United States Department of Labor
Employees' Compensation Appeals Board

E.C., Appellant	)	
	)	
and	)	**Docket Nos. 06-1145, 06-1184 & 06-1637**
	)	
DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS & BORDER PROTECTION, Miami, FL, Employer	)	**Issued: March 5, 2007**

Appearances:
John Cavicchi, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 24, 2006 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated April 10, 2006 which was docketed as 06-1184; on April 25, 2006 he filed a timely appeal from an Office decision dated April 14, 2006, docketed as 06-1145; and on July 12, 2006 he filed a timely appeal from Office decisions dated October 24,

2005 and June 29, 2006, docketed as 06-1637.[1] Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claims.[2]

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty causally related to factors of his employment for the period April 5, 2002 through July 28, 2003; (2) whether he sustained an emotional condition in the performance of duty causally related to factors of his employment for the period July 29 through December 16, 2003; and (3) whether he met his burden of proof to establish that he sustained an emotional condition in the performance of duty causally related to factors of his employment for the period December 17, 2003 through July 23, 2005.

FACTUAL HISTORY -- DOCKET NO. 06-1184 -- ISSUE 1

On August 18, 2003 appellant, then a then a 53-year-old senior customs inspector working a reduced schedule,[3] filed a Form CA-2, occupational disease claim, alleging that he sustained employment-related stress. He stopped work on July 28, 2003. In an attached statement, appellant noted that he was fearful of two coworkers, Maria Tavel and Alice O'Donnell, who talked back to him. He alleged that Diane Georges, his supervisor, inappropriately accepted food from vendors who received special treatment and that he was inappropriately counseled by Ms. Georges on July 23, 2003. Ms. Georges told appellant that she had never had trouble before his arrival and that he was transferred because of his lawsuit. Appellant also referenced a shooting that occurred at the employing establishment in 1999,[4] which he alleged showed that Ms. Georges had previously had trouble. On July 24, 2003 he called internal affairs to report fears for his physical safety because of Ms. O'Donnell's open hostility.

Appellant submitted copies of a request for leave under the Family and Medical Leave Act (FMLA) for the period July 28 to October 13, 2003, a letter from John Casale, chief, trade

[1] Docket No. 06-1184 is in reference to Office file number 062095290; Docket No. 06-1145 is in reference to file number 062110183; and Docket No. 06-1637 is in reference to file number 062147919. File numbers 062095290 and 062110183 were combined by the Office on April 17, 2006. By order dated August 18, 2006, the Board granted appellant's request to consolidate these appeals. Appellant also has two claims for back injuries, adjudicated under Office file numbers 062067229 and 062068673.

[2] Appellant had a previous case before the Board. By decision dated January 12, 2005, the Board affirmed Office decisions dated January 30 and May 25, 2004 which denied appellant's claim that he sustained an emotional condition through April 4, 2002. The Board found that appellant established a compensable factor, that his supervisor committed administrative error by telephoning his mother's physician, but determined that the medical evidence of record did not contain a rationalized opinion attributing appellant's condition to this factor. The law and the facts of the previous Board decision are incorporated herein by reference. Docket No. 04-1591 (issued January 12, 2005).

[3] The record indicates that for nonemployment-related health reasons appellant worked a flexible schedule of 32 hours per week.

[4] This was concluded to be a suicide.

operations, Miami Seaport, advising appellant that he needed to submit additional medical evidence to support this leave request and materials regarding the 1999 shooting.

In a July 28, 2003 report, Dr. Daniel R. Collins, a psychiatrist, noted that appellant had been under his care since April 2002. He described a very oppressive workplace and advised that appellant's symptoms had worsened and that he should stop work. In an FMLA form report, Dr. Collins reiterated that appellant had been incapacitated since July 28, 2003. In an attending physician's report dated August 21, 2003, he diagnosed adjustment disorder with anxiety and again found that appellant could not work. Dr. Collins checked the "yes" box, indicating that the diagnosis was employment related, stating "exacerbation of symptoms followed his experiencing specific upsetting and very stressful situations [and] events at work." On August 29, 2003 he advised that appellant would be totally disabled for three months.

