United States Department of Labor
Employees' Compensation Appeals Board

J.B., Appellant	)	
and	)	**Docket No. 07-352**
	)	**Issued: June 1, 2007**
U.S. POSTAL SERVICE, GENERAL MAIL FACILITY, Wichita, KS, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 20, 2006 appellant filed a timely appeal from the decision of the Office of Workers' Compensation Programs dated September 14, 2006 affirming the denial of his emotional condition claim. 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 established that he sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On November 22, 2004 appellant, then a 59-year-old automation clerk, filed an occupational disease claim, Form CA-2, alleging that he had developed stress and anxiety as a result of his supervisor issuing letters of warning and conducting off-the-floor counseling since 2001. He stated that in July and August 2003 his supervisor, Kathleen Webb, seemed to devote all her time to harassing and demeaning him. Appellant alleged that from July 17 to

August 14, 2003 Ms. Webb gave him three letters of warning, a seven-day suspension and several off-the-floor discussions. In August 2003, he informed Ms. Webb and G.R. Porter, the acting Manager of Distribution Operations (MDO), that Ms. Webb's actions were causing him stress. In October 2004, appellant reported to his physician, Dr. Lawrence Pelletier, a Board-certified internist, that he had pain in his chest and erratic breathing. In a report dated December 3, 2004, Dr. Pelletier stated that appellant was experiencing severe stress as a result of his employment, which caused chest pain, aggravation of low back pain and sciatica, anxiety, depression and fatigue. Appellant also submitted selected pages from a medical history provided by the Department of Veterans Affairs medical center.

The employing establishment controverted appellant's claim on the basis that appellant's condition was not related to his employment and appeared to be a "reaction to justified administrative action" taken in response to his unacceptable conduct and failure to follow instructions. In a statement dated November 26, 2004, Ms. Webb stated that she did not harass or demean appellant or treat him differently from the other employees she supervised. She indicated that he did not currently have any discipline on file. Ms. Webb also stated that appointments with the Employee Assistance Program had been made for appellant and that the employing establishment had requested that he attend additional meetings "on the clock."

The employing establishment submitted an August 14, 2003 letter of warning prepared by Ms. Webb and a prearbitration settlement dated May 4, 2004 agreeing to remove the letter from appellant's file on August 14, 2004 if no other discipline was required in the meantime. The letter of warning indicated that on July 21, 2003 a meeting was held with Ms. Webb, appellant, MDO J.T. Thompson, and union representative Alonzo Wells. Ms. Webb stated that appellant had been instructed three times, off-the-floor, not to talk about coworkers on the workroom floor where others could hear his demeaning remarks. Appellant stated that he considered Ms. Webb to be a racist. The meeting became heated and nothing was resolved. The following day, July 22, 2003, Ms. Webb instructed appellant to finish a pile of mail he was running through a machine and to go to the prepping area by 9:00 p.m. Appellant kept shaking his head as if to say no. At 9:17 p.m. he was seen carrying a new tray of mail back to the machine. At 9:30 p.m. he went to the supervisor's desk to fill out paperwork to go home. When Ms. Webb requested medical documentation for his absence, appellant first asked for an ambulance and then stated he would take some pain medication, get a chair and sit down to work. At 9:47 p.m. appellant filled out paperwork to leave and was told by Ms. Webb that he needed medical documentation. He then left without saying anything. At 10:10 p.m. appellant called and stated that he was at the hospital. On July 23, 2003 he presented a note from his doctor and Ms. Webb told him it was not acceptable as it did not indicate that he had been incapacitated for work the previous evening. Appellant said that he never claimed he could not do his job, only that his back hurt. Ms. Webb found his explanation and behavior to be inappropriate.

