

restriction until the fall of 1999 when he was asked to work more. He alleged that he was singled out and humiliated because he could not work longer hours and that his pay was unjustly cut. Appellant alleged that on October 9, 2002 and on other occasions, after his supervisor, Edward Williamson, approved sick leave, Mr. Stevenson changed the leave to AWOL and that in September 2003 annual leave was changed to AWOL. He stated that he was given a letter of reprimand which was rescinded. Mr. Stevenson was hostile to him, followed him on his route and ordered him to operate his postal vehicle in an unsafe manner. In May 2004, when he returned to work after having a virus, his sick leave was rescinded. Appellant considered this the "last straw" and stopped work.

Appellant submitted treatment notes dated November 12, 2003 to July 5, 2004 from Andrew Stanton, a licensed social worker, who noted a 10-year history of panic attacks. Mr. Stanton stated that appellant felt targeted by management and suffered public ridicule for his condition and diagnosed panic disorder, chronic and pervasive. A Step-B grievance settlement indicated that a January 16, 2002 letter of warning for being AWOL was removed, an October 15, 2003 letter of warning was expunged and AWOL was changed to leave without pay. On January 28, 2004 appellant received a seven-day no time off suspension for irregular attendance.

In an undated statement received by the Office on July 21, 2004, Mr. Williamson, delivery supervisor, advised that on October 9, 2002 the postmaster changed sick leave that he had approved to AWOL even though at that time appellant was not on any leave restriction. In an October 1, 2003 statement, S. Jose Hemby, a supervisor, advised that on two occasions appellant requested sick leave and even though he furnished requested medical documentation, Mr. Stevenson changed the sick leave to AWOL.

By letters dated July 23, 2004, the Office advised appellant of the evidence needed to support his claim and asked that the employing establishment respond. In a statement dated August 26, 2004, appellant described his job duties. After he informed Mr. Williamson of his medical condition on November 5, 2003, Mr. Williamson made jokes about appellant's condition in the presence of coworkers. He alleged that Mr. Stevenson treated him in a hostile and confrontational manner and that he had to work beyond the recommendations of his doctors. Appellant stated that, in December 2003, Mr. Stevenson screamed at him and that in many instances leave was changed or denied. He noted that he had filed many grievances.

The record also contains copies of a letter of warning dated February 26, 2003, that was expunged on March 10, 2003 and AWOL changed to leave without pay, a class grievance dated March 3, 2003 changing AWOL to paid administrative leave and an August 29, 2003 grievance that was withdrawn. A letter of warning dated October 2, 2003 noted that appellant had filed for sick leave for the week of September 8, 2003 but upon his return to work claimed Family Medical Leave to care for a sick friend but when questioned, advised that he was sick and since he failed to submit acceptable medical documentation, he was charged with 40 hours AWOL. A December 3, 2003 letter of warning issued because appellant forgot to scan express mail was expunged on December 15, 2003. Appellant was issued a notice of a 14-day suspension dated May 3, 2004 for unsatisfactory work performance following an audit which revealed that his first class mail was not endorsed, a letter of intent dated May 19, 2004 to change leave to AWOL

because he had not explained the nature of his absence and a grievance filed on August 4, 2004 because management did not comply with the union's request for appellant's discipline record.

In an October 25, 2004 statement, Tisha Johnson, a coworker, advised that Mr. Williamson discussed appellant's medical condition on the workroom floor, telling the employees not to talk with him because he might have a panic attack. She stated that she had heard Mr. Williamson say that Mr. Stevenson was "out to get" appellant. Eugene Washington, a coworker, submitted an October 26, 2004 statement in which he advised that he witnessed Mr. Stevenson confront appellant in a loud, hostile and confrontational manner demanding that appellant report to his office and when appellant asked for union representation, he was yelled at to get to the office. In an undated statement received by the Office on November 1, 2004, Craig Baker, a coworker, alleged that he on several occasions had heard Mr. Williamson ridicule appellant because he was unable to handle excess volume due to his tendency to have panic attacks, that he heard Mr. Williamson tell appellant that Mr. Stevenson was out to get him and that he heard Mr. Stevenson yell at appellant.

By report dated August 27, 2004, Dr. Darryl Dillman, a Board-certified psychiatrist, noted treating appellant on August 13 and 26, 2004. He reported a history of panic attacks since 1997, which lasted a brief period and returned in November 2003 due to work stress. Dr. Dillman noted appellant's statement that he stopped work because he was afraid he would hurt someone and diagnosed an anxiety disorder. In a November 12, 2004 treatment note, he diagnosed panic disorder without agoraphobia and advised that appellant could not work. Appellant also submitted forms indicating that he underwent medical treatment on May 3, August 13 and September 23, 2004.

