United States Department of Labor
Employees' Compensation Appeals Board

W.B., Appellant	)	
and	)	**Docket No. 06-1378**
	)	**Issued: October 31, 2006**
DEPARTMENT OF AGRICULTURE, OUCHITA NATIONAL FORREST, JOB CORPS, Hot Springs, AR, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 1, 2006 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated May 31, 2005[1] finding that he had not established an injury causally related to his federal employment. 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 met his burden of proof in establishing that he developed an emotional condition due to factors of his federal employment.

[1] Although appellant's claim was not filed by the Board until June 1, 2006, his request for appeal was postmarked on May 30, 2006. Therefore, the Board finds that the May 31, 2005 decision of the hearing representative was within one year of the date of the appeal to the Board. *See* 20 C.F.R. § 501.3(d)(2).

FACTUAL HISTORY

On January 10, 2003 appellant, then a 42-year-old social service assistant, filed an occupational disease claim alleging that he developed an aggravation of his diagnosed adjustment disorder with mixed anxiety and depressed mood due to job-related stress. He indicated that he first became aware of his illness on September 4, 2002 and related his condition to his employment on that date. On the reverse of the form, appellant's supervisor indicated that appellant stopped work on December 8, 2002.

Appellant's attending physician, Dr. Charles A. Jackson, a Board-certified family practitioner, completed a note on September 4, 2002 diagnosing major depression. He stated, "Due to this he will need to be excused from work intermittently due to stress of the job." On December 11, 2002 Dr. Jackson stated that appellant had a history of depression and that his symptoms increased in August 2002 due to work stress. He treated appellant with medication which improved his symptoms. In December 2002, appellant's anxiety symptoms again worsened. He attributed his condition to increased job stress and stated that he wanted a transfer to a forest detail to alleviate his stress. Dr. Jackson stated that a large percentage of appellant's current depressive symptomatology stemmed from his work environment and recommended a change to a less stressful environment.

In a letter dated March 11, 2003, the Office requested additional factual and medical evidence from appellant in support of his claim. The Office allowed appellant 30 days for a response.

Appellant submitted a statement dated April 19, 2000 asserting that, during the "daily brief-in," Daryl Pridgen, assistant center director, made several remarks that appellant found offensive. He alleged that Mr. Pridgen used the words "fuck and fucking" and that he made threatening gestures such as pounding the table with his fist. Appellant stated that Mr. Pridgen degraded the performance of the employees and instructing them to "Turn in your fucking keys." He stated that he found these actions abusive, threatening and a hostile work environment.

In a note dated January 4, 2001, appellant stated that he was on duty December 25, 26 and 27, 2000 for 56 straight hours. He stated that during a meeting on January 2, 2001 regarding this incident he felt interrogated, demeaned and exposed to animosity and contempt. Appellant filed a grievance on January 4, 2001 alleging that he was left unrelieved from duty for 40 hours, that he was not provided food, heat or communications for a great deal of the time. He stated that Mr. West knew of his situation and made no effort to relieve him under very hazardous weather conditions.

Appellant submitted a letter dated May 8, 2002 in which he informed Sedalia Gouley, his supervisor, that Mr. Pridgen approached him on May 8, 2002 and that he felt threatened by his tone and posture. He related that Mike Drusky, the director of the center, requested his notes regarding the April 19, 2000 incident with Mr. Pridgen. As appellant left the employing establishment to gather these notes, Mr. Pridgen approached him, came very close and stated, "As they gather the troops and you send them what you got…. Just go ahead -- just go ahead." He stated that he felt threatened by Mr. Pridgen's tone and posture. As appellant walked off, Mr. Pridgen began laughing.

In a note dated September 4, 2002, Dr. Jackson diagnosed appellant's condition as major depression and stated that he would require intermittent time from work due to the stress of his job.

Dr. Martien Carroll, a licensed psychologist, submitted an email dated February 18, 2003 and recommended a less stressful environment. In a report dated March 7, 2003, he diagnosed mixed anxiety and moderate to severe depression. Dr. Carroll stated, "This condition was an adjustment reaction related to the situations surrounding his employment…."

