

relationship between his employment and his conditions. The employing establishment controverted the claim. It noted that appellant was not at work on June 11, 2003. It further advised that appellant's last date in pay status was April 23, 2004. In August 2006, appellant applied for disability retirement.¹ The record reflects that appellant has two other claims before the Office.²

By letter dated July 19, 2006, the Office notified appellant that the information submitted was insufficient to establish his claim. It advised him to identify the specific incidents, dates and individuals involved that he believed contributed to his illness. The Office requested statements from any person who could verify his allegations and copies of any grievances and/or EEO complaints filed. Appellant was advised to submit a medical report describing his symptoms, treatment and an explanation as to how the alleged work incidents or exposure contributed to his condition.

In statements dated August 9 and 13, 2006, appellant attributed his emotional condition to the employing establishment's knowledge of his illness, prior on-the-job injuries and his daily pain. He stated that the employing establishment assigned him the hardest job knowing about his low back condition. Appellant alleged that, on February 10, 2001, a Mr. Duncan, supervisor distribution operations, instructed him to clear the floor of all the mail. He alleged that, although Mr. Duncan had six clerks keying in the mail, no one helped him. Appellant also stated that he could not file for unemployment benefits even though he had not worked since October 31, 2004. He submitted numerous medical reports and documents relating to his physical and mental conditions. The record contains various reports diagnosing depression and alcohol dependence.

By decision dated November 15, 2006, the Office denied appellant's claim, finding that he failed to establish any work-related incidents which he believed caused his emotional condition.

LEGAL PRECEDENT

To establish a claim that an emotional condition arose 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 the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.³

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 where an injury or illness

¹ The date of any disability retirement is not in the record.

² Under file number 062109391, the Office accepted appellant's claim, with a date of injury of June 11, 2003, for cervical spinal stenosis and adhesive capsulitis of the left shoulder. Under file number 0621685545, the Office denied appellant's claim for lumbar disc disease, with a date of injury of February 10, 2001, on October 2, 2006.

³ *D.L.*, 58 ECAB ____ (Docket No. 06-2018, issued December 12, 2006).

has some connection with employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to his 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. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of his work or his fear and anxiety regarding his ability to carry out his work duties.⁴ By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.⁵ An employee's emotional reaction to an administrative or personnel matter is generally not covered by workers' compensation. The Board has held, however, that error or abuse by the employing establishment in an administrative or personnel matter may afford coverage.⁶

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. 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.⁷

As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.⁸ Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable

⁴ *Ronald J. Jablanski*, 56 ECAB ____ (Docket No. 05-482, issued July 13, 2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁵ *Id.*

⁶ *Margreat Lublin*, 44 ECAB 945 (1993). See generally *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁷ *A.K.*, 58 ECAB ____ (Docket No. 06-626, issued October 17, 2006); *C.S.*, 58 ECAB ____ (Docket No. 06-1583, issued November 6, 2006); *T.G.*, 58 ECAB ____ (Docket No. 06-1411, issued November 28, 2006); *D.L.*, *supra* note 2.

⁸ *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).

evidence.⁹ The primary reason for requiring factual evidence from the claimant in support of 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.¹⁰

ANALYSIS

Appellant made general allegations that because the employing establishment knew or should have known about his various physical conditions, its actions and the actions of other agencies, caused or contributed to his emotional condition. The thrust of appellant's argument is that management and other agencies treated him unfairly which caused or contributed to his emotional condition. Because he attributes this emotional condition to administrative actions of management, supervisors, and to various federal agencies, his claim, as a general rule, falls outside the scope of the Act.¹¹

The Board has recognized an exception for administrative error or abuse. Appellant alleged that he was given the hardest jobs without any assistance from his coworkers and that he could not file for unemployment benefits because of his on-the-job injuries. The evidence of record does not contain probative and reliable evidence sufficient to establish a factual basis for his allegations of mistreatment or establish administrative error or abuse. Appellant alleged that on February 10, 2001 Mr. Duncan mistreated him by not assigning anyone to help him. An employee's complaints about the manner in which supervisors perform supervisory duties or the manner in which supervisors exercise supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor must be allowed to perform his duties and that employees will at times dislike actions taken.¹² There is no evidence that appellant's supervisor acted unreasonably in assigning appellant the task of clearing the floor of mail on February 10, 2001. To the extent that appellant thought he was mistreated because the employing establishment knew or should have known about his various physical conditions, there is no probative evidence of discrimination or harassment in this case.¹³ Appellant has failed to establish compensable work factors with respect to these allegations.

Appellant also mentioned that there were various reports from other agencies and he was unable to file for unemployment benefits. The record reflects that he has two other claims before the Office in various stages of development. The Board notes that the development of any

⁹ *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).

¹⁰ *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

¹¹ *L.S.*, 58 ECAB ___ (Docket No. 06-1808, issued December 29, 2006).

¹² *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

¹³ See *Joel Parker, Sr.*, 43 ECAB 220 (1991) (the Board held that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

condition related to such matters would not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties.¹⁴ Appellant also had claims considered by other federal agencies. However, findings of other federal agencies or bodies are not dispositive with regard to questions arising under the Act.¹⁵ Appellant did not otherwise present findings by other administrative bodies supporting that the employing establishment erred regarding matters alleged in the present case. He presented insufficient evidence to support that the employing establishment erred or acted abusively with regard to processing his claims. Thus, appellant failed to establish a compensable factor in this regard.

A claimant's burden of proof includes submission of a detailed description of the employment factors or conditions that he believes caused or adversely affected the condition or conditions for which compensation is claimed.¹⁶ He was advised of the deficiencies in his claim in a letter dated July 19, 2006. However, he did not provide the requested information outlining the specific work-related incidents, other than the February 10, 2001 incident, which he believed caused or contributed to his emotional condition. Accordingly, appellant has failed to satisfy his burden of proof. The Board finds that the Office properly denied his claim for benefits under the Act.

CONCLUSION

Appellant has not met his burden of proof in establishing that he developed an emotional condition in the performance of duty.

¹⁴ See *George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

¹⁵ See *Joe M. Hagewood*, 56 ECAB ____ (Docket No. 04-1290, issued April 26, 2005).

¹⁶ *Robert Breeden*, 57 ECAB ____ (Docket No. 06-734, issued June 16, 2006); *David Apgar*, 57 ECAB ____ (Docket No. 05-1249, issued October 13, 2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 15, 2006 is affirmed.

Issued: June 4, 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