Appellant returned to work on November 3, 2003. By letters dated November 6, 2003, the Office requested that he furnish additional information and that the employing establishment respond to his allegations. On November 15, 2003 appellant reported that his problems at work began years previously when he first applied for FMLA.[5] He complained about Jose Ramirez, the port director, described the 1999 shooting and stated that on November 10, 2003 Joseph Ward Cox, a coworker, inappropriately gave him instructions. Appellant contended that he had been inappropriately denied a transfer to Nassau and complained that many of his coworkers did not know what they were doing. He generally alleged that his dental problems were caused by employment-related stress.[6]

By letter dated December 4, 2003, Mr. Ramirez responded to appellant's allegations. He noted that Ms. Georges had been appellant's supervisor for the past nine months. Mr. Ramirez opined that appellant's fears regarding Ms. Tavel and Ms. O'Donnell were unfounded because both individuals were responsible employees and that, when appellant complained that customers were inappropriately bringing in food, this was immediately addressed. He explained that inspectors have discretion regarding how to process transactions and that there was no evidence of favoritism. Appellant was transferred from the Miami Seaport to the Miami Free Trade Zone (FTZ) in April 2003 to assist in managing the workload and to provide proper service to the trade community. He was accommodated for his nonemployment-related health condition and since 1999 his FMLA requests had been granted. Mr. Ramirez explained that appellant was initially assigned to a special project which was completed with no problem and that, when he complained about a new assignment, he was permitted to process in-bonds at his request. He stated that appellant's work was initially capably performed but that his behavior became disruptive, noting that appellant would initiate altercations with the public and coworkers when his supervisor was absent. Appellant's complaints were mostly directed to female coworkers and that complaints were filed against him because he refused to process customers' papers. When this was discussed at a meeting, appellant left work. Mr. Ramirez concluded that appellant continually worked contrary to established procedures and opined that his stress was self-generated.

[5] *See* Docket No. 04-1591 (issued January 12, 2005).

[6] Appellant also noted that he had filed a claim for a back injury.

In a December 14, 2003 report, Dr. Collins reported a history of a "pattern of punishment" at the employing establishment. He diagnosed an anxiety disorder, stating that appellant's "obsessing got worse and anger continued to build" due to "perceived injustices." Dr. Collins advised that appellant had no emotional problems "until a series of very upsetting events at work began to occur a few years ago," continuing that appellant's anger and anxiety continued to increase to the point that appellant feared an attempt was going to be made on his life. He concluded that appellant's mental illness had a direct causal relationship to the "pattern of harassment" at work.

By decision dated August 16, 2004, the Office denied the claim, finding that appellant failed to establish a compensable factor of employment. On August 30, 2004 he requested a hearing and on October 4, 2004 submitted subpoena requests for Mr. Casale, Mr. Ramirez, Ms. Georges, Suzanne Gelber, Gerry O'Neill, John Breslin, Barbara Evans and Wilfredo Lopez. In an undated decision, an Office hearing representative denied appellant's subpoena requests.

At the hearing, held on March 21, 2005, appellant testified that since 1998 he had worked part time because of kidney disease. He stated that he did not want to be transferred to the FTZ in April 2003 and had complained to internal affairs that customers were bringing in food. In July 2003, appellant took FMLA because of the 1999 shooting and did not return to work until November 2003. He related that Mr. Cox berated him in front of customers on November 10, 2003 and that Ms. Georges inappropriately accused him of being disruptive.

Appellant submitted evidence including a police report regarding the 1999 shooting and email correspondence between appellant and Ms. Georges dated July 23, 2003 regarding his referral to the Employee Assistance Program (EAP). In a January 21, 2004 statement prepared for appellant's Equal Employment Opportunity (EEO) Commission claim, Ms. Georges related that she had been appellant's supervisor since April 2003. She described a meeting with appellant held on July 23, 2003 in which she discussed an email complaint made against him by a customer, noting that he became loud, hostile and accusatory. Ms. Georges urged him to call EAP and told him that she would initiate the process. She stated that she had never had major problems with employees until appellant's arrival and that customers had complained about his unprofessional attitude. Ms. Georges noted that inspectors were given discretion regarding the processing of transactions and opined that appellant had no reason to be fearful of Ms. O'Donnell or Ms. Tavel. She also related that Mr. Cox determined that appellant was inappropriately processing a shipment prohibited at the FTZ and told appellant that the customer would have to be sent to the Port of Miami. Ms. Georges investigated appellant's complaints about Ms. Tavel and Ms. O'Donnell and concluded that they were unfounded advising that appellant inappropriately monitored other employee's activities and was rude and disrespectful.