On May 21, 2003 Dr. Carroll completed a report describing appellant's job stress beginning with the April 19, 2000 remarks by Mr. Pridgen and negative performance briefing. He also mentioned the May 8, 2002 incident when appellant felt threatened by Mr. Pridgen. Dr. Carroll stated that appellant felt his immediate and top supervisors were contributing to a hostile work environment. He noted that appellant feared retaliatory comments and threats. Dr. Carroll stated that appellant believed his "whistle[-]blowing" activities were not kept secret, that his letter to Mr. Gouley was not delivered and that his grievance was misplaced. He noted that appellant believed that he was passed over for job promotions, that job scheduling became more difficult, that his work performance was in question and that retaliation was a possibility. Dr. Carroll stated, "The culmination of this pressure lead to anxiety, depression, feeling betrayed by an inadequate and impotent system of filing grievances and a dissatisfying uncomfortable work environment."

By decision dated September 3, 2003, the Office denied appellant's claim finding that he did not provide a factual statement on which to base his claim.

Appellant requested an oral hearing on October 1, 2003. He also asked to present testimony from witnesses including Drs. Carroll and Jackson and his representative.

Appellant submitted a detailed narrative statement on October 20, 2003 and stated that he had worked at the employing establishment in his date-of-injury position for nine years and had tried unsuccessfully to transfer to a different position. Appellant related the events of April 19, 2000 noting that Mr. Pridgen addressed the staff with abusive, threatening and hostile words and behavior. He stated that Mr. Pridgen yelled obscenities, pounded the table with his fist and suggested that the employee's "Turn in your fucking keys" if they disagreed with his approach. Appellant stated, "I found this very threatening, unprofessional, and offensive." He noted that he reported his concerns to his supervisor, Jes Witherspoon, and to Terry West, Mr. Pridgen's supervisor. Appellant stated that he filed a whistle-blower complaint and continued to perform his duties.

Appellant alleged that Mr. Witherspoon instructed him to turn in a confidential drug referral on two students, which he did. He stated that the following afternoon Mr. Pridgen confronted appellant regarding the referral in the presence of the involved students. Appellant noted that drug referrals were kept confidential for the protection of the referring employees and that Mr. Pridgen violated this policy, that Mr. Pridgen was not usually involved in drug referrals and that he chose to become involved due to appellant's participation. He stated that, following the meeting with Mr. Pridgen and the accused students, his new truck was vandalized. Appellant alleged that Mr. Pridgen had paved the way for the students to retaliate against him.

Appellant stated that in December 2000 he reported for work on the Christmas holiday at 1600 hours and shortly thereafter freezing precipitation began. He and a coworker were the only two employees at the employing establishment. Appellant's supervisor as well as the students were out of town. He stated that he was left at the employing establishment for three days and nights without relief from duty. Appellant noted that there was no heat, no food and only sporadic communications. He stated that he remained at the employing establishment to ensure the safety of the center, but that Mr. Pridgen questioned appellant's authorization to stay. Appellant stated, "My decision to stay on center was the direct result of a memorandum dated December 11 from center director, Terry West, authorizing overtime for employees who were willing to provide coverage for the center during periods of inclement weather conditions." He noted that Mr. Pridgen refused to approve the merit award submitted by appellant's supervisor.

Appellant noted that on May 8, 2002 the new director, Mr. Drusky, requested that appellant provide documentation regarding the April 19, 2000 incident with Mr. Pridgen. He proceeded to leave the employing establishment to retrieve this information in compliance with Mr. Drusky's request and Mr. Pridgen approached appellant precipitously, displayed an intimidating tone and posture and verbally threatened appellant. Mr. Pridgen walked away laughing and appellant reported his behavior to Mr. Drusky. Appellant alleged that Mr. Pridgen attempted to bias the investigation of the April 2000 incident by discussing the events with other employees.

Appellant stated that, after the May 8, 2002 incident with Mr. Pridgen, John Booker, his supervisor, changed appellant's work schedule to include working weekends for the first time in six years. He stated that several of his coworkers were upgraded in position, and that only he and one other employee were not promoted in grade. Appellant stated that he had more time in grade and service, a college degree and an exemplary work record. He concluded that his failure to achieve a higher grade position was reprisal.

