United States Department of Labor
Employees' Compensation Appeals Board

THOMAS J. RICHARDSON, Appellant	)	
and	)	**Docket No. 04-1245**
	)	**Issued: March 6, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Anchorage, AK, Employer	)	

Appearances:
Ann M. Richardson, Esq., for the appellant
Jim C. Gordon, Jr., Esq., for the Director

Oral Argument November 1, 2005

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 12, 2004 appellant, through his attorney, filed a timely appeal from a January 5, 2004 merit decision of the Office of Workers' Compensation Programs, denying modification of an October 3, 2002 decision, which found that he did not sustain an emotional condition while in the performance of duty. 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 that he sustained an emotional condition while in the performance of duty.

FACTUAL HISTORY

On December 22, 2000 appellant, then a 60-year-old maintenance operations manager, filed an occupational disease claim (Form CA-2) alleging that on November 8, 2000 he first became aware of his anxiety disorder, gastroesophageal reflux and dumping syndrome. He alleged that on November 27, 2000 he first realized that his conditions were caused by factors of

his federal employment. On November 8, 2000 he experienced unusual chest pain that was concurrent with a dumping syndrome episode which caused him to seek medical treatment. Appellant related that, since reporting for duty at the employing establishment in October 2000, his dumping syndrome and esophageal reflux symptoms had dramatically increased in severity and frequency and were concurrent with stressful working conditions. He stopped work on November 8, 2000 and has not returned to work.

On December 22, 2000 appellant described the symptoms of his emotional and physical conditions and treatment. His gastroesophageal reflux rarely occurred since a vagotomy and pyloroplasty to correct a duodenal ulcer in 1977, but it became more frequent since reporting to the employing establishment in October 2000. Appellant's severe dumping syndrome was a result of the 1977 surgery and he experienced 8 to 10 episodes a year on average but he noted that he experienced nighttime episodes in April and May 2000 which increased to 3 to 4 episodes a week since November 8 through February 2001.

Appellant identified work factors as the cause of his emotional and physical conditions. He stated that, as a result of filing a grievance against the employing establishment which was considered by an administrative law judge in April 2000, he was promoted and transferred from New Hampshire to Alaska in October 2000. Appellant contended that he worked in an adversarial atmosphere in that he was required to work from 6:00 p.m. until 2:30 a.m. while the position he applied for and was granted by the administrative law judge involved managerial duties which required him to work during the day shift. Working at night disrupted his eating and sleeping habits which aggravated his medical condition and contributed to his anxiety. Appellant contended that he was unable to secure his desk and computer and he experienced related incidents of sabotage and interference. He alleged that he was threatened with ostracism by his peers and subordinates who claimed to be acting on the authority of a manager. Appellant's manager failed to comply with the administrative law judge's orders and many of his household goods remained in New Hampshire months after he had relocated due to the employing establishment's delay in approving shipment. He attributed his emotional and physical conditions to irregular work hours and fear for his physical safety while arriving and departing work, fear for his safety if he experienced a dumping episode and subsequently passed out at work and being lied to by his manager and deliberately stalled by human resources regarding back pay issues. Appellant listed the dates and times from October 23 through November 28, 2000 that he was exposed to stressful conditions at the employing establishment.

In a June 15, 1995 medical report, Dr. Michael A. Evans, a Board-certified psychiatrist, noted that appellant was fit for duty and there was no evidence of significant depression. He stated that appellant exhibited signs of adjustment disorder which had resolved. Medical reports and treatment notes from Dr. Derek A. Hagen, a Board-certified family practitioner, and Dr. John P. Czarnecki, a Board-certified internist, covered intermittent dates from January 8 through December 12, 2000. They found that appellant's emotional and physical conditions were caused by a stressful work environment and that he was disabled for work on intermittent dates.

By letters dated January 30, 2001, the Office advised appellant that the evidence submitted was insufficient to establish his claim and to submit additional information. The Office requested that the employing establishment respond to appellant's allegations and state

whether it had made any accommodations to reduce his stress. The Office also requested a description of appellant's job position and a statement regarding any problems he had performing his work duties.