In an October 6, 2004 statement, Mr. Stevenson advised that appellant had attendance problems in the past and that he was not aware that appellant had a history of panic attacks until he submitted medical documentation on May 26, 2004. He alleged that appellant had been investigated by the Postal Inspection Service, which found that he engaged in inappropriate behavior by paying other carriers to deliver his route.¹

By decision dated January 14, 2005, the Office denied the claim on the grounds that appellant had not sustained an injury in the performance of duty. On November 8, 2005 appellant, through counsel, requested reconsideration. In a July 27, 2005 report, Dr. Patrick J. Sheehan, a Board-certified psychiatrist, noted his review of the records and examination of appellant in May, June and July 2005. He noted that appellant developed panic attacks in 1995 while working and was placed on no overtime by his therapist at that time. When appellant transferred to his current postal facility in 1999, his workload increased, he was placed on AWOL, was verbally chastised because he could not deliver all of his mail, was made fun of by Mr. Williamson about his medical condition and was harassed by Mr. Stevenson, which led to increased stress and culminated in the events of May 12, 2004 when he was placed on AWOL even though he had medical documentation to verify sick leave. Appellant reported that he then became fearful that he would hurt someone and left work. Dr. Sheehan advised that appellant returned to limited duty for four hours a day on May 7, 2005. He provided findings on mental

¹ A copy of the inspection service report is not in the case record.

status examination and noted that he telephoned Mr. Baker and Ms. Johnson who confirmed that appellant's medical condition was discussed by Mr. Williamson and Mr. Stevenson and that he was intimidated by Mr. Stevenson. Dr. Sheehan also telephoned Mr. Williamson who confirmed that he would joke with others about appellant's panic attacks but now knew that it was wrong and confirmed that Mr. Stevenson changed appellant's leave to AWOL. He advised that appellant had a sleep disturbance and panic attacks two or three times a day, had problems with concentration including difficulty sorting mail and had less social interaction. Dr. Sheehan advised that appellant's work environment aggravated his preexisting panic disorder, precipitated a major depressive disorder and caused psychological factors affecting blood pressure because management singled him out for hostile treatment, ridiculed him about his psychiatric condition and refused to follow medical recommendations. He concluded that, if appellant's medical restrictions were followed, he continued treatment and was not subjected to a hostile work environment, he could perform his regular work duties.

In a July 5, 2006 decision, the Office denied modification of the July 5, 2006 decision. The Office found that, while appellant established that Mr. Stevenson changed appellant's leave to AWOL, this was administrative in nature and, therefore, not a compensable factor of employment.²

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.³ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.⁴ 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.⁵

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*,⁶ 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.⁷

² The record also contains an August 8, 2006 decision approving an attorney's fee in the amount of \$3,325.00. Appellant has not filed an appeal of this decision.

³ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁴ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁵ *Id.*

⁶ 28 ECAB 125 (1976).

⁷ 5 U.S.C. §§ 8101-8193.

There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁸ 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.⁹ A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹⁰

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.¹¹ 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.¹²

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 evidence.¹³

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.¹⁴ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that

⁸ See *Robert W. Johns*, 51 ECAB 137 (1999).

⁹ *Lillian Cutler*, *supra* note 6.

¹⁰ *Roger Williams*, 52 ECAB 468 (2001).

¹¹ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹² *Kim Nguyen*, 53 ECAB 127 (2001).

¹³ *James E. Norris*, 52 ECAB 93 (2000).

¹⁴ *Dennis J. Balogh*, *supra* note 4.

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.¹⁵

ANALYSIS

The Board finds this case is not in posture for decision. Appellant did not contend that performing his actual job duties as a letter carrier was stressful. Rather, he claimed that he was inappropriately denied leave, was inappropriately disciplined and was harassed. Appellant alleged that Mr. Williamson discussed his medical condition with other workers and that Mr. Stevenson yelled at him.

Appellant generally alleged that the employing establishment engaged in improper disciplinary actions and wrongly changed his leave. Reactions to disciplinary matters, such as letters of warning or suspensions are not compensable unless it is established that the employing establishment acted abusively in such capacity.¹⁶ Likewise, actions of the employing establishment in matters involving the use of leave are not considered compensable factors of employment as they too are administrative functions of the employer and not duties of the employee. Approving or denying a leave request is an administrative function of the employing establishment.¹⁷ The Board finds that these allegations concern administrative or personnel matters unrelated to his regular or specially assigned work duties and do not fall within coverage of the Act as there is no evidence to show that the employing establishment committed error or abuse in this case.¹⁸ While appellant submitted copies of numerous grievances and of their resolutions, as support for his claim of harassment, in assessing the evidence, the Board has held that grievances by themselves do not establish that workplace harassment or unfair treatment occurred.¹⁹ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.²⁰ Appellant also submitted statements from Mr. Williamson and Mr. Hemby showing that his approved leave was changed by Mr. Stevenson to an AWOL status. The postmaster merely stated that appellant had attendance problems. The Board finds that the evidence on this matter requires further development on the issue of whether it was error on the part of the postmaster to change the leave status to AWOL.