Appellant noted that Mr. Booker conducted a counseling session on September 25, 2002. He noted that other employees had used more leave and were not subject to counseling. Appellant stated that the meeting was moved to an office adjacent to Mr. Pridgen's office and human resource personnel were invited as reprisal. He received a temporary detail to the supervisor's office from February to July 2003.

Dr. Carroll completed a report on July 28, 2003 and stated that although appellant's condition had responded to treatment as his return to work approached appellant was again exhibiting symptoms. He stated that appellant's problems were work related. In an additional report dated October 1, 2003, Dr. Carroll repeated his diagnoses of mixed anxiety and moderate to severe depression as the result of an adjustment reaction related to his employment. He stated that appellant's history of stress began on April 19, 2000 when Mr. Pridgen, his supervisor, made threatening remarks and gestures. Appellant stated that Mr. Pridgen gave a very degrading performance briefing to the staff in general. Dr. Carroll stated that, following a meeting with Mr. Drusky on May 8, 2002 regarding the events of April 19, 2000, Mr. Pridgen again threatened appellant. He noted that appellant felt that his supervisors were not supportive and contributed to the hostile work environment. Dr. Carroll noted that appellant feared retaliatory comments and treats of infractions of center rules as a result of his "whistle[-]blowing." He noted that appellant believed that Mr. Pridgen gained access to privileged or sensitive information through his wife,

that the letter he wrote Mr. Gouley was not delivered and that his grievance against Mr. Pridgen was lost. Dr. Carroll reported appellant's belief that he was passed over for job promotions, that job scheduling became more difficult and that he continued to work in a hostile environment. He noted that appellant felt under pressure and stress regarding his work performance, that the issues raised had not been addressed by his supervisors and that he was subjected to retaliatory comments and innuendoes regarding both his position and bodily harm. Dr. Carroll concluded that the culmination of these events and perceptions lead to appellant's anxiety and depression.

Dr. Carroll noted that appellant had attempted to return to work in his date-of-injury position, but that the employing establishment did not comply with appellant's work restrictions of a set work schedule, weekends off, minimized interaction with Mr. Blocker and minimized interaction with students. He noted that appellant's first return assignment was weekend bus duty with students. Dr. Carroll concluded, "Going back to the Center without any modifications was sufficient to demonstrate that he was unable to do work at that workplace and it was not feasible for him to continue to work the Job Corp. That workplace provided a stress barrier and would continue to place him in a disabled work position and danger to himself."

By decision dated December 2, 2003, the hearing representative set aside the Office's September 2, 2003 decision and remanded the claim for the Office to make findings of facts.

Valerie Harwood, the center director, ordered appellant to return to work effective August 6, 2003 in a letter dated August 4, 2003.

In a report dated November 26, 2003, Dr. Carroll again recommended a set work schedule with weekends free, minimized interaction with Mr. Booker and minimized interaction with students.

Ms. Harwood addressed the events of appellant's claim occurring after July 13, 2003. She noted that Mr. Pridgen was currently working in Milwaukee, Wisconsin and that Mr. West was the administrative officer in superior national forest. Ms. Harwood noted that Mr. Drusky died in April 2003. She stated that appellant returned to work on November 4, 2003 and was performing the duties of his position in a satisfactory manner. Ms. Harwood noted that appellant's schedule was changed to include weekends as this was the primary shift for residential living and that the needs of the agency required all available staff. She noted that appellant's accommodations were denied as Mr. Booker was the sole residential living supervisor, as appellant's primary job requirement was to run a dormitory, contact with students was unavoidable, and that as the department's prime shift ran 24 hours on Saturday and Sunday appellant was needed to work on those days.

By decision dated April 21, 2004, the Office denied appellant's claim for an emotional condition finding that he had not substantiated a compensable factor of employment.