In a January 16, 2001 letter, Blanche Streumke, a human resources specialist, controverted appellant's claim. She contended that the position offered and accepted by him was in compliance with the administrative law judge's ruling. Ms. Streumke agreed with his analysis of his work hours, but could not identify any aspects of his job that could be perceived as stressful. Contrary to appellant's assertion that he had no prior history of an emotional condition, Ms. Streumke stated that a 1995 fitness-for-duty examination revealed that he was treated for anxiety disorders and sought help from the Employee Assistance Program. Appellant failed to specifically identify incidents related to his allegation that his emotional and physical conditions were caused by his inability to secure a desk and computer and related incidents of sabotage/interference, threats of ostracism by his peers and subordinates and being lied to by his supervisor about pay issues. Ms. Streumke explained that his request to relocate from residences in New Hampshire and Montana needed written approval from a postal executive for an exception to the standard relocation process. She noted that appellant's request precipitated a change from normal procedures. Ms. Streumke further indicated that appellant's fear for his safety was not work related as he had suffered from dumping syndrome and gastroesophageal reflux conditions since the late 1970s as a result of his military service. She stated that the human resources personnel did not deliberately stall in providing information to appellant about a pay adjustment. Ms. Streumke noted that the management job offer which he signed contained an incorrect social security number and neither it nor appellant noticed the error until a pay adjustment problem appeared, which was immediately corrected.

In a January 17, 2001 letter, Cesar Vaughan, a supervisor, stated that appellant never informed him about any inability to secure a desk and computer, incidents of sabotage or interference, threats of ostracism or fear for his safety. The only conversation Mr. Vaughan had with appellant regarding his pay revolved around problems the payroll office encountered due to errors with his social security number. The job offer was for a maintenance operations manager position which appellant accepted on September 5, 2000. A schedule reflected the dates on which he worked between November 2 through 28, 2000.

A November 15, 2000 electronic message from Philip B. Parks, a maintenance operations supervisor, indicated that his former desk was assigned to appellant and that the drawers were locked because it contained his files. Mr. Parks explained that he had one key and that William Garwick, a maintenance operations manager, had the other key. He told Mr. Garwick that he still had a key and after he became established in his new office, he would retrieve the files. Mr. Parks noted that the telephone number was still in his name and that it needed to be changed and that he had experienced computer problems.

In an August 9, 2000 note, Dr. Czarnecki stated that appellant should take intermittent leave from work due to his dumping syndrome and status post vagotomy/pyloroplasty. He indicated that the dumping condition began in 1978 and that it was a permanent long-term condition that may result in episodic inability to work. Dr. Czarnecki opined that appellant's post surgical symptoms were due to his current gastrointestinal tract anatomy.

In a February 2, 2001 letter, Consuelo Lightner, a human resources manager, advised appellant that the accounting office was going to proceed with reimbursement of expenses associated with the sale of his house at his old duty station. She noted that they previously discussed a job offer for an officer-in-charge position in Palmer, Alaska and that he had not responded to the job offer. Ms. Lightner advised appellant to respond by February 5, 2001.

In a March 1, 2001 attending physician's report, Dr. Ellen J. Halverson, a Board-certified psychiatrist, found that appellant had an anxiety disorder secondary to depression. She indicated with an affirmative mark that the diagnosed condition was caused by an employment activity. Dr. Halverson explained that appellant felt ostracized and unsupported in his new employment situation and that his private computer files had been opened. She opined that appellant would not be able to function in his employment setting with his current emotional and physical problems.

By decision dated March 13, 2001, the Office found that appellant failed to establish that his emotional condition arose from a compensable factor of his employment. He disagreed with the Office's decision and requested reconsideration by letter dated April 6, 2001.

In a March 5, 2001 letter, appellant stated that his claim was for emotional and physical conditions. He indicated that the employing establishment's August 21, 2000 job offer for a position in Anchorage, Alaska was made as a result of an administrative law judge's order which found that it had unlawfully discriminated against him in 1997 by failing to promote him to a managerial position for which he had applied. The position required daytime work with weekends off while the position offered by the employing establishment required night time work. He accepted the position to protect his right to remedy and intended to dispute the night job. Appellant recalled on November 8, 2000 that Mr. Vaughan told him that he would be working at night effective the next pay period. By that time, his dumping syndrome had already been aggravated by a hostile environment and he was beginning to experience emotional symptoms. After being notified by that he was not going to be allowed to work on the dayshift, appellant experienced chest pain for the first time. He told Darnell Walton, a maintenance operations supervisor, about his pain and left work.

