United States Department of Labor
Employees' Compensation Appeals Board

C.P., Appellant	)	
and	)	**Docket No. 06-2102**
	)	**Issued: January 25, 2007**
U.S. POSTAL SERVICE, TRIBORO DISTRICT, Flushing, NY, Employer	)	

Appearances:
C.B. Weiser, Esq., for the appellant
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 September 14, 2006 appellant filed a timely appeal from the June 20, 2006 merit decision of the Office of Workers' Compensation Programs, which denied his claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the Office's decision.

ISSUE

The issue is whether appellant sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On February 2, 2002 appellant, then a 49-year-old human resource specialist (safety), filed a claim alleging that his dysthymic disorder was a result of his federal employment: "[employing establishment] failed to settle my EEO [Equal Employment Opportunity] case. It caused me great anxiety and stress causing me to seek psychiatric help including several medications to help with my problem." Dr. Michael L. Melamed, a psychiatrist, reported on

January 29, 2002 that appellant was still suffering from depression and anxiety because of unfair treatment and discrimination "he says the [employing establishment] has caused him."

In a decision dated August 9, 2002, the Office denied appellant's claim on the grounds that his dissatisfaction with the lack of a settlement was self-generated. It noted no evidence such as EEO or grievance findings to show that management acted in an abusive, erroneous or improper manner or that they maliciously delayed the settlement. On June 20, 2003 an Office hearing representative affirmed the denial of appellant's claim on the grounds that he failed to establish that he sustained the claimed condition in the performance of duty.

Appellant requested reconsideration.[1] The Office conducted a merit review of his case and on June 20, 2006 denied modification of its prior decision. The Office found no EEO or grievance findings showing that management acted in an abusive, erroneous or improper manner or that they acted maliciously in delaying settlement. The Office noted that appellant, by his own admission, was not reacting to his regular or specially assigned work duties. His reaction to the delay in the processing of his claim and his dissatisfaction with the lack of a settlement, the Office concluded, could only be considered self-generated.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] When an employee experiences emotional stress in carrying out his employment duties or has fear and anxiety regarding his ability to carry out his duties and the medical evidence establishes that the disability resulted from his emotional reaction to that 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 resulted from his emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of his work. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.[3]

Workers' compensation does not cover an emotional reaction to an administrative or personnel action unless the evidence shows error or abuse on the part of the employing establishment.[4] The Board has held that actions of an employer which the employee characterizes as harassment or discrimination may constitute a factor of employment giving rise

[1] On the prior appeal, the Board found that appellant filed a timely request for reconsideration. The Board remanded the case to the Office for a review of appellant's request under the appropriate standard. Docket No. 06-539 (issued June 7, 2006).

[2] 5 U.S.C. § 8102(a).

[3] *Lillian Cutler*, 28 ECAB 125 (1976).

[4] *Thomas D. McEuen*, 42 ECAB 566, 572-73 (1991), *reaff'd on recon.*, 41 ECAB 387 (1990).

to coverage under the Act, but there must be some evidence that harassment or discrimination did in fact occur. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[5] The claimant must substantiate those allegations with probative and reliable evidence.[6] The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.[7] A claimant seeking compensation under the Act has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.[8]

ANALYSIS

Appellant does not attribute his emotional condition to the duties he performed as a human resource specialist. He attributes his emotional condition instead to the employing establishment's failure to settle his EEO case. Appellant alleges, in addition: intimidation, disparate treatment, harassment, bribery and breach of settlement. But how an employing establishment handles its end of EEO negotiations is purely an administrative matter. Appellant's emotional reaction thereto is not covered by workers' compensation as a general rule.

The Board has recognized an exception for administrative error or abuse, but the record must contain something more substantial than allegations of unfair treatment and harassment. Appellant must submit evidence that harassment and abuse did in fact occur. He has not met that burden. His case remains one of personal perception and unsupported allegations. With his request for reconsideration, appellant attempted to use two seemingly contradictory letters from the employing establishment as evidence of error or abuse. But a careful reading of these letters shows no actual contradiction, much less any error or abuse by the employing establishment in submitting them.[9]

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[5] *See Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

[6] *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).

[7] *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

[8] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

[9] The February 2, 2004 letter is essentially correct that appellant did settle his EEO case, as evidenced by his signature to the original settlement agreement on January 12, 2000. As the June 4, 2003 letter explained, however, this agreement required appellant to submit all appropriate documents to support his case, and the manager of Human Resources was to receive the information and propose an agreement. Management offered first- and second-amended settlement agreements but appellant and his representative did not accept or reject the offers. So the process never reached a final resolution.

Dr. Melamed, appellant's psychiatrist, repeated his perception of unfair treatment and discrimination, but this does not independently corroborate the charges. The first sentence of his January 29, 2002 report notes: "[Appellant] is still suffering from [d]epression and [a]nxiety, because of unfair treatment and discrimination, he says the [employing establishment] has caused him." It is not enough for appellant to say it. He has the burden to show it with probative and reliable evidence. Because appellant has failed to establish a factual basis for his claim, the Board will affirm the Office's June 20, 2006 decision denying his claim for compensation.

CONCLUSION

The Board finds that appellant has not met his burden of proof. He attributes his emotional condition to how the employing establishment treated him in his EEO case, but he has submitted no evidence establishing administrative error or abuse. Appellant's claim is one of unsupported allegations and does not come within the scope of workers' compensation.

ORDER

IT IS HEREBY ORDERED THAT the June 20, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 25, 2007
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