Appellant requested an oral hearing on May 18, 2004. He testified at the oral hearing on December 9, 2004 and stated that his job duties required him to work as a dormitory manager. Appellant repeated his allegations regarding the actions of Mr. Pridgen. He stated that Mr. West and Mr. Pridgen were good friends. Appellant described the Christmas ice storm and stated that he could have left the employing establishment as he had a four-wheel drive vehicle. He stated

that he stayed because otherwise he would have been accused of leaving the employing establishment without being relieved. Appellant stated that he felt threatened by Mr. Pridgen and Mr. Booker. He described his change in work schedule after returning from a temporary detail in the supervisor's office. The hearing representative left the record open for appellant to provide witnesses statement substantiating his claim.

Following the oral hearing, appellant submitted a statement dated December 17, 2004 from Donald Flemon, a coworker, who asserted that on April 19, 2000 Mr. Pridgen addressed the residential living staff with abusive, threatening and hostile behavior. Mr. Flemon stated that Mr. Pridgen used words such as "fuck and fucking" as he pounded the table with his fist. He stated that Mr. Pridgen directed the employees to turn in their keys if they did not like what he had to say.

By decision dated May 31, 2005, the hearing representative affirmed the Office's April 21, 2004 decision finding that, although Mr. Pridgen's April 19, 2000 profanity was substantiated, this was not directed at appellant personally and that appellant's reaction to this was self-generated. The hearing representative further found that, although appellant stayed at the employing establishment for three days during the ice storm, he had the ability to leave, through his four-wheel drive vehicle, and that appellant's statement that he did not want to leave the employing establishment unattended was illogical and "not indicative of the actions of a reasonable man." The hearing representative found that the employing establishment's actions in changing appellant's work shift and denying his requests for leave were administrative matters. He concluded that appellant had not established an injury in the performance of duty.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related 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 worker's compensation. Where the disability results from an employee's emotional reaction to his regular of specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[2] 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.[3]

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 under the Act, as they do not involve appellant's ability to perform her regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.[4]

[2] 5 U.S.C. §§ 8101-8193.

[3] *See Thomas D. McEuen,* 41 ECAB 387, 390-91 (1990), *reaff'd on recon.,* 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[4] *Donald W. Bottles,* 40 ECAB 349, 353 (1988).

The Board has held that the manner in which a supervisor exercises his or her discretion falls outside the coverage of the Act. This principal recognizes that a supervisor or manager must be allowed to perform their duties and that employee's will at times disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.[5] The Board has further held that the mere fact that a supervisor raised his voice during the course of a conversation does not warrant a finding of verbal abuse.[6] Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. 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.[7]

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 with the coverage of the Act.[8] While an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment, mere perceptions are insufficient. In determining whether the employing establishment erred or acted abusively, the Board determines whether the employing establishment acted reasonably.[9]

For harassment or discrimination to give rise to a compensable disability, there must be evidence 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.[10]

ANALYSIS

Appellant attributed his emotional condition primarily to actions by his supervisor, Mr. Pridgen. Specifically, he alleged that Mr. Pridgen was verbally abusive to all employees in a meeting on April 19, 2000. Appellant submitted a witness statement from Mr. Flemon, a coworker, which substantiated appellant's allegation that Mr. Pridgen used profanity in reference to all employees on April 19, 2000. He also alleged that Mr. Pridgen threatened him on May 8, 2002. As noted above, verbal abuse can be a compensable factor of employment.[11] The Board finds that, although Mr. Pridgen used a common vulgarity and raised his voice during the

[5] *Linda J. Edwards-Delgado*, 55 ECAB ___ (Docket No. 03-823, issued March 25, 2004).

[6] *Carolyn S. Philpott*, 51 ECAB 175 (1999).

[7] *Marguerite J. Toland*, 52 ECAB 294 (2001).

[8] *James E. Norris*, 52 ECAB 93, 100 (2000).

[9] *Bonnie Goodman*, 50 ECAB 139, 143-44 (1998).

[10] *Reco Roncoglione*, 52 ECAB 454, 456 (2001).

[11] *Toland, supra* note 7.

meeting on April 19, 2000, appellant was not singled out in any way and not every ostensibly offensive statement uttered in the workplace with give rise to coverage under the Act.[12]

In regard to the alleged threats on May 8, 2002, appellant did not submit any evidence to substantiate that this event occurred as alleged. To establish entitlement to benefits, appellant must establish a factual basis for his claim by supporting allegations with probative and reliable evidence.[13] As there is no such evidence regarding the May 8, 2002 incident appellant had not established a compensable factor of employment in regard to this incident.