Appellant temporarily stayed in a hotel until he could move into his house and was required to adjust his sleep and eating habits due to working at night. He reported to work on October 23, 2000 and a desk had not been cleaned out for him. On November 6, 2000 Mr. Garwick gave him a key to an empty drawer in a desk that he shared with Mr. Parks. Appellant was instructed not to lose the key because it was the only one available. He locked the drawer, but on November 13, 2000 he found the drawer unlocked and left it that way. On November 28, 2000 the drawer was locked but not by him.

Appellant contended that he was responsible for all emergencies but was not given adequate instructions regarding emergency procedures and he did not know the names of union officials. He further contended that on November 7, 2000 he left his computer unattended and someone printed his file. Appellant also alleged that someone changed the default printer on his computer. On November 28, 2000 a large sheet of white paper was taped over his computer monitor forbidding use of the computer.

Appellant alleged that he was repeatedly ostracized by Mr. Garwick who asked him if he was a team player, tried to negotiate with him about his work duties and hours and instructed him not to wear a tie to work due to a safety rule. In November 2000 Richard Nelson, an Equal Employment Opportunity (EEO) compliance employee, proclaimed to him on numerous occasions that discrimination was alive and well in Alaska. Appellant indicated that the shipment of his household goods from New Hampshire was not approved until December 22, 2000 and he did not receive them until early February 2001. The employing establishment approved a split shipment of his goods in early October and there was no reason why it should have taken an additional two and one-half months to approve the shipment from his old duty station. His irregular work hours caused concern for his safety going and leaving work as he feared passing out after a dumping episode. He related that the employing establishment failed to give him a pay stub which reflected his correct social security number and delayed the processing of his back pay.

Appellant related that in the spring of 1995 he had a dumping episode at work and was told by his gastroenterologist to take some time off work due to stress at work. Upon his release to work, the employing establishment significantly delayed his return. A contract physician required appellant to be treated by a psychiatrist before returning to work and suggested counseling to deal with workplace stress. He attended one or two sessions with a psychologist in the Employee Assistance Program.

Appellant submitted documents regarding his back pay, a description of the maintenance operations manager position and the employing establishment's February 21, 2001 offer for an officer-in-charge position. The employing establishment's August 21, 2000 offer for the position of maintenance operations manager required him to work from 6:00 p.m. until 2:30 a.m. with a 30-minute lunch break and Sundays and Mondays off from work.

Appellant also submitted medical records covering the period July 5, 2000 through April 2, 2001 from John A. Miller, Ph.D., Dr. Halverson, and Dr. Hagen which found that his emotional and physical conditions were caused by his federal employment.

In a March 14, 2001 letter, Ms. Streumke stated that appellant's allegation that he accepted the offered position in order to protect his rights was without merits. He knew upon acceptance of the job offer that he would be working at night. Since October 23, 2000, he had reported for duty a total of 9 days or 55.5 hours and that approximately 51 hours were dedicated to familiarization and orientation with plant operations. Ms. Streumke related that there were no aspects of his job that could be perceived as stressful as there was no overtime work, deadlines, quotas, travel or intense assignments. The only travel appellant participated in was at his own request and management was unaware of any conflict between appellant and his coworkers.

Appellant submitted correspondence regarding his EEO claim and the administrative law judge's August 4, 2000 decision which found that the employing establishment discriminated against him on the basis of age when it failed to select him for a maintenance operations manager position in 1997. The administrative law judge ordered, among other things, that the employing establishment appoint him to the position in Anchorage effective May 12, 1997 with retroactive pay with interest and benefits to that date. He also submitted correspondence and literature concerning his back pay, reimbursement for the sale of his home, an offer of temporary

employment as an officer-in-charge in Palmer, Alaska a job announcement for maintenance operations manager position.