In an EEO Commission hearing testimony dated November 30, 2004, Ms. Georges described appellant's complaint regarding customers bringing food to the work premises and her response. In an undated report, Dr. Collins noted that appellant's report of various incidents that

occurred at work which he opined demonstrated a severe pattern of harassment. Appellant also submitted an internet article dated December 15, 2004.[7]

By decision dated June 16, 2005, an Office hearing representative affirmed the August 16, 2004 decision in Office file number 062095290. She advised the Office that, upon the return of the case records, appellant's claims should be doubled for administrative purposes. On June 23, 2005 appellant, through counsel, requested reconsideration.[8] In an August 19, 2005 decision, solely regarding file number 062095290, the Office denied modification of the June 16, 2005 decision. On August 30, 2005 appellant filed an appeal with the Board. By order dated March 21, 2006, the Board remanded the case to the Office for reconstruction of the case record to include Office file number 062110183, to be followed by *de novo* decisions on the merits of the claims under both file numbers.[9] Following remand, on April 10, 2006 the Office reissued the August 19, 2005 decision, and on April 17, 2006 doubled file numbers 062095290 and 162110183, with the former being the master case.

FACTUAL HISTORY -- DOCKET NO. 06-1145 -- ISSUE 2

On November 20, 2003 appellant filed an occupational disease claim, alleging stress caused by a continued policy of harassment and retaliation by management. On December 5, 2003 he filed a second occupational disease claim, alleging that on that day Ms. Georges inappropriately called him at home and requested medical documentation for sick leave. In an attached statement, appellant noted that he had been on sick leave for three days, and it was employing establishment policy that he did not need a doctor's certification until the fourth day. He contended that the policies of Ms. Georges and her staff led to him being assaulted, that he had been transferred in retaliation for an EEO claim, and that he was the subject of verbal abuse and a hostile work environment. Appellant again alluded to the suspicious death in 1999.

Appellant filed a third occupational disease claim on December 16, 2003, alleging that his stress was aggravated by management. In an attached statement, he alleged that on November 26, 2003 he was assaulted by a customer, that coworkers did nothing and that the incident was inappropriately investigated by Ms. Georges. Appellant further alleged that on or about December 1, 2003 he asked a customer for identification because he perceived that she received preferential treatment. He filed incident reports regarding the assault and the preferential treatment and that Ms. Georges took offense with this and suspended his authority to send incident reports.

In a January 21, 2004 statement, Ms. Georges noted that a counseling session was held on November 20, 2003 regarding a written complaint made against appellant by a coworker. In her

[7] Appellant submitted a letter to Ms. Georges dated December 2, 2003 in Spanish, evidence related to his other claims which will be discussed below, evidence pertaining to his request for a transfer in 1998, and pleadings submitted in his EEO claim. In its January 12, 2005 decision, the Board determined that the denial of his requests for a transfer prior to April 4, 2002 was proper administrative functions of the employing establishment. *Supra* note 2.

[8] He again submitted evidence regarding a 1998 request for a transfer. *Supra* note 6.

[9] Docket No. 05-1887 (issued March 21, 2006).

EEO Commission hearing testimony on November 30, 2004, she explained that she was told by Mr. Breslin in employee relations to call appellant for medical documentation and that, upon learning that this information was incorrect, she apologized to appellant.

By letter dated April 23, 2004, the Office informed appellant of the evidence needed to develop his claims. In an April 26, 2004 response, he stated that he had previously answered all questions and wanted the claims consolidated.

In a September 15, 2004 decision, the Office denied the claim finding that appellant submitted no evidence to show that the incidents occurred as alleged and had submitted no medical evidence to show that he had a diagnosed condition. On September 20, 2004 appellant requested a hearing and on November 26, 2004 submitted subpoena requests. As noted, an Office hearing representative denied appellant's subpoena requests.

At the hearing, held on March 21, 2005, appellant testified that, in late November 2003, over a period of several days he asked a customer several times to move and that at one point she jumped on a trash can, then lunged at him, hitting him and breaking his glasses. The customer was thereafter arrested. Appellant testified that he was inappropriately called at home for medical documentation and that Ms. Georges solicited complaints against him and accused him of processing forged documents.

