

appellant experienced a panic attack. He was seen by an employing establishment nurse and sent home. Appellant stated that he did not work in his assigned position because of a reasonable accommodation for a mental condition. He stated he was disoriented when he returned to work the next day and was diagnosed on January 17, 2006 with psychotic features. Appellant alleged that his situation could have been avoided if management would have checked with the medical unit first about his reasonable accommodation, as he previously told them. In a January 25, 2006 letter, the employing establishment controverted the claim, indicating that the January 12, 2006 meeting pertained to an administrative issue.

In a February 24, 2006 response to the Office's request for additional information, appellant explained that he won a series of grievances in 1999 against his supervisor, Davis Santiago. However, he was subsequently harassed by management. In 2001, appellant had an appointment with Plant Manager Pablo Claudio to discuss his situation with Mr. Santiago, but was treated in a disrespectful manner by him. He became stressed and ended up being hospitalized for approximately two weeks with a diagnosis of major depression. Appellant stated that the employing establishment's physician provided him with a reasonable accommodation when he returned to work and management left him alone until approximately October 2005, when his section was eliminated. He was asked by four different supervisors for evidence to support the schedule he was working and the reasonable accommodation. Appellant told the supervisors that the medical unit had the information and to obtain it from there. He alleged that supervisors Carlos Diaz, Hernesto Hernandez, Carlos Cabrera, Olga Ortiz and Carlos Yarleque insisted that the medical information come from him. Appellant noted that it was not pleasant to talk about his situation or to and, by the time he was required to go to the manager's office on January 12, 2006, he was very tense and stressed. He alleged that management knew of his situation and should have respect for it. Appellant filed an Equal Employment Opportunity (EEO) claim as he felt management's action was erroneous and abusive. He submitted numerous copies of grievances from October 1998, February through December 1999 and July through November 2000 as well as his requests for reasonable accommodations and outpatient medical records pertaining to his emotional condition.

In an undated letter, Dr. Roberto Coira, a psychiatrist, stated that appellant was evaluated on January 17, 2006 for complaints which occurred while awaiting a meeting with the manager. He opined that appellant's condition had worsened and he now had a diagnosis of psychotic features. In a March 2, 2006 report, Dr. Diana Diaz, a Board-certified psychiatrist, diagnosed a recurrent major depressive disorder with psychotic features and panic attack episode by history. Work-related problems were also indicated.

By decision dated April 12, 2006, the Office denied the claim.

On May 2, 2005 appellant requested a review of the written record. In an April 21, 2006 statement, he reiterated that management acted abusively by repeatedly asking for medical information to support his work schedule/reasonable accommodation when such information was with the medical unit. Appellant told the managers that he had been on a reasonable accommodation since 2001 because of his mental condition. He indicated that he worked accommodated schedule for five years prior to the January 12, 2006 incident and was still working the same schedule. In an undated witness statement, Juan Carlos Gonzalez, a coworker and shop steward, stated that he told supervisor Ortiz, manager Diaz and manager Yarleque that

they should have contacted the medical unit first to obtain the requested medical information. Medical reports dated March 2, 2006 from Dr. Diaz and March 30, 2006 from Dr. Coira were also submitted.

By decision dated August 30, 2006, an Office hearing representative affirmed the April 12, 2006 decision, finding that appellant did not establish any compensable factors of employment.

LEGAL PRECEDENT

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.¹ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.²

Generally, actions of the employing establishment in administrative or personnel matters unrelated to the employee's regular or specially assigned work duties, do not fall within the coverage of the Act.³ While an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment, mere perceptions are insufficient. In determining whether the employing establishment erred or acted abusively, the Board determines whether the employing establishment acted reasonably.⁴

The Board has held that the manner in which a supervisor exercises his or her discretion falls outside the coverage of the Act. This principle recognizes that a supervisor or manager must be allowed to perform their duties and that employee's will at times disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.⁵

For harassment or discrimination to give rise to a compensable disability, there must be evidence 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.⁶

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *See Thomas D. McEuen*, 41 ECAB 387, 390-91 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

³ *James E. Norris*, 52 ECAB 93, 100 (2000).

⁴ *Bonnie Goodman*, 50 ECAB 139, 143-44 (1998).

⁵ *Linda J. Edwards-Delgado*, 55 ECAB 401, 405 (2004).

⁶ *Reco Roncaglione*, 52 ECAB 454, 456 (2001).

ANALYSIS

Appellant has not attributed his emotional condition to his regular or specially assigned duties. Rather he implicated the aggravation of his diagnosed emotional condition on January 12, 2006 to management's requests for medical information regarding his work schedule and request for reasonable accommodation. The monitoring of activities at work is an administrative or personnel matter.⁷ As noted, the January 12, 2006 meeting regarding appellant's reasonable accommodations never took place. Appellant submitted no evidence to establish error or abuse on the part of the employing establishment in scheduling the January 12, 2006 interview about his work schedule and need for reasonable medical accommodation. Thus, this is not a compensable factor of employment.

Appellant stated that management's actions were abusive as his supervisors knew about his mental condition and he had advised them to obtain the requested medical information from the employing establishment medical unit. He contended that his managers should have obtained the medical information from the medical unit as opposed to requesting it from him. Appellant submitted a witness statement from Mr. Gonzalez. He advised management that the medical unit had appellant's medical information pertaining to his accommodations. However, this statement does not establish that management's request for medical information from appellant was either erroneous or done in an abusive manner.⁸ As noted above, the method by which managers perform their supervisory duties falls outside the coverage of the Act absent a finding of error or abuse.⁹ Appellant did not submit sufficient evidence to substantiate his allegations that management's requests for medical information from him was erroneous or abusive. Appellant's frustration from not being permitted to work in a particular environment is not a compensable factor under the Act.¹⁰ Appellant filed an EEO complaint pertaining to the request for medical information. The Board notes, however, that there is no indication that a final EEO decision has been rendered. The filing of a grievance or an equal employment opportunity complaint is not sufficient by itself to establish error or abuse.¹¹

Appellant alleged harassment after he won a series of grievances in 1999 and alleged that Mr. Claudio disrespected him in 2001. 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 allegations with probative and reliable evidence.¹² Appellant did not submit sufficient evidence to establish a factual basis for his perceptions of harassment or disrespect by various personnel. He did not establish that harassment or discrimination

⁷ *Barbara J. Latham*, 53 ECAB 316 (2002).

⁸ Assigning work and monitoring work are administrative functions of a supervisor. *Beverly R. Jones*, 55 ECAB 411 (2004).

⁹ *Linda J. Edwards-Delgado*, *supra* note 5.

¹⁰ *See Cyndia R. Harrill*, 55 ECAB 522 (2004).

¹¹ *Michael A. Salvato*, 53 ECAB 666, 668 (2002).

¹² *James E. Norris*, *supra* note 3.

occurred.¹³ The evidence instead suggests that the employee's feelings were self-generated and thus, not compensable under the Act.¹⁴

For the foregoing reasons, the Board finds that appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.¹⁵

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the August 30, 2006 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: March 8, 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

¹³ *Id.*

¹⁴ See *Gregorio E. Conde*, 52 ECAB 410 (2001).

¹⁵ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. See *Roger Williams*, 52 ECAB 468, 474 (2001); *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).