By decision dated August 17, 2001, the Office addressed the employing establishment's delay in shipping his household goods from New Hampshire and Montana to his duty station in Alaska and his fear for his safety if he experienced a dumping episode and subsequently passed out at work. The Office determined that the former incident constituted an administrative matter but found no evidence of error or abuse by the employing establishment in handling this matter. The Office determined that appellant's fear for his safety did not constitute a compensable employment factor as it was self-generated. The Office found that the following incidents were not established by the record as having occurred: (1) a requirement that appellant work from 6:00 p.m. until 2:30 a.m. when the position he applied for required daytime work; (2) his inability to secure his desk and computer and related incidents of sabotage and interference; (3) threats of ostracism from his peers and subordinates who claimed to be acting on the authority of management; (4) the employing establishment's failure to comply with the administrative law judge's order despite adopting his order for relief; (5) the assignment of irregular work hours and appellant's fear for his safety arriving and departing work; (6) Mr. Vaughan lied to appellant about his pay stub; and (7) human resources personnel deliberately stalled information regarding the processing of his pay adjustment. Accordingly, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition causally related to factors of his employment.

In an August 17, 2002 letter, appellant requested reconsideration. He reiterated that his emotional condition was caused by the employing establishment's discrimination against him and delay in shipping his household goods to Alaska, and in returning him to work and by sabotage of his ability to perform his work duties. Appellant contended that the employing establishment made false representations to the Office in its March 14, 2001 letter which were accepted by the Office in denying his claim and that he was not provided with an opportunity to respond to the letter.

Appellant submitted medical reports and a work restriction evaluation of Dr. Halverson covering the period May 2 through October 3, 2001 which initially found that he could not return to work due to his emotional condition. He subsequently found that appellant could return to work with certain restrictions regarding his work hours and work environment. Dr. Halverson also submitted correspondence from the employing establishment regarding his ability to return to work.

In a January 4, 2001 statement, Mr. Walton indicated that after Mr. Vaughan told appellant that he would be working at night, appellant patted his chest and stated that he did not feel well and that he was going home. Mr. Vaughan's January 13, 2001 statement revealed that appellant left work without notifying him or an immediate supervisor. He stated that appellant complained of chest pain concurrent with a dumping episode but did not seek medical treatment until November 13, 2000 and never informed his immediate supervisor about his medical conditions or stressful work environment.

Electronic mail messages and correspondence from the employing establishment addressed appellant's back pay issue, reimbursement of expenses associated with the sale of his

house his prior duty station, a job offer for a position located near his home and his work schedule upon his release to return to work.

In a September 10, 2002 letter, Jewelle Shoemake, a human resources specialist, stated that the employing establishment's records were available for review whenever an employee made an appointment. Ms. Shoemake contended that the error regarding appellant's social security number was not malicious or abusive. She was informed that he had household goods to be moved from New Hampshire and Montana and as soon as the employing establishment learned there household goods located in two states, the shipments were immediately approved. Ms. Shoemake concluded by noting that he was reimbursed for his move and offered a position with no loss of pay.

In a July 11, 2002 deposition materials, Ms. Lightner described a meeting she had with appellant about reimbursement for his move to the employing establishment's Palmer office if he accepted a position there. An incomplete copy of a September 19, 2002 deposition of Linda Watson, an employing establishment Manager, EEO Dispute Resolution, addressed the delay in processing appellant's back pay.

By decision dated October 3, 2002, the Office denied modification of the August 17, 2001 decision. The Office found that he failed to establish that his emotional condition was causally related to compensable factors of his employment.

In an October 3, 2003 letter, appellant requested reconsideration. He contended that the employing establishment erred by failing to promptly make retroactive payment. Appellant submitted a complete copy of Ms. Watson's September 19, 2002 deposition. He also submitted a September 23, 2002 deposition of William R. Fetterhoff, a district manager, who noted that the employing establishment willingly took steps to comply with the administrative law judge's August 4, 2000 decision. He described the process for offering appellant a job based on this decision. Mr. Fetterhoff addressed problems with the processing of appellant's back pay, but indicated that efforts were made to resolve them. Regarding the denial of appellant's request for relocation expenses, he stated that there was a question regarding whether the sale of his house was in line with his intention to move to Alaska.