Appellant submitted a police report dated February 17, 2004. It described the November 27, 2003 incident, noting that, when he ordered his assailant off a garbage can, she jumped down and punched him on the chest, breaking his sunglasses. Appellant was not injured. In an EEO statement dated March 18, 2004, Mr. Breslin, a human resource specialist at the employing establishment, advised that in December 2003 he had either provided incorrect information to Ms. Georges or she had misinterpreted what he stated regarding the medical documentation appellant would need, noting that the contract stipulates that documentation is needed after three days.

By decision dated June 16, 2005, an Office hearing representative affirmed the August 16 and September 15, 2004 decisions. Thereafter appellant resubmitted the undated report in which Dr. Collins noted appellant's report of various incidents that occurred at work, specifically describing the assault when appellant's sunglasses were broken. Dr. Collins concluded that these events "exhibit a severe pattern of harassment at work, which is condoned and even encouraged by his supervisors. The work-related harassment is so severe, in my expert opinion, it has resulted in a direct and proximate cause of the worsening of [appellant's] emotional and psychiatric conditions."

In a January 26, 2004 statement, Mr. Cox, a coworker, noted that he had occasionally worked with appellant during the past 10 to 15 years. He stated that for several years he had been designated the lead inspector in the supervisor's absence. On November 10, 2003 Mr. Cox observed appellant inappropriately discussing a personal shipment clearance with a customer, noting that this was not done at the FTZ. He stated that he was neither abusive nor arrogant but that appellant became angry, raised his voice and ordered Mr. Cox from his cubicle. Mr. Cox stated that he apologized to the customer and explained that she should have been referred to the seaport.

On September 2, 2005 appellant filed an appeal with the Board. As noted, the Board remanded the case to the Office for reconstruction of the case record.[10] Following remand, by decision dated April 14, 2006, the Office found that appellant had not established fact of injury. On April 17, 2006 it doubled file numbers 062095290 and 162110183, with the former being the master case.

FACTUAL HISTORY -- DOCKET NO. 06-1637 -- ISSUE 3

On July 23, 2005 appellant submitted an occupational disease claim and stopped work that day. On July 22, 2005 Dr. Collins advised that appellant was totally disabled. He resubmitted the undated report from Dr. Collins who reported a history that on February 4, 2004 appellant was told not to leave his cubicle and that on November 17, 2004 he was accused of forging documents. By letter dated September 6, 2005, the Office informed appellant of the information needed to develop this claim and requested that the employing establishment respond.

Appellant alleged that Mr. Ramirez continued to harass him, that false sexual harassment charges had been placed again him and that he had been demoted from a GS-11 to a GS-3 and ordered to deliver mail. On July 27, 2005 Mr. Ramirez approved appellant's FMLA request for the period July 21 through October 14, 2005; annual leave was approved for October 17 through 28, 2005 and sick leave for October 31, 2005.

By decision dated October 24, 2005, the Office denied the claim on the grounds that appellant had not established a compensable factor. On April 3, 2006, through counsel, appellant requested reconsideration, alleging that Ms. Georges falsely accused him and solicited complaints about him, that the employing establishment refused to transfer him, that he was falsely imprisoned, that offensive notes were left at his workspace, that he was falsely accused of sexual harassment, that he was assaulted at work and that his coworkers expressed joy when he was transferred. Appellant generally alleged that he worked in a hostile environment and that Mr. Ramirez lacked credibility.

Appellant submitted a separation clearance with an attached statement dated November 1, 2005 in which he alleged that he was being forced to retire, stating that he had been continually harassed by management. He also submitted a February 9, 2005 report of investigation concerning Ms. O'Donnell's complaint of sexual harassment filed against him which noted that his supervisor, Mr. Lopez, had scheduled a meeting to discuss the allegations. In statements dated July 15 and August 9, 2005 prepared for appellant's EEO claim, Mr. Lopez noted that from July to December 2004 he was appellant's supervisor. He stated that he told appellant that his transfer request was denied in December 2004 because of a pending investigation of misconduct and not because of his EEO complaint. Mr. Lopez described a difference of opinion between appellant and Mr. Cox at a meeting in February 2005 and asked for EEO mediation regarding this incident and appellant's additional complaints regarding Mr. Cox. He had no knowledge of any solicitation of complaints against appellant and advised that appellant was given a letter of warning on December 21, 2004 and that Ms. O'Donnell's EEO complaint

[10] *Id.*

against appellant was pending. In excerpts of Mr. Lopez's EEO trial testimony on November 30, 2004, he stated that he was told by Mr. Casale that appellant's 2003 request to transfer was not granted because appellant was not going to be rewarded for his disruptive behavior.