The employing establishment also submitted a notice of seven-day suspension dated October 21, 2003. According to the notice prepared by Ms. Webb and signed by Mr. Porter, the acting MDO, on October 6, 2003 appellant disregarded her instructions to assist in the sorting of manual letters and instead tabbed mail. She asked him whether another supervisor had changed his assignment and he informed her that because there was no place for him at the manual cases, Mr. Porter told him to tab mail instead. Ms. Webb informed appellant that Mr. Porter was not in

charge in that section and that, according to supervisor Toni Vu, there were open cases. Appellant accused her of harassment and retaliation and stated that because there was nowhere to sit in the manual case section his light-duty restrictions prohibited working there. He asked whether Ms. Webb had more power than Mr. Porter and stated that she was harassing him. Ms. Webb stated that she was tired of appellant not doing what he was asked. Appellant responded that if she was tired of telling him what do to, she could stop. Ms. Webb found his actions and conduct to be unacceptable and inappropriate.

On December 15, 2004 the Office requested additional information from appellant about his claim, including detailed information about specific events that he believed contributed to his condition. In a January 9, 2005 statement, appellant indicated that in June 2001 he injured his back while moving equipment. He stated that he was given a letter of warning for failing to report the accident after Ms. Webb lied and said that he had not immediately informed her. Appellant stated that she had a "very vindictive" attitude toward him following his back injury, which was accepted by the Office in 2002. He stated that because of Ms. Webb he was always "on the defense" for fear of losing his job. Appellant alleged that he was emotionally affected by a 2002 event in which he was physically and verbally abused by a coworker. In response to a question about events in his personal life, he stated that his mother had recently died from a terminal illness.

Jessie Peters, a counselor with the Employee Assistance Program, reported that she had assisted appellant with his feelings of job-related stress on October 4, 2000, February 20 and 26, 2002, November 6, 2003 and December 28, 2004. On December 11, 2003 appellant and the plant manager met with her to discuss job issues. In a December 10, 2004 report, Dr. Pelletier requested two weeks of leave to allow appellant to recover from his employment stress. On January 3, 2005 he stated that appellant was seen on September 28, 2004 for symptoms of situational depression due to job-related stress. Dr Pelletier reported that a thallium stress test indicated anterior and antero-lateral ischemia, but that a heart catheterization showed that this was not caused by coronary artery disease. He noted that appellant appeared to be having increasing difficulties on the job, primarily with his supervisor and that this was leading to depression, anxiety, hypertension, noncardiac chest pain and lightheadedness. Dr. Pelletier also stated that appellant's short-term removal from work had not improved his symptoms, as "his worries about job-related stress are still there even when he does not work."

On January 19, 2005 the employing establishment submitted a number of documents related to appellant's 2001 injury and issues pertaining to his conduct. Ms. Webb controverted appellant's version of events. She stated that appellant was given a letter of warning in 2001 because he reported an injury that occurred June 12, 2001 on June 19, 2001, despite a well-publicized rule at the facility that accidents and injuries must be reported immediately. Ms. Webb indicated that, in addition to appellant's mother, his sister had passed away unexpectedly and that she had given him time off for both funerals, despite the fact that he had no accumulated leave. She stated that appellant's complaint of physical and verbal abuse by a coworker had been dismissed without a finding of fault because there was no evidence of abuse. The situation apparently arose when the coworker, who was eight months pregnant, was unable to perform a certain task on the machine that she was sharing with appellant. Ms. Webb stated that appellant did not seem upset at the time of the incident and did not immediately notify the

employing establishment that anything had occurred. The coworker was instructed to "choose her words more carefully."

Ms. Webb submitted handwritten notes, administrative records and statements dealing with the June 2001 back injury, when appellant alleged the period of harassment began. On a discipline proposal form, she stated that appellant did not inform her of the accident, despite his statements to the contrary. Supervisor Brian Hecht reported that appellant told him on June 19, 2001 that he felt a pain in his lower back when moving a container of mail the previous week. Appellant also told Mr. Hecht that he had informed Ms. Webb of the injury but that she assumed he was "kidding around." He did not report the injury to Mr. Hecht until his doctor issued lifting restrictions of 20 pounds for two weeks. In his handwritten statement dated June 19, 2001, appellant stated that his pain initially went away with pain medication but resumed over the next few days. He stated that he mentioned to Ms. Webb that he would have his back examined on June 19, 2001 when he went for his regular doctor's appointment.