Mr. Walton told appellant that Mr. Vaughan was not an honest person. Appellant told him that Mr. Garwick stated that he did not have to wear a tie and that this statement was inaccurate as he understood that the employing establishment's dress policy required employees to wear business attire every day except Friday when business causal attire was allowed. Mr. Walton did not recall Mr. Nelson stating that discrimination was alive and well at the employing establishment's Anchorage facility. He recalled appellant telling him that papers from his computer were found on another printer and hearing Diane Horbochuk, a plant manager, say that appellant was litigious.

In a February 18, 2003 deposition, Dr. Halverson indicated that appellant had an anxiety disorder with secondary depression and that she treated him with medication and referred him to psychotherapy. He became anxious at work following an argument with a peer on November 28, 2000 and after someone tampered with his computer files.

In a November 22, 2003 letter, Karen Flakes, a senior safety injury compensation specialist, submitted a June 7, 2002 EEO decision finding that the position offered to appellant by the employing establishment was substantially equivalent to the position he would have had absent discrimination. A September 2003 letter from Bradley D. Owens, appellant's attorney, indicated that he was returning the settlement memorandum to an Assistant United States Attorney, as it was an internal document that he mistakenly received. She also submitted a June 16, 2003 order which granted the employing establishment's motion to dismiss appellant's federal court claim.

By decision dated January 5, 2004, the Office denied modification of the October 3, 2002 decision. The Office found that the employing establishment's delay in awarding appellant back pay did not constitute administrative error because it was instructed to do so as a result of an administrative law judge's order.

LEGAL PRECEDENT

Appellant 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 factors of his federal employment.[1] To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying 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.[2]

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*,[3] the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.[4] 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 under the Act.[5] When an employee experiences emotional stress 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 his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.[6]

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[1] *Pamela R. Rice*, 38 ECAB 838 (1987).

[2] *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

[3] 28 ECAB 125 (1976).

[4] 5 U.S.C. §§ 8101-8193.

[5] *See Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

[6] *Lillian Cutler, supra* note 3.

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 under the Act.

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.[7] 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.[8]

Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. 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.[9] Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act.[10] 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.[11]

ANALYSIS

The Office found that appellant experienced fear for his safety if he experienced a dumping episode and subsequently passed out at work. The Board notes that fear of future injury does not constitute a compensable factor of employment.[12] Therefore, appellant has failed to establish a compensable factor of employment under the Act.

The Office also found that appellant established a delay in having his household goods shipped from New Hampshire and Montana to his duty station in Alaska, but that the employing establishment did not commit error or abuse in handling this administrative matter. As noted above, actions of the employing establishment in administrative or personnel matters, unrelated

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[7] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[8] *Id.*

[9] *Lillian Cutler, supra* note 3.

[10] *Michael L. Malone*, 46 ECAB 957 (1995).

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

[12] *See Lillian Cutler*, *supra* note 3; *Artice Dotson*, 41 ECAB 754 (1990); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *see also Joseph G. Cutrufello*, 46 ECAB 285 (1994) (fear of future injury is not a compensable factor of employment).

to the employee's regular or specially assigned work duties, do not fall within coverage of the Act absent error or abuse. Appellant failed to establish that the employing establishment committed error or abuse in handling the above noted administrative matter. Mr. Fetterhoff stated that there was a question regarding whether the sale of his house was in line with his intention to move to Alaska. Ms. Streumke stated that written approval from a postal executive was needed to obtain an exception to the standard relocation process and that appellant's request to move household goods from two locations changed the normal procedure. Ms. Shoemake related that, after the employing establishment realized that appellant had goods in two households, shipment was approved. Appellant has not shown error in light of the statements of Mr. Fetterhoff, Ms. Streumke and Ms. Shoemake. Therefore, the Board finds that he has failed to establish a compensable factor of employment under the Act.

