

appellant established that he sustained either an emotional or heart condition in the performance of duty causally related to factors of his federal employment.¹ The law and the facts of the previous Board decision are incorporated herein by reference.

Subsequent to the Board's March 8, 2006 decision, in a merit decision dated May 12, 2006, the Office found that, while the timesheets established that appellant had worked at three different facilities in 1999, the evidence was not sufficient to show that he was overworked. It denied modification of its May 12, 2004 decision.

LEGAL PRECEDENT

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his stress-related condition.² 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.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 as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁵ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁶ When an employee experiences emotional stress in carrying out his or her employment duties, and the medical evidence establishes that the disability resulted from an 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 or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁷

¹ Docket No. 06-246 (issued March 8, 2006).

² *Leslie C. Moore*, 52 ECAB 132 (2000).

³ See *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁴ 28 ECAB 125 (1976).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ See *Robert W. Johns*, 51 ECAB 137 (1999).

⁷ *Lillian Cutler*, *supra* note 4.

Disciplinary actions concerning an oral reprimand, discussions or letters of warning for conduct pertain to actions taken in an administrative capacity and are not compensable unless the employee shows management acted unreasonably.⁸ Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.⁹ The Board has also held that overwork may be a compensable factor of employment. As with all allegations, however, overwork must be established on a factual basis to be a compensable employment factor.¹⁰

For harassment or discrimination to give rise to a compensable disability, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations that the harassment occurred with probative and reliable evidence¹¹

ANALYSIS

The Board finds that appellant failed to establish that he sustained either an emotional or heart condition in the performance of duty. Appellant generally contended that his supervisor caused his stress-related condition. He alleged that she gave him inappropriate job orders, that he was inappropriately given a parking ticket and seven-day suspension and that he did not receive an award he had earned. However, appellant did not establish by the submission of probative evidence to establish a factual basis for these allegations¹² and appellant's supervisor countered each of these contentions. An employee's complaints concerning the manner in which a supervisor performs his or her duties as a supervisor or the manner in which a supervisor exercises supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act.¹³ Although such matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹⁴ In this case, appellant provided no supportive evidence to show that his supervisor acted unreasonably.¹⁵

Appellant also alleged that he was harassed at the employing establishment. However, he submitted no evidence to establish that he was treated in a harassing manner. Unsubstantiated

⁸ *Janice I. Moore*, 53 ECAB 777 (2002).

⁹ *Kim Nguyen*, 53 ECAB 127 (2001).

¹⁰ *Bobbie D. Daly*, 53 ECAB 691 (2002).

¹¹ *James E. Norris*, 52 ECAB 93 (2000).

¹² *See Bobbie E. Daly*, *supra* note 10.

¹³ *Marguerite Toland*, 52 ECAB 294 (2001).

¹⁴ *Dennis J. Balogh*, *supra* note 3.

¹⁵ *Janice I. Moore*, *supra* note 8.

allegations are insufficient to establish entitlement to compensation.¹⁶ The Board, therefore, finds that appellant did not establish harassment on the part of employing establishment personnel.

Regarding appellant's contention that he was overworked, he submitted a number of timesheets for various periods in 1999. His managers noted that, during this period the postal facility was being renovated and some services were temporarily transferred to a building next door and to a third facility three blocks away. A review of the timesheets submitted by appellant show that, during 15 of the weekly periods, he worked at either 2 or 3 postal locations. However, he did not exceed a 40-hour workweek in any of these periods. As with all allegations, overwork must be established on a factual basis to be a compensable employment factor.¹⁷ Appellant, therefore, failed to establish that he was overworked.¹⁸ As he did not submit sufficient probative evidence to establish a compensable factor of employment, appellant failed to establish that he sustained an employment-related condition.¹⁹

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a stress-related condition causally related to his federal employment.

¹⁶ *James E. Norris*, *supra* note 11.

¹⁷ *Sherry L. McFall*, 51 ECAB 436 (2000).

¹⁸ *See Peter D. Butt Jr.*, 56 ECAB ___ (Docket No. 04-1255, issued October 13, 2004).

¹⁹ Because appellant failed to establish a compensable employment factor, it was not necessary to consider the medical evidence. *Marlon Vera*, 54 ECAB 834 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 12, 2006 be affirmed.

Issued: November 28, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board