Ms. Webb also submitted her handwritten notes of 12 instances of appellant's questionable or inappropriate conduct from April 12, 2002 to October 21, 2003. The notes cover the following occurrences: April 12, 2002 -- appellant talking loudly about his coworkers on the workroom floor and being reprimanded; June 18, 2002 -- appellant providing late or faulty information about his light-duty restrictions; August 19, 2002 -- appellant presenting restrictions on back twisting and being told he had already been instructed not to twist; August 20, 2002 -- appellant questioning supervisor's instruction to wait until the break to return his wife's call; October 9, 2002 -- appellant talking loudly about coworkers on workroom floor and being reprimanded; November 7, 2002 -- appellant arguing about the need to see a steward about his previous back injury; January 10, 2003 -- appellant telling supervisor to close her eyes as he carried three trays of mail; June 18, 2003 -- appellant adding his name to the "early out" list after it had been posted; July 23, 2003 -- appellant refusing to train coworker and then asking other coworkers to do it; August 14, 2003 -- appellant talking with coworker for 16 minutes prior to beginning work after clocking in; October 1, 2003 -- appellant refusing to take his break at the scheduled time; and October 2, 2003 -- appellant accusing supervisor of picking on him during a meeting about breaks.

Appellant retired from the employing establishment on January 31, 2005.

By decision dated April 26, 2005, the Office denied appellant's claim on the grounds that he had failed to establish any compensable factors of employment.

On June 26, 2005 an oral hearing was held at appellant's request. He testified that Ms. Webb had been harassing him ever since he injured his back on June 12, 2001. Appellant explained that she was supposed to take him off the workroom floor or direct him to a physician when he reported the injury, but did neither. Ms. Webb also harassed him after he filed a grievance against her over this incident. He was removed from his training duties following his injury, but would still be asked to train people from time to time, which was disconcerting.

Describing the events of October 6, 2003, for which appellant received a seven-day suspension, he said that he went to the manual section, as Ms. Webb had directed him, but found no seats available. He stated that because of his work restrictions, he was supposed to sit while

working. Appellant was then directed by the acting MDO, Mr. Porter, to process some mail on the labeling machine. When questioned by Ms. Webb, he said that he did not think he needed to tell her about the changed assignment because Mr. Porter was in charge of the whole division. Appellant stated that Ms. Webb took this personally and within a short amount of time wrote him up five times, had several meetings with the union steward and had counseled him off the record six times.

Appellant said that he tried to stay away from her, but that she found ways to "get to him." This exacerbated problems he was facing because of his mother's cancer and the illness of his sister and his aunt. Appellant requested a meeting with the union steward, MDO J.T. Thompson and Ms. Webb to discuss her racial bias against the African American employees she supervised.[1] He was upset when she turned the focus of the meeting away from herself. As a result of this meeting, appellant filed a grievance against Ms. Webb, which was eventually dropped. He stated that Ms. Webb continued to harass him and would write him up regularly. In response to his questions about why she was treating him in that manner, she told him that she was supposed to be doing it under the directions and regulations. Appellant stated that an Equal Employment Opportunity (EEO) Commission claim he brought against her following his retirement had been dismissed because no one dared to give a statement about how she treated them. He alleged that he was disciplined for things that Caucasian employees were not, specifically, taking a break to talk with a coworker.

In response to appellant's testimony, the employing establishment stated on July 19, 2006 that his complaints had to do with his response to the supervisor's right and responsibility to enforce policy and procedures and that he had not presented evidence of error or abuse.

By decision dated September 14, 2006, the Office hearing representative affirmed the April 26, 2005 decision denying appellant's claim on the grounds that the evidence was insufficient to establish that he had sustained an emotional condition in the performance of duty. She found that several of the allegations could not be accepted because they were emotional reactions to administrative or personnel matters. The Office hearing representative found that there was no evidence of error or abuse in these allegations. She also found that the allegations of harassment and discrimination were not compensable because there was no evidence they had occurred, as alleged. The Office hearing representative noted that appellant's perceptions of harassment and discrimination were not compensable.

