing establishment erred in terminating appellant. He has not established a compensable employment factor under the Act with respect to the alleged administrative matters.

Appellant has also alleged that harassment on the part of his supervisors contributed to his claimed stress-related condition. He alleged that when he expressed disagreement with work policies, management made such statements as "There [i]s the door," and "If you do n[o]t like it here, leave!" He asserted that when he expressed concern about a disciplinary action taken against a coworker, a supervisor told him that he would be "squashed like a bug." Appellant alleged that the fiscal officer would get upset about the duties of his job or the actions of a given claims examiner and would shout, pound his fists on a desk or wall and gnash his teeth.

To the extent that disputes and incidents alleged as constituting harassment by supervisors are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.<sup>11</sup> However, for harassment to give rise to a

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<sup>8</sup> See *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

<sup>9</sup> *Id.*

<sup>10</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>11</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.<sup>12</sup> In the present case, appellant has not submitted sufficient evidence to establish that he was harassed by his supervisors.<sup>13</sup> Appellant alleged that supervisors made statements and engaged in actions, which he believed constituted harassment, 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>14</sup> Those provided by Ms. Green and Mr. Gallashaw are general in nature and do not address the specific instances alleged by appellant. He has not established a compensable employment factor under the Act with respect to the claimed harassment.

Appellant stated that in November 2001, he was transferred to the post-adjudication unit as a deliberate attempt to ensure that he would be placed on a PIP. He stated that he began to worry that he would be the next employee to be placed on a PIP. Appellant claimed that the unit had a reputation as a “dumping ground” and an undesirable place to work and indicated that his new supervisor, Mr. Andrews, was known as the “axe man” for finding ways to eliminate undesirable employees. Regarding appellant’s allegation that he developed stress due to insecurity about maintaining his position, the Board has previously held that a claimant’s job insecurity, including fear of a reduction-in-force, is not a compensable factor of employment under the Act.<sup>15</sup> With respect to appellant’s general dislike of Mr. Andrews’ management style and his displeasure at being transferred to another unit, the Board has held that an employee’s dissatisfaction with perceived poor management and being transferred constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.<sup>16</sup> Again, the evidence of record is not sufficient to establish error or abuse in these matters.

Appellant asserted that between 2000 and 2004, he experienced an increase in his workload due to such factors as his promotion to more demanding positions and the departure of coworkers. He claimed that the volume of mail he had to handle began to increase and that delays in receiving documents made his job more difficult. Appellant asserted that he often had to work through his lunch period or after the formal end of the workday in order to complete his work and claimed that his coworkers also found it difficult to meet their work standards.<sup>17</sup>

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<sup>12</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>13</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>14</sup> *See William P. George*, 43 ECAB 1159, 1167 (1992).

<sup>15</sup> *See Artice Dotson*, 41 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986). Moreover, appellant’s concern about a coworker being placed on a PIP would not be compensable.

<sup>16</sup> *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993); *Donald W. Bottles*, 40 ECAB 349, 353 (1988). Similarly, appellant’s concerns about an “increase in bickering” between work units regarding such matters as deadlines would constitute a noncompensable desire to work in a different work environment.

<sup>17</sup> Appellant claimed that he refused to take shortcuts to complete his work because he did not wish to compromise the quality of his work.

The Board has held that emotional reactions to situations in which an employee is trying to meet his position requirements are compensable.<sup>18</sup> In *Antal*, a tax examiner filed a claim alleging that his emotional condition was caused by the pressures of trying to meet the production standards of his job and the Board, citing the principles of *Cutler*, found that the claimant was entitled to compensation. In *Kennedy*, the Board, also citing the principles of *Cutler*, listed employment factors which would be covered under the Act, including an unusually heavy workload and imposition of unreasonable deadlines.

The Board notes that appellant has not established the factual aspects of his claims regarding his work duties. Appellant only generally discussed his claims that his work became more difficult because his caseload increased, staffing was inadequate, mail volume had increased and supervisors emphasized quality over quantity. His statements in this regard lack specificity and he did not submit sufficient evidence in support of his claims. Appellant submitted statements of coworkers, Ms. Green and Mr. Gallashaw, but these statements also provided a vague and generalized account of the work performed at the employing establishment.<sup>19</sup>

For the foregoing reasons, appellant has not established any compensable employment factors under the Act. He has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.<sup>20</sup>

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

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<sup>18</sup> See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

<sup>19</sup> Appellant submitted documents, dated between 2002 and 2004, in which he expressed concerns to management about his workload, but these documents contain statements, which are similar to those submitted in connection with the present claim.

<sup>20</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).

**ORDER**

**IT IS HEREBY ORDERD THAT** the decision of the Office of Workers' Compensation Programs dated January 19, 2006 is affirmed.

Issued: June 16, 2006  
Washington, DC

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

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