Regarding appellant's contention that he was generally harassed by employing establishment management and Mr. Stevenson in particular, a claimant must establish a factual basis for allegations of harassment with probative and reliable evidence.²¹ Appellant submitted

¹⁵ *Id.*

¹⁶ See *Joe M. Hagewood*, 56 ECAB ____ (Docket No. 04-1290, issued April 26, 2005).

¹⁷ See *David C. Lindsey, Jr.*, 56 ECAB ____ (Docket No. 04-1828, issued January 19, 2005).

¹⁸ *Charles D. Edwards*, *supra* note 11.

¹⁹ *Michael E. Deas*, 53 ECAB 208 (2001).

²⁰ *Lori A. Facey*, 55 ECAB 217 (2004).

²¹ *Charles D. Edwards*, *supra* note 11.

no evidence to support his contentions that Mr. Stevenson inappropriately followed him on his route or ordered him to operate his vehicle in an unsafe manner. The Board, therefore, finds these allegations unsubstantiated and not compensable factors of employment.²² While appellant submitted statements from coworkers who noted that in December 2003 Mr. Stevenson yelled at appellant and who believed that he was “out to get” appellant, not every statement uttered in the workplace will give rise to coverage under the Act and a raised voice in the course of a conversation does not in itself warrant a finding of verbal abuse.²³ The evidence supports that Mr. Stevenson raised his voice in December 2003. This factual scenario, however, does not rise to the level of error or verbal abuse.²⁴ There is no evidence that Mr. Stevenson’s actions were unwarranted.²⁵ Thus, the December 2003 conversation is not a compensable factor of employment. Regarding appellant’s allegations that Mr. Stevenson was out to get him, there is a lack of specificity regarding this perceived pattern of harassment²⁶ and the Board finds that the statements in support were too general in nature to establish a compensable factor of employment and are insufficient to establish that employing establishment management inappropriately discussed appellant’s medical condition in the presence of other employees.

Appellant also made a very general allegation that overwork caused his stress. While overwork may be a compensable factor of employment, as with all allegations, overwork must be established on a factual basis to be a compensable employment factor.²⁷ In this case, appellant did not provide sufficient evidence to document the alleged overwork and, consequently, this allegation was not established by the evidence.²⁸

The Board, however, finds the fact that Mr. Williamson discussed appellant’s medical condition with coworkers a compensable factor of employment. Ms. Johnson and Mr. Baker advised that Mr. Williamson discussed appellant’s medical condition at work.²⁹ Mr. Williamson himself acknowledged this. The evidence, therefore, establishes appellant’s allegation that his supervisor improperly disclosed that he had panic attacks to his fellow employees. It was error on the part of the supervisor to disclose confidential information. The Board finds this compensable. As appellant established a compensable factor of employment regarding Mr. Williamson inappropriately discussing his medical condition with coworkers, the case presents a medical question regarding whether his emotional condition arose from this compensable factor. The Office, therefore, must base its decision on an analysis of the medical

²² See *James E. Norris*, *supra* note 13.

²³ *Karen K. Levene*, 54 ECAB 671 (2003).

²⁴ *Id.*

²⁵ See *Carolyn S. Philpott*, 51 ECAB 175 (1999).

²⁶ See *Jesse J. Starcher*, 51 ECAB 314 (2000).

²⁷ *Sherry L. McFall*, 51 ECAB 436 (2000).

²⁸ *Bonnie Goodman*, 50 ECAB 139 (1998).

²⁹ The Board notes that Dr. Sheehan’s report of his conversations with Ms. Johnson, Mr. Baker and Mr. Williamson are hearsay and are, therefore, not probative evidence.

evidence. As it found that there were no compensable employment factors and did not analyze or develop the medical evidence, the case must be remanded to the Office for this purpose.³⁰

CONCLUSION

The Board finds this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 5, 2006 be vacated and the case remanded to the Office for proceedings consistent with this opinion of the Board.

Issued: February 22, 2007
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

³⁰ See *Robert Bartlett*, 51 ECAB 664 (2000).