Appellant also alleged that Mr. Pridgen revealed his identity to the students that appellant reported for drug use and generally intimidated him. The manner in which a supervisor exercises his or her discretion falls outside the coverage of the Act. This principal recognizes that a supervisor or manager must be allowed to perform their duties and that employee's will at times disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.[14] Appellant has not submitted any evidence in support of his statements regarding these incidents. As there is no supportive evidence such as witness statements establishing that Mr. Pridgen threatened or attempted to intimidate him, appellant has failed to establish that these allegations of error or abuse on the part of Mr. Pridgen are compensable factors of employment.

Appellant also attributed his emotional condition to the events of the December 2000 Christmas holiday during which an ice storm ensued. He alleged that he reported to work as scheduled and was not relieved of duty for three days. Appellant stated that there was no heat, food or communication. In response to the hearing representative's questions, appellant admitted that he was physically capable of leaving the employing establishment, but that he did not do so for fear of being accused of dereliction of duty. However, in his initial statement, appellant noted that he stayed at the employing establishment due to the authorized overtime for employees who were willing to provide coverage for the employing establishment during periods of inclement weather. The Board finds that there was no error or abuse on the part of the employing establishment in allowing appellant to stay at the employing establishment during the ice storm. Appellant received overtime pay for this period and he has submitted no evidence that the employees who failed to either stay or report to work were penalized. While appellant felt that he was entitled to additional consideration for this period, such as a merit award, the employing establishment's decision that appellant had already received sufficient payment does not rise to the level of error or abuse in an administrative decision.[15]

Appellant attributed his emotional condition to the denial of transfers and promotions. 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 under the Act, as they do not

[12] *Judy L. Kahn*, 53 ECAB 321, 327 (2002).

[13] *Andrew J. Sheppard*, 53 ECAB 170, 171 (2001).

[14] *Linda J. Edwards-Delgado*, 55 ECAB ___ (Docket No. 03-823, issued March 25, 2004).

[15] *Norris, supra* note 8.

involve appellant's ability to perform her regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.[16]

Appellant also attributed his emotional condition to the investigation of his stay at work over the holidays, the denial of a merit award regarding this stay, a change in his work schedule by Mr. Booker which he thought was punitive, and a counseling meeting regarding his use of leave which he felt was designed to be humiliating. Ms. Harwood addressed most of these events in her statement and asserted that the change in appellant's work schedule was due to the needs of the employing establishment and that appellant's accommodations could not be met. These allegations related to administrative or personnel matters and fall outside the coverage of the Act unless appellant establishes that they were the result of error or abuse on the part of the employing establishment.[17] Appellant submitted no evidence supporting his allegations of error or abuse and has not established that these work activities are compensable work factors.

Appellant has alleged that Mr. Pridgen and Mr. Booker harassed and discriminated against him through the above listed actions. For harassment or discrimination to give rise to a compensable disability, there must be evidence 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.[18] While the record establishes that the events alleged by appellant occurred, he has not established that these events were harassing or discriminatory. Appellant has submitted no evidence that the employing establishment's decisions regarding promotions, transfers, disciplinary meetings or unpleasant interactions with his supervisors were in fact intended to single him out or resulted in unfair treatment. As appellant has neither established discriminatory intent nor effect he has not established harassment or discrimination under the Act and his allegations relate to mere perceptions which do not support his claim for an employment-related emotional condition.[19]

CONCLUSION

As appellant has not substantiated a compensable factor of employment, he has not met his burden of proof to establish an emotional condition claim and the Board finds that the Office properly denied his claim.

[16] *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

[17] *Bonnie Goodman*, 50 ECAB 139, 143-44 (1998).

[18] *Reco Roncoglione*, 52 ECAB 454, 456 (2001).

[19] *Barbara J. Latham*, 53 ECAB 316, 320 (2002). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence. *Hasty P. Foreman*, 54 ECAB 427, 430 (2003).

ORDER

IT IS HEREBY ORDERED THAT the May 31, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 31, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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