In correspondence dated July 13 and 18, 2005, Barbara J. Evans, acting union president, requested information from Greta Campos, assistant port director, regarding appellant's recent reassignment. In a July 20, 2005 affidavit, she alleged that, while appellant's job classification and pay had not changed, his reassigned duties were demeaning and he had not received proper notice of the reassignment. Ms. Evans also stated that the fact that he was confined was illegal and noted that this order was immediately rescinded. She further noted that she was told by a FTZ customer that Ms. Georges asked if she had any complaints about appellant.

In a July 19, 2005 affidavit, Mr. Cox advised that both Ms. Georges and Mr. Lopez were very even-handed supervisors who did not harass appellant. He opined that, for the past several years, appellant had been a troublemaker and management had been too lenient with him. Mr. Cox was not aware that Ms. Georges ever solicited complaints about appellant but knew that complaints had been made about him and described a discussion he had with appellant on April 7, 2004 regarding a door being left open. He noted that his relationship with appellant had never been good and, although he knew that notes were found in appellant's cubicle, did not know who put them there. Regarding the February 2005 staff meeting, Mr. Cox voiced his opinion that it was not appropriate for a part-time employee to review a full-time employee's work but was not derogatory. He stated that no one in management revealed appellant's EEO findings to him.

In a July 29, 2005 affidavit, Ms. O'Donnell noted that she had been a coworker with the same supervisors since appellant started to work at the FTZ. She opined that appellant was given preferential treatment, and that Ms. Georges did not solicit complaints against him. In 2003 Ms. O'Donnell wrote about an incident where she heard appellant yelling at Ms. Georges. In November 2004, she filed a complaint about appellant's disruptive behavior which was witnessed by at least two coworkers. Ms. O'Donnell also stated that she received a letter of reprimand for telling appellant to "f*** off" in 2004. She did not know who placed a note in appellant's cubicle and was unaware that a second note was found. Ms. O'Donnell did not find Mr. Cox's comments during the February 2005 meeting to be derogatory and was not told of appellant's EEO findings. She stated that appellant was loud and yells all day long. Ms. O'Donnell stated that she was not encouraged to file a complaint against appellant and concluded that it was appellant who created a hostile work environment due to his disruptive behavior.

Ms. Georges provided an August 15, 2005 affidavit in which she stated that she supervised appellant from April 2003 to August 2004 and had been named in numerous EEO complaints filed by him. She was unaware of any reprisal for his EEO activity in denying transfer requests in 2004 or 2005, noting that three employees had transferred during this period but that this was at the director's discretion. Ms. Georges advised that she tried to be fair and impartial with appellant and that he was given a letter of reprimand for his unprofessional, disrespectful and unwarranted behavior towards her and Mr. Cox. The letter of reprimand was not initiated by her but by employee relations after an investigation and that she only shared appellant's EEO findings with Mr. Lopez, as he became appellant's supervisor. Ms. Georges

was not a witness to the April 7, 2004 incident between appellant and Mr. Cox but advised Mr. Cox not to speak to appellant. She held meetings regarding the notes placed in appellant's cubicle and did not know who placed them there. Ms. Georges advised that a customer had complained that transactions were being processed with forged signatures. She misread the employing establishment's computer tracking screen and directed the complaint to appellant in error. Upon realizing her mistake, Ms. Georges notified Mr. Lopez, appellant's supervisor. In excerpts from her November 29, 2004 trial testimony, she testified that she was not present at the time of the assault and again explained the circumstances surrounding the notes found in appellant's cubicle noting appellant's complaint about a flyer that had been posted on his bulletin board.[11] Ms. Georges had a meeting saying such actions would not be tolerated and held another meeting after a second incident. At the second meeting, other employees voiced their belief that appellant had placed the notices himself. Appellant also resubmitted the FMLA request form from Dr. Collins, a copy of the medical report which was now dated March 19, 2005 and an unsigned affidavit, from Mark Read.

By decision dated June 29, 2006, the Office found that appellant had not established that he sustained an emotional condition in the performance of duty.

