



department manager. Appellant alleged that Ms. Repsher retaliated against him and created a stressful, hostile, depressive work environment, which caused him to experience headaches, depressing mood swings and crying spells.

In a statement received by the Office on November 12, 2002, Ms. Repsher denied harassing appellant or treating him in a discriminatory manner following his filing of the EEO claim. She counseled appellant for not performing his job duties correctly or in a timely manner and had only undertaken such action in the course of discharging her managerial functions. Ms. Repsher stated that appellant had never told her that he believed he was being harassed or subjected to a hostile work environment. She had never taken any personnel actions against appellant, but did monitor his work and counsel him on improving his job performance.

By letter dated November 19, 2002, the Office advised appellant to submit additional information in support of his claim. The Office asked appellant to describe in detail the employment-related conditions or incidents which he believed contributed to his emotional condition and to provide specific descriptions of all incidents which he believed affected his condition.

In a report dated December 9, 2002, Dr. Nadeem Akhtar, a specialist in psychiatry, stated that he examined appellant on October 21, 2002. Appellant related symptoms of sleeplessness, depression and anger, noting that he was having problems including harassment and unfair treatment. Dr. Akhtar advised that appellant was trying to adjust to his work situation and was having emotional and behavioral symptoms. He diagnosed adjustment disorder with depressed mood and anxiety. Dr. Akhtar ruled out major depressive disorder.

In response to the Office's November 19, 2002 letters, appellant asserted that coworker Sheila Parker lied to Ms. Repsher by falsely accusing him of not working. He stated that he was the only employee whose whereabouts were monitored by management on a daily basis, to the extent that he had to report in every time he took a 15-minute break or lunch break. He encountered harassment and a hostile work environment due to his light-duty status. Appellant accused Ms. Repsher of arbitrarily refusing his request to attend a class and calling him into her office to discuss his work ethic. Finally, appellant alleged that Ms. Parker used a racial epithet in front of two supervisors.

In response to appellant's allegations, the employment establishment submitted a July 31, 2002 statement from Dr. Steven W. Arle, a supervisor. He had spoken to appellant about his work status for July 19, 2002, when Ms. Parker asserted that appellant left work early without informing anyone. Dr. Arle noted that there were differing versions as to when appellant left work on July 19, 2002. He advised appellant to tell a supervisor that he was taking leave in order to protect himself from false allegations and because this was common practice at the worksite.

In an April 10, 2003 statement, Ms. Repsher responded to appellant's allegations. With regard to his assertion that he was singled out by having his whereabouts monitored, she stated:

“[Appellant] would disappear from his duty station for long periods of time during the workday. When he was away, this placed more work on the other

clerk who had to do her work and appellant's as well. The July [2000] incident was partly due to his absence from his duty station without informing anyone. In the resolution of that issue, [appellant] agreed to inform his supervisor when he was away from his duty station. [Appellant] was in agreement [with] this practice. Other staff members report to staff in their area/lead supervisor, when they are away from duty station, for example, [in regard to] lunch, breaks, etc. This is necessary to provide continuity of direct patient care within our service. The expectations of [appellant] are no different from any other radiology employee."

Ms. Repsher emphasized that, as appellant's immediate supervisor, she was authorized to make appellant accountable for his absences and to know where he was during the workday. Other staff members reported their whereabouts and appellant was not exempt from this procedure.

Regarding appellant's allegation of harassment, Ms. Repsher stated:

"Additionally, problems in workflow had occurred in the file room. Regular duties and responsibilities were not being performed timely or correctly; errors were identified in the processing of x-ray examinations. In an effort to smooth workflow, a standard operating procedure was established in August 2002. The standard operating procedure identified specific duties and responsibilities for each clerk and prioritized tasks....

"[Appellant] was never asked to perform additional or different duties from the other file room clerk; both clerks have identical position descriptions. Our expectations of him have been that he performs the job, for which he is being paid, in an efficient and timely manner.

"No harassment has been directed toward [appellant]. In fact, efforts have been developed and implemented to improve workflow and establish continuity through the file room, [appellant's] assigned work area.... No additional duties were added. No personnel actions were taken against [appellant]."

Regarding his allegation of harassment based on his light-duty status, Ms. Repsher indicated that appellant needed to identify specific incidents of alleged harassment from March to October 2002, which he had not done. With respect to his request to attend a class, Ms. Repsher stated:

"[Appellant] brought to me a request to attend the Leadership Development Training Program. I told him I would sign the form if he provided me with documentation from his primary physician stating he approved [appellant's] participation in the class with his current restrictions. The class required intensified classroom time. [Appellant] never came back to me to discuss this issue, nor did he provide me with any documentation from his physician."