LEGAL PRECEDENT

To establish a claim of emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric 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 emotional condition.[2]

[1] It appears from the evidence of record that this meeting occurred prior to the letter of warning issued in August 2003, not after the seven-day suspension issued in October 2003.

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

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations in which an injury or illness has some connection with the employment but does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that a disability results from an employee's emotional reaction to his or her regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act.[3] The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of her work or her fear and anxiety regarding her ability to carry out her duties.[4] By contrast, when disabilities are related to, but do not arise out of, employment they are not covered by the Act; such situations include an employee's fear of a reduction-in-force or frustration about not being permitted to work in a particular environment or to hold a particular position.[5] Although administrative and personnel matters are generally related to employment, they are functions of the employer and not duties of the employee. Thus, the Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.[6]

When working conditions are alleged as factors in causing 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 may be considered by a physician when providing an opinion on causal relationship and which are not deemed factors of employment and may not be considered. When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.[7] When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.[8] As a rule, a claimant's allegations alone are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.[9]

With regard to emotional claims arising under the Act, the term harassment as applied by the Board is not the equivalent of harassment as defined or implemented by other agencies, such as the EEO Commission, which is charged with statutory authority to investigate and evaluate

[3] 5 U.S.C. §§ 8101-8193.

[4] *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[5] *Id*. *See also Peter D. Butt, Jr*., 56 ECAB ___ (Docket No. 04-1255, issued October 13, 2004).

[6] *See Charles D. Edwards*, 55 ECAB 258 (2004); *see also Ernest J. Malagrida*, 51 ECAB 287, 288 (2000).

[7] *Margaret S. Krzycki*, 43 ECAB 496 (1992).

[8] *See Charles D. Edwards*, *supra* note 6.

[9] *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Arthur F. Hougens*, 42 ECAB 455 (1991) and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence established such allegations).

such matters in the workplace. Rather, in evaluating claims for workers' compensation under the Act, the term harassment is synonymous, as generally defined, with a persistent disturbance, torment or persecution. Mere perceptions and feelings of harassment will not support an award of compensation.[10] For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. Rather, the issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[11]

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused or adversely affected by his employment.[12] Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[13]

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of a number of employment incidents involving his supervisor, Ms. Webb. The Office denied his claim on the grounds that he did not establish any compensable employment factors. The Board must, therefore, initially review whether these alleged incidents are covered employment factors under the Act.

The Board notes that appellant did not allege that he developed stress and anxiety due to the performance of his employment duties or a specific requirement imposed by his employment. His allegations relate to Ms. Webb's treatment of him and not difficulties with the duties he was assigned.

Appellant alleged that his anxiety arose because of disciplinary actions by Ms. Webb. Discipline is an administrative function of the employing establishment and, as such, is not a compensable employment factor unless appellant establishes that there was error or abuse in its administration. Disciplinary actions concerning oral reprimands, discussions or letters of warning for conduct are not compensable unless the employee shows management acted unreasonably.[14] Appellant stated that he received three letters of warning, a seven-day suspension and several off-the-floor discussions between July 17 and August 14, 2003. The

[10] *Beverly R. Jones*, 55 ECAB 411 (2004).

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

[12] *See Charles D. Edwards*, *supra* note 6.

[13] *Ronald K. Jablanski*, 56 ECAB ___ (Docket No. 05-482, issued July 13, 2005). *See also Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[14] *Gregory N. Waite*, 46 ECAB 662, 673 (1995).

Board notes that the record does not establish these allegations: it contains evidence of one letter of warning from June 2001, one letter of warning from August 2003, one seven-day suspension in October 2003 and as many as 12 informal discussions in between April 12, 2002 and October 21, 2003, only two of which occurred in July and August 2003.[15] To the extent appellant's allegations of disciplinary actions are borne out by evidence, however, he must still establish that they were erroneous or abusive.