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 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.[12] 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.[13]

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*,[14] 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.[15] There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.[16] When an employee experiences

[11] This was described as a notice that Wendy's was hiring.

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

[13] *See Dennis J. Balogh*, 52 ECAB 232 (2001).

[14] 28 ECAB 125 (1976).

[15] 5 U.S.C. §§ 8101-8193.

[16] *See Robert W. Johns*, 51 ECAB 137 (1999).

emotional stress in carrying out his employment duties and the medical evidence establishes that the disability resulted from his 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 emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.[17]

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.[18] 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.[19]

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 with probative and reliable evidence. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence[20]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[21] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[22] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the

[17] *Lillian Cutler, supra* note 14.

[18] *See Dennis J. Balogh, supra* note 16.

[19] *Id.*

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

[21] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[22] *Leslie C. Moore, supra* note 12; *Gary L. Fowler*, 45 ECAB 365 (1994).

disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[23]

ANALYSIS -- ISSUES 1 & 2

Regarding the first two issues in this case, appellant attributed his emotional condition to a shooting that occurred at the employing establishment in 1999, his fear of two female employees, that customers were inappropriately allowed to bring food to the workplace and were then given preferential treatment. He alleged inappropriate counseling by his supervisor, Ms. Georges, who also inappropriately called him at home for medical documentation. Appellant described an improper transfer to the FTZ and that his requests for reassignment were improperly denied. He was assaulted by a customer at the employing establishment on November 27, 2003 and alleged a general pattern of harassment by management.

As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Act.[24] However, an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.[25] The denial by the employing establishment of a request for a different job, promotion or transfer is an administrative decision which does not directly involve an employee's ability to perform work duties, but rather constitutes an employee's desire to work in a different position.[26] Reactions to disciplinary matters, such as a letter of reprimand, also pertain to actions taken in an administrative capacity and are not compensable unless it is established that management erred or acted abusively.[27] Investigations are generally related to the performance of an administrative function of the employer and not to the employee's regular or specially assigned work duties; a compensable factor of employment does not arise unless there is affirmative evidence that the employer erred or acted abusively.[28]

The Board notes that appellant's allegations regarding the 1999 suicide at the employing establishment are not a compensable factor. He did not work at the FTZ at that time, and there is no evidence of record of any wrongdoing on the part of personnel or management. There is no evidence to establish that the employing establishment committed error and abuse regarding his transfer to the FTZ and subsequent denials of reassignment. Mr. Ramirez explained that appellant's transfer to the FTZ was done to assist in the volume of the workload. Appellant has presented no evidence that the denial of his requests for reassignment were error or abuse. An employee's frustration and depression resulting from an involuntary transfer are not compensable,[29] and dissatisfaction with holding a position in which he or she feels underutilized,

[23] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[24] *Roger Williams*, 52 ECAB 468 (2001).

[25] *Dennis J. Balogh*, *supra* note 13.

[26] *Ernest J. Malagrida*, 51 ECAB 287 (2000).

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

[28] *Ernest S. Pierre*, 51 ECAB 623 (2000).

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

performing duties for which he or she feels overqualified or holding a position which he or she feels to be unchallenging or uninteresting is not a compensable employment factor. A reaction to such conditions and incidents at work is self-generated and results from frustration in not being permitted to work in a particular environment or to hold a particular position.[30]

Appellant alleged that he was inappropriately counseled by Ms. Georges. An employee's complaints concerning the manner in which a supervisor performs his or her duties as a supervisor or the manner in which a supervisor exercises his or her supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act.[31] Disciplinary actions concerning an oral remand, discussions or letters of warning for conduct pertain to actions taken in an administrative capacity and are not compensable unless the employee shows management acted unreasonably.[32] Appellant submitted no evidence to support that he was improperly counseled. To the degree that appellant is alleging that his FMLA leave request was not handled properly, while the handling of leave requests is generally related to employment, it is an administrative function of the employer and not a duty of the employee.[33] It was reasonable for Mr. Casale to request that appellant provide a medical report. Regarding the November 10, 2003 incident between appellant and Mr. Cox, the evidence of record supports that Mr. Cox was reasonably acting as a lead customs inspector in the absence of a supervisor and properly instructed appellant regarding a prohibited transaction. Appellant has not established error or abuse in the matters and they are not compensable factors of employment.