Regarding appellant's allegation concerning about his work ethics, Ms. Repsher stated:

"I had several conversations with [appellant] about his work. There were occasions when job duties were not being performed, not completed timely nor correctly. Problems were addressed to both clerks and individually if identifiable; on occasion I spoke with [appellant] individually about job performance."

Finally, as to the alleged racial epithet made by Ms. Parker in front of two supervisors, Ms. Repsher stated:

"I have never been present in a meeting with [appellant] and Ms. Parker when Ms. Parker used racial slurs toward [appellant]. That did not happen in my presence. My office is located next door to the file room; both doors remain open the majority of the time. I have never witnessed or heard, loud voices, disagreements or inappropriate language used by either file room clerk."

In a statement dated April 10, 2003, Dr. Arle reiterated Ms. Repsher's rebuttal statements and the assertions he made about appellant in his July 31, 2002 statement. He further stated that on September 5, 2002 he convened a staff meeting to address appellant's allegations of harassment, at the conclusion of which "it was agreed by all parties that these issues were resolved."<sup>1</sup> In addition, Dr. Arle stated:

"On October 1, 2002 a meeting was held to discuss standard operating procedure for the file room personnel. [Appellant], [Ms.] Parker, [Ms.] Repsher and I were present. During that meeting [Ms. Parker] voiced her annoyance that [appellant] was not doing his share of the workload. No racial slurs were used. [Ms. Parker] never used that sort of language about him during the meeting or at any time to my knowledge."

Ms. Parker submitted an April 11, 2003 statement in which she stated:

"On July 19, 2002 I was taking routine films into Dr. Arle's office. He asked me have I seen [appellant] today. My response was no, not since early this morning."

On October 1, 2002 Dr. Arle, [Ms.] Repsher, [appellant] and I were having a meeting about our job duties in the file room. [Appellant] was talking about things he was doing, he said that I called him a n----r in front of Dr. Arle and [Ms.] Repsher, but I did not say that."

By decision dated August 14, 2003, the Office denied appellant compensation for an emotional condition, finding that he failed to establish a compensable factor.

On August 20, 2003 appellant requested an oral hearing, which was held on May 26, 2004. Appellant reiterated his allegation that his coworker Ms. Parker denigrated him and addressed him in a derogatory manner at the October 2, 2002 meeting with Ms. Repsher and

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<sup>1</sup> The case file contains an employing establishment memorandum which documented and provided a record of this September 5, 2002 meeting.

Dr. Arle. Appellant testified that he expected one of the supervisors to take “corrective action” against Ms. Parker for using a racial epithet, but that neither supervisor took any disciplinary action toward her. Whenever he saw Ms. Parker, he became agitated because he did not want to work around her. Appellant asked management if he could be moved to a different worksite, but was told they were “just going to have to work together.” Appellant testified that he became very upset and sought counseling because he did not want to be in an environment where he would possibly commit physical harm. His physician removed him from the worksite.

Following the hearing, appellant submitted a June 10, 2004 handwritten statement from coworker Janice Robinson, who stated that, on October 2, 2002, appellant called her and told her that he had just returned from a meeting with a coworker and his supervisor, during which his coworker had referred to him using a racial epithet.

By decision dated September 8, 2004, an Office hearing representative affirmed the August 14, 2003 decision.

### **LEGAL PRECEDENT**

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.<sup>2</sup> There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.<sup>3</sup>

The first issue to be addressed is whether appellant has established factors of employment that contributed to his alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees’ Compensation Act.<sup>4</sup> On the other hand, disability is not covered where it results from an employee’s fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position or to secure a promotion. Disabling conditions resulting from an employee’s feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.<sup>5</sup>

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<sup>2</sup> See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

<sup>3</sup> See *Ruth C. Borden*, 43 ECAB 146 (1991).

<sup>4</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> *Id.*

## ANALYSIS

The Board finds that appellant has failed to submit sufficient evidence to establish his allegations that his supervisor engaged in a pattern of harassment or discrimination. Appellant alleged that Ms. Repsher harassed him, but did not provide sufficient evidence or a description of the specific incidents he believes constituted harassment or discrimination.<sup>6</sup> Mere perceptions of harassment or discrimination are not compensable; a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.<sup>7</sup> Appellant has not submitted evidence sufficient to establish that Ms. Repsher engaged in a pattern of harassment toward appellant, created a hostile workplace environment or that she retaliated against him for filing an EEO claim.

Ms. Repsher rebutted appellant's allegations that she unfairly singled him out by counseling him about his work habits and by monitoring his whereabouts, including work breaks and lunch breaks. In her April 10, 2003 statement, she noted that appellant had a tendency to disappear from his duty station for long periods of time during the workday, which placed an unfair burden on his coworkers. Ms. Repsher explained that the July 19, 2002 incident was due in part to appellant's unauthorized absence from his duty station. As a result of this incident, appellant agreed to inform his supervisor when he was away from his duty station. Ms. Repsher emphasized that this agreement was consistent with the other employees at the worksite. She indicated that all employees were required to report to their lead supervisor whenever they left their duty station to take work and lunch breaks, a procedure which was necessary to provide continuity of direct patient care at the employing establishment. Therefore, appellant was not treated in a discriminatory manner with regard to his duty to report his whereabouts to management.