Appellant contends that his emotional condition was caused by the employing establishment's delay in processing his retroactive pay as ordered by an administrative law judge. The administrative law judge ordered the employing establishment to appoint him to a maintenance operations manager position effective May 12, 1997 with retroactive pay with interest and benefits to that date. Although the processing of appellant's retroactive pay does not bear a relation to the duties an employee is hired to perform and, generally, does not arise within the performance of duty, coverage will afforded in this administrative or personnel matter, as noted above, when evidence or error or abuse on the part of the employing establishment is established. Ms. Streumke stated that the employing establishment did not deliberately stall the process for adjusting appellant's pay. She noted that the maintenance operations manager job offer signed by appellant contained an incorrect social security number that went unnoticed. When the error was noticed, the problem was corrected. Mr. Vaughan also stated that the offer for the maintenance operations manager position contained the wrong social security number which caused problems for the payroll office in processing appellant's retroactive pay. The Board finds that, although the employing establishment mistakenly used an incorrect social security to process appellant's retroactive pay, this mistake does constitute error or abuse under the Act based on the statements of Ms. Streumke and Mr. Vaughan.

Appellant attributed his emotional condition to being harassed at the employing establishment by being required to work at night rather than during the day as in his former position. He alleged being prevented from securing his desk and computer and acts of sabotage and interference. Appellant also alleged that he was harassed by his coworkers and peers by threats of ostracism and threats to his safety as he arrived and departed work at night. Harassment and verbal abuse when shown to have occurred is considered a compensable factor of employment. However, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.[13]

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[13] *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

Appellant did not submit any evidence establishing that at the time he applied for the maintenance operations manager position it involved day shift work. The August 21, 2000 job offer for this position required him to work from 6:00 p.m. until 2:30 a.m. Tuesday through Saturday. Ms. Streumke stated that appellant knew at the time he accepted the offered position that he would be working at night. She also stated that his job was not stressful as the majority of time he worked was dedicated to familiarization and orientation with plant operations and there was no overtime work, deadlines, quotas, travel or intense assignments.

Further, appellant did not submit any evidence to corroborate the alleged instances of being unable to secure his desk and computer and related acts of sabotage, interference or ostracism by his coworkers. Mr. Walton stated that appellant told him that papers from his computer were found on another printer but, he did not actually see the papers on the printer and identify them as belonging to appellant. Mr. Vaughan stated that appellant never informed him about his inability to secure his desk and computer, incidents of sabotage or interference, threats of ostracism by his peers and subordinates and fear for his safety. Although Mr. Parks indicated that appellant was assigned to his former desk and that the drawers were locked because it contained his files, he stated that Mr. Garwick had a key to his desk. Mr. Walton deposed that he told appellant that Mr. Vaughan was not honest but he did not witness any incidents where Mr. Vaughan was dishonest towards appellant. In addition, he did not witness Mr. Garwick tell appellant not to wear a tie despite the employing establishment's dress policy which required employees to wear business attire every day except Friday when business causal attire was allowed. Mr. Walton's statement that he heard Ms. Horbochuk state that appellant was litigious does not constitute verbal abuse. Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.[14] In the instant case, appellant has not shown how such an isolated comment would rise to the level of verbal abuse or otherwise fall within the coverage of the Act.[15] As appellant has the burden of establishing a factual basis for his allegations, he has not met this burden of proof in this case where the allegations in question are not supported by specific, reliable, probative and substantial evidence. Accordingly, the Board finds that these allegations, therefore, cannot be considered to have occurred as alleged and are, therefore, not compensable factors of employment since appellant has not established a factual basis for them.

CONCLUSION

As appellant has not identified any compensable factors of his employment, the Board finds that he has failed to establish that he sustained an emotional condition while in the performance of duty.[16]

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[14] *See Frank B. Gwozdz*, 50 ECAB 434 (1999); *Christophe Jolicoeur*, 49 ECAB 553 (1998); *Harriet J. Landry*, 47 ECAB 543, 547 (1996).

[15] *Compare*, *Alfred Arts*, 45 ECAB 530, 543-44 (1994) and *Abe E. Scott*, 45 ECAB 164, 173 (1993).

[16] As appellant has not submitted the necessary evidence to substantiate a compensable factor of employment as the cause of his emotional condition, the medical evidence relating appellant's emotional condition need not be addressed. *Karen K. Levene*, 54 ECAB 671 (2003).

ORDER

IT IS HEREBY ORDERED THAT the January 5, 2005 decision of the Office of Workers' Compensation Programs is affirmed.[17]

Issued: March 6, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[17] Willie T.C. Thomas, who participated at oral argument and in the preparation of this decision, retired effective January 3, 2006.