The record supports that Ms. Georges called appellant one day too soon requesting that he submit medical evidence for sick leave. However, the Board finds that this did not constitute harassment as alleged. The fact that Ms. Georges called EAP on appellant's behalf was in line with employing establishment policy. The Board finds that employing establishment management handled his complaint regarding improper gifts of food properly. He presented no evidence to show any customers received preferential treatment or to show that he should be fearful of Ms. Tavel or Ms. O'Donnell.

Regarding appellant's general allegation that he was harassed, the Board finds that he has submitted insufficient evidence to establish his allegations. An EEO Commission complaint, by itself, does not establish that workplace harassment or unfair treatment occurred.[34] There is no EEO Commission decision of record that is favorable to appellant.[35] The issue is not whether the

[30] *Paul L. Stewart*, 54 ECAB 824 (2003).

[31] *Margaret J. Toland*, 52 ECAB 294 (2001).

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

[33] *James P. Guinan*, 51 ECAB 604 (2000).

[34] *James E. Norris*, *supra* note 20.

[35] The Board notes that, with his appeals to the Board, appellant submitted new evidence regarding his EEO claims. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence which was in the case record before the Office at the time it issued its final decision. 20 C.F.R. § 501.2(c); *see Willie R. Miller*, 53 ECAB 697 (2002). Appellant may submit this evidence to the Office with a valid request for reconsideration. 20 C.F.R. §§ 10.605-10.610.

claimant has established harassment or discrimination under EEO Commission standards. Rather, the issue is whether the claimant has submitted sufficient evidence to establish a factual basis for the claim under the Act by supporting his or her allegations with probative and reliable evidence.[36] The standards for harassment or discrimination as defined by the EEO Commission do not represent the standard for claim adjudication under the Act, where the term harassment is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by coemployees or supervisors.[37] In this case, appellant has submitted insufficient evidence to establish that management harassed him. These allegations do not rise to a compensable factor.

Finally, the Board notes that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and a claimant's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to particular employment factors or incidents.[38]

The record establishes that appellant was assaulted by a customer on November 27, 2003 while in the performance of duty. This is a compensable factor of employment. The medical evidence must therefore be analyzed.[39] The relevant medical evidence includes reports from appellant's attending psychiatrist, Dr. Collins. In a July 28, 2003 report, Dr. Collins described an "oppressive workplace" and advised that appellant should stop work. In an August 21, 2003 attending physician's report, he diagnosed adjustment disorder with anxiety and again advised that appellant could not work. Dr. Collins checked the "yes" box, indicating that the diagnosis was employment related, stating "exacerbation of symptoms followed his experiencing specific upsetting and very stressful situations [and] events at work." On August 29, 2003 he advised that appellant would be totally disabled for three months and in a December 14, 2003 report stated that appellant provided a history of a "pattern of punishment" at the employing establishment. Dr. Collins diagnosed an anxiety disorder, stating that appellant's "obsessing got worse and anger continued to build" due to "perceived injustices." He advised that appellant had no emotional problems "until a series of very upsetting events at work began to occur a few years ago," continuing that appellant's anger and anxiety continued to increase to the point that he feared an attempt was going to be made on his life. Dr. Collins concluded that appellant's mental illness was related to a "pattern of harassment" at work. In an undated report, he noted appellant's report of various incidents that occurred at work which, he opined, demonstrated a severe pattern of harassment at work, specifically describing the assault when appellant's sunglasses were broken. Dr. Collins concluded that these events "exhibit a severe pattern of harassment at work, which is condoned and even encouraged by his supervisors. The work-related harassment is so severe, in my expert opinion, that it has resulted in a direct and proximate cause of the worsening of [appellant's] emotional and psychiatric conditions."

[36] *James E. Norris, supra* note 20.

[37] *Constance I. Galbreath*, 49 ECAB 401 (1998).

[38] *Willie M. Miller, supra* note 35.

[39] *See Dennis J. Balogh, supra* note 13.