Ms. Repsher stated that, because workflow problems had accumulated in the file room, she implemented a standard operating procedure in August 2002, which identified specific duties and responsibilities for each clerk. Appellant was not treated in a discriminatory manner; Ms. Repsher stated that she was required to counsel appellant about his work habits, in her supervisory capacity, because he was not carrying out his duties and responsibilities in a sufficiently competent and timely manner and had demonstrated a tendency to wander off from the worksite for long periods of time during the workday. With regard to appellant's allegation that he was harassed because of his light-duty status, Ms. Repsher indicated that appellant failed to provide a description of specific incidents or sufficient supporting evidence to substantiate this allegation.<sup>8</sup>

Appellant failed to provide sufficient evidence for his allegation that Ms. Parker used a racial epithet in the presence of Ms. Repsher and Dr. Arle at the October 1, 2002 meeting. This allegation was denied by all of the other participants at the meeting and appellant did not submit any factual evidence to corroborate his assertions. The April 10, 2004 statement from

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<sup>6</sup> See *Joel Parker, Sr.*, 43 ECAB 220 (1991). (The Board held that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

<sup>7</sup> *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>8</sup> See *Joel Parker, Sr.*, *supra* note 6.

Ms. Robinson, in which she asserted that appellant called her and told her of the incident is not probative because Ms. Robinson was not present at the meeting. Ms. Parker denied the allegations and the supervisors did not support appellant's version of the meeting.

The Office reviewed appellant's allegations of harassment, abuse and mistreatment and found that they were not substantiated by the evidence of record. The Board finds that the allegations harassment made by appellant are not substantiated as alleged. He failed to provide any adequate evidence to support his allegations. Appellant has failed to establish that he was subjected to harassment or mistreatment at the workplace; therefore, he has not established a factor of employment in this regard.

The Board finds that the record does not establish that the administrative and personnel actions taken by management constituted error and therefore are not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.<sup>9</sup> In the instant case, appellant has presented no evidence that the employing establishment acted unreasonably or committed error with regard to personnel matters. Regarding appellant's allegation that Ms. Repsher acted unreasonably in monitoring his whereabouts and in counseling appellant for failing to perform his job duties in an adequate or timely manner, appellant has shown no error or abuse in Ms. Repsher's discharge of these administrative functions.<sup>10</sup> Management's meetings with appellant to advise him of his duties and responsibilities as an employee of the employing establishment, including the July 19, 2002 meeting with Dr. Arle and the October 1, 2002 meeting with Ms. Repsher, Dr. Arle and Ms. Parker, also constituted routine, administrative functions of appellant's job, which, absent agency error or abuse, were not compensable. Disciplinary matters consisting of counseling sessions, discussions or letters of warning for conduct pertain to actions taken in an administrative capacity and are not compensable as factors of employment.<sup>11</sup> Appellant failed to demonstrate that Ms. Repsher was doing anything other than discharging her supervisory duties by ensuring that he carried out his duties pursuant to standard operating procedure. He has submitted no evidence to substantiate his allegation that Ms. Repsher engaged in improper conduct, which exceeded her administrative responsibilities. An employee's dissatisfaction with perceived poor management 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>12</sup>

Regarding appellant's allegations that Ms. Repsher unfairly denied his request to attend a training class, the Board has held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment as they do not involve the employee's ability to perform his or her regular or specially assigned work duties but

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<sup>9</sup> See *Alfred Arts*, 45 ECAB 530, 543-44 (1994).

<sup>10</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>11</sup> *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

<sup>12</sup> See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

rather constitute his or her desire to work in a different position.<sup>13</sup> It was noted that appellant did not submit documentation from his physician that he was medically cleared to attend the class. In addition, appellant has presented no evidence that management tolerated harassment toward employees. Dr. Arle convened a staff meeting on September 5, 2002, to address appellant's allegations of harassment, at the conclusion of which it was agreed that all issues raised at this meeting had been resolved. Appellant has submitted no corroborating evidence to support his allegation that Dr. Arle and Ms. Repsher condoned an alleged racial epithet by Ms. Parker at the October 1, 2002 meeting.

The Board notes that, since appellant has not established a compensable work factor, the medical evidence will not be considered.<sup>14</sup>

### **CONCLUSION**

The Board finds that the Office properly found that appellant failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 8, 2004 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 2, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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<sup>13</sup> *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

<sup>14</sup> *See Margaret S. Krzycki*, *supra* note 7.