Appellant alleged that Ms. Webb lied when she said that he did not report his employment injury to her on June 12, 2001, which resulted in her issuing a letter of warning for failure to report an injury. While this could constitute unreasonable behavior if established, the Board finds that appellant has not submitted sufficient evidence to substantiate or corroborate his allegation. Appellant provided only his testimony, which was countered by that of Ms. Webb. The statement Mr. Hecht, another supervisor, while lending some support for both statements, does not confirm either because it does not provide independent confirmation of whether or not appellant actually informed Ms. Webb of his injury on June 12, 2001. Without more evidence, the Board cannot find that this event occurred as alleged or that issuance of the letter of warning was unreasonable. The Board, therefore, finds that appellant has not established that the issuance of the 2001 letter of warning was a compensable employment factor.

Appellant alleged that Ms. Webb's disciplinary actions from 2001 constituted harassment and discrimination. The Board has held that harassment and discrimination by a supervisor may constitute compensable employment factors if the evidence establishes both that they occurred as alleged and that they arose from the employee's performance of regular duties.[16]

Appellant alleged that Ms. Webb's discipline was a form of harassment motivated by a vindictive attitude towards him. He stated that she was vindictive because he brought a grievance against her over the 2001 letter of warning. However, appellant has presented no evidence to corroborate these allegations. The fact that he was disciplined through off-the-floor discussions, letters of warning and a seven-day suspension does not prove that Ms. Webb was harassing him. Enforcing work rules and issuing discipline are duties of the employing establishment and, as an official, Ms. Webb was authorized to do these things.[17] The fact that appellant disagreed with the discipline he received does not make it a compensable employment factor either.[18] The Board finds that because appellant has not established that he was harassed by Ms. Webb, his discipline cannot be considered a compensable employment factor.

Appellant also alleged that Ms. Webb's discipline was motivated by racist attitudes. He contended that Ms. Webb treated African American employees differently than Caucasian employees. Appellant alleged that on one occasion she disciplined him and another African American employee for a two minute conversation and took no action against Caucasian employees who had been talking with each other for longer. He stated that he filed a grievance

[15] It is unclear from the record whether Ms. Webb discussed all of the noted incidents with appellant.

[16] *Janice I. Moore*, 53 ECAB 777 (2002).

[17] *See Charles D. Edwards, supra* note 6.

[18] *See Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

and an EEO Commission complaint charging Ms. Webb of racist actions, but that they were dropped because no one dared to provide statements. Appellant charged her with racism in a meeting with the manager of distribution operations and his union representative. Ms. Webb denied these allegations and stated that she treated all of her employees the same. The Board finds that, because the record contains no corroborating evidence of these charges, they constitute unsubstantiated allegations and as such, cannot be considered as compensable employment factors. The Board finds that appellant has not established that Ms. Webb or other employing establishment officials erroneously or abusively disciplined him by harassing or discriminating against him.

An altercation, when sufficiently detailed by the claimant and supported by the evidence, may constitute a compensable employment factor.[19] Appellant alleged that, in a 2002 incident, he was physically and verbally abused by a coworker. He did not provide any details about the time, place or circumstances of this incident. Ms. Webb stated that this event occurred when a coworker, who was eight-months pregnant, was unable to perform a certain task on a machine on which they were partners. It was investigated and no fault was found with either party, though the coworker was instructed to choose her words more carefully. Ms. Webb said that appellant did not appear upset following the incident and did not immediately report it. The Board finds that appellant has not presented sufficiently detailed evidence that he was physically or verbally abused by his coworker. While the record does establish that the employing establishment warned the coworker to choose her words more carefully, the Board has held that being spoken to in a harsh or raised voice does not of itself constitute verbal abuse.[20] This event is, therefore, does not constitute a compensable employment factor.

CONCLUSION

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty.[21]

[19] *Janet D. Yates*, 49 ECAB 240 (1997).

[20] *Beverly R. Jones, supra* note 10.

[21] As appellant has not established any compensable factors of employment, it is not necessary to review the medical evidence of record. *See Margaret S. Krzycki, supra* note 7 at 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 14, 2006 is affirmed.

Issued: June 1, 2007
Washington, DC

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

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

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