While Dr. Collins advised that appellant's anxiety disorder was due to a pattern of harassment at work, as noted, the Board finds that appellant also submitted insufficient evidence to establish that he was harassed. Dr. Collins made reference to the one compensable factor of employment in his undated report, but did not provide an explanation of how this factor caused or contributed to appellant's condition. The Board had long held that medical conclusions unsupported by rationale are of diminished probative value and are insufficient to establish causal relationship.[40] Appellant has the burden of proof to establish that the conditions for which he claims compensation were caused or adversely affected by his federal employment.[41] Part of this burden includes the necessity of presenting rationalized medical evidence, based on a complete factual and medical background, establishing a causal relationship. An award of compensation may not be based upon surmise, conjecture or upon appellant's belief that there is a relationship between his medical conditions and his employment. The Board finds that Dr. Collins did not base his opinion on an accurate factual background as he generally accepted appellant's various allegations as established. Appellant has not submitted sufficient probative medical evidence to establish that he sustained an emotional condition due to his federal employment.

ANALYSIS -- ISSUE 3

The Board finds that appellant failed to establish a compensable factor of employment regarding the third issue. He has contended that his transfer requests were improperly denied, that Ms. Georges solicited complaints regarding him, that she falsely accused him of processing forged documents, that he was falsely imprisoned in his cubicle, that offensive notes were placed in his cubicle and that he was improperly charged with sexual harassment by Ms. O'Donnell. Mr. Lopez explained that appellant was denied a transfer request because of a pending investigation regarding his misconduct. As noted, as a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Act[42] unless the evidence of record discloses error or abuse on the part of the employing establishment.[43] The denial by the employing establishment of a request for a different job, promotion or transfer is an administrative decision which does not directly involve an employee's ability to perform work duties, but rather constitutes an employee's desire to work in a different position.[44] In this case, there is no evidence of error or abuse on the part of Mr. Lopez in this administrative matter.

Appellant also submitted no probative evidence that Ms. Georges solicited complaints about him. The only evidence submitted by appellant in this regard is Ms. Evans' report that a customer stated to her that Ms. Georges asked her if she had any complaints about appellant. Mr. Lopez and Mr. Cox stated that they were not aware that Ms. Georges solicited complaints. This evidence is insufficient to establish this as a compensable factor of employment.

---

[40] *Albert C. Brown*, 52 ECAB 152 (2000); *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

[41] *See Calvin E. King*, 51 ECAB 394 (2000).

[42] *Roger Williams*, 52 ECAB 468 (2001).

[43] *Dennis J. Balogh*, *supra* note 13.

[44] *Ernest J. Malagrida*, 51 ECAB 287 (2000).

The record does not substantiate his complaint that Ms. Georges falsely accused him of processing forged documents. Rather, she read a computer tracking screen in error and forwarded to appellant an email containing a customer's complaint. The mere fact that personnel actions are later modified or rescinded does not, in and of itself, establish error or abuse on the part of the employing establishment.[45] The Board finds that the record does not establish appellant's allegation.

The evidence of record also shows that appellant was not demoted. While a transfer was recommended and appellant complained that the new job duties were demeaning, he did not accept this job. Rather he went on FMLA, took additional leave and then retired. An employee's frustration and depression resulting from an involuntary transfer are not compensable.[46] A reaction to such conditions and incidents at work is self-generated and results from frustration in not being permitted to work in a particular environment or to hold a particular position.[47] The evidence in this case also does not support that appellant was falsely imprisoned as Ms. Evans indicated that, while appellant was issued some notice of confinement, it was immediately rescinded. There is no other evidence in this record concerning this allegation. There is also no record to support that Mr. Cox acted abusively in a February 2005 meeting. Appellant therefore did not establish these as factors of employment.

Finally, regarding appellant's general allegation that he was subjected to a pattern of harassment, as stated in the discussion of issues 1 and 2 above, he has submitted insufficient evidence to establish that he was treated in a harassing manner. While he alleged that two notes were inappropriately placed in his cubicle, the subject matter of these notes did not include a racial epithet or other offensive language,[48] and Ms. Georges immediately took action. The Board therefore finds that these incidents do not establish harassment by the employing establishment. As appellant failed to establish a compensable factor of employment regarding this third issue, the Office properly did not address the medical evidence of record.[49]

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an employment-related emotional condition due to employment factors that occurred during the period April 2, 2002 to July 23, 2005.

[45] *Paul L. Stewart, supra* note 30.

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

[47] *Paul L. Stewart, supra* note 30.

[48] *See generally Frank B. Gwozdz*, 50 ECAB 434 (1999).

[49] *Garry M. Carlo*, 47 ECAB 299 (1996).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs June 29, April 14 and April 10, 2006 and October 24, August 19 and June 16, 2005 be affirmed.

Issued: March 5, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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