

FACTUAL HISTORY

On April 21, 2005 appellant, then a 47-year-old letter carrier, filed a traumatic injury claim, Form CA-1, alleging that on April 20, 2005 he experienced stress at work which caused back pain while in the performance of duty.¹ He stopped work on April 20, 2005.

By letter dated September 22, 2005, the Office advised appellant of the factual and medical evidence needed to establish his claim. It requested that appellant submit a physician's reasoned opinion addressing the relationship of his claimed conditions and specific employment factors.

In an October 1, 2005 statement, appellant noted that on February 11, 2005 he requested assistance in delivering his mail route because his medication caused him to be drowsy. Nancy Carreras, his manager, denied his request. Thereafter, appellant filed an Equal Employment Opportunity (EEO) complaint which was mediated on April 19, 2005. He alleged that on April 20, 2005 he experienced emotional stress after David Weatherspoon, his supervisor, approached him in a threatening manner to discuss allegations in his EEO complaint that he was denied overtime. After this discussion, appellant returned to his job and experienced back pain after performing duties that included bending and lifting mail containers and casing mail.

In an October 25, 2002 report, Dr. Sudha Sikri, a Board-certified family practitioner, noted treating appellant for a left knee injury which occurred while he was working. Reports from Dr. Eric G. Dawson, an orthopedic surgeon, dated November 5, 2002 to January 6, 2005, addressed a left knee injury that occurred at work on October 25, 2002. He diagnosed left knee chondromalacia, patella alta and patella tendinitis and advised that appellant could return to work full time with restrictions. In disability certificates dated April 22 and May 3, 2005, Dr. Dawson diagnosed lumbar discopathy with myelopathy and sciatica. He advised that appellant would be totally disabled from April 20 to May 13, 2005. On May 9, 2005 Dr. Dawson diagnosed right sciatica and advised that appellant could return to work limited duty on May 16, 2005. In a report dated September 28, 2005, Dr. Dawson noted treating appellant on April 20, 2005 for a lifting injury. He diagnosed sacroiliac sprain, sciatica and a low grade disc injury and initiated a regimen of conservative care for six to eight weeks.

Appellant submitted treatment notes from Kaiser Permanente dated February 25, 2004 to March 2, 2005, which noted treatment for recurrent low back pain from a military injury and diagnosed lumbar strain with spasms. Reports from Dr. Howard M. Schulman, a clinical psychologist, noted appellant's treatment for anxiety associated with a urinary frequency condition. Appellant submitted Veterans Administration (VA) Medical Center records addressing treatment for gout, arthritis of the toes and anxiety associated with urinary frequency. On February 24, 2005 Dr. Luis A. Gonzalez, a Board-certified internist, treated appellant for gout and total loss of control of the anal sphincter. In a report dated April 20, 2005, Dr. Neil Bien, a clinical psychologist, treated appellant for stress associated with urinary frequency and incontinent bowel. Appellant submitted an EEO complaint dated April 25, 2005 which alleged

¹ Appellant filed a claim for a knee injury which occurred at work on October 24, 2002 and which was accepted by the Office for a left knee contusion in file number 25-2022645.

that he was wrongfully denied overtime by Ms. Carreras. On May 25, 2005 he was treated for chronic low back pain and arthritis by Dr. Divya Schroff, an internist.

In a December 16, 2005 decision, the Office denied appellant's claim for a back injury and an emotional condition. It found that the evidence did not establish that he sustained an injury on April 20, 2005. The Office found that the evidence was insufficient to establish that appellant experienced the claimed incident on April 20, 2005.

On December 20, 2005 appellant requested an oral hearing which was held on May 3, 2006. In a letter dated January 2, 2006, he noted that on April 20, 2005 he was casing mail and lifting a mail container, which involved twisting and turning, when he experienced pain in his lower back. Appellant also noted that on April 20, 2005 Mr. Weatherspoon approached him in a threatening manner and questioned him about discussions which occurred in an EEO mediation on April 19, 2005. He advised that the EEO mediation was confidential and contended that Mr. Weatherspoon harassed and discriminated against him by obtaining the confidential information and discussing it with him. Appellant alleged that his manager and supervisor refused to assist him in filing a CA-1, CA-2 or CA-7 claim.

In a January 24, 2006 report, Dr. Dawson noted that appellant injured his back on April 20, 2005 when he was lifting parcels and casing mail at work and sought treatment on April 22, 2005. He noted findings upon physical examination of decreased range of motion of the lumbar spine, muscle spasms, positive straight leg raises and sciatica irritability. Dr. Dawson diagnosed lumbar discopathy with nerve impingement. In an accompanying duty status report dated January 24, 2006, he advised that appellant could return to limited-duty work eight hours per day subject to various restrictions. In reports dated February 22 to May 26, 2006, Dr. Dawson treated him for pain, spasm and stiffness in the lower back extending to the leg. He noted that the physical examination revealed sciatica and diagnosed lumbar discopathy with impingement at L5. Dr. Dawson advised that appellant was totally disabled from work on May 25, 2006.

In a decision dated July 18, 2006, the hearing representative affirmed the December 16, 2005 decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury."² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.³

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another.

The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁴ In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.⁵ An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.⁶ A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.⁷ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.⁸ Although an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence,⁹ an employee has not met this burden when there are inconsistencies in the evidence such as to cast serious doubt upon the validity of the claim.¹⁰

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.¹¹

ANALYSIS -- ISSUE 1

Appellant alleged that he injured his back on April 20, 2005 while at work casing mail. However, the contemporaneous medical records make no mention of an employment-related incident on that day. Rather, the first mention of an employment-related incident on

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

⁷ *Id.* at 255-56.

⁸ *Dorothy M. Kelsey*, 32 ECAB 998 (1981).

⁹ *Robert A. Gregory*, 40 ECAB 478 (1989).

¹⁰ *Joseph A. Fournier*, 35 ECAB 1175 (1984).

¹¹ *See Richard A. Weiss*, 47 ECAB 182 (1995); *John M. Tornello*, 35 ECAB 234 (1983).

April 20, 2005 is Dr. Dawson's report of September 28, 2005, which was over five months after the alleged event. The Board notes that, with an injury as alleged by appellant, it would be reasonable to expect medical treatment with histories reflecting such an event within a few days or weeks of the claimed injury. Additionally, there were no witnesses to the alleged incident. These circumstances of lack of confirmation cast serious doubt on appellant's *prima facie* claim.

There is no contemporaneous medical evidence supporting that a specific incident occurred on April 20, 2005. The medical records closest to the date of the alleged incident include disability certificates from Dr. Dawson dated April 22 and May 3, 2005. Dr. Dawson diagnosed lumbar discopathy with myelopathy and sciatica and advised that appellant would be totally disabled from April 20 to May 13, 2005. However, he failed to mention a work-related incident on April 20, 2005. On May 9, 2005 Dr. Dawson diagnosed right sciatica and advised that appellant could return to work limited duty on May 16, 2005; however, he failed to reference a work-related incident on April 20, 2005. As noted, the first mention of an employment-related incident in a medical report is in Dr. Dawson's report of September 28, 2005. Dr. Dawson diagnosed sacroiliac sprain, sciatica and a low grade disc injury and initiated a regimen of conservative care for six to eight weeks; however, there was no treatment note in the record prior to September 28, 2005 which mentions a work-related injury of April 20, 2005 nor is there any reasonable explanation by Dr. Dawson as to why such claimed incident was not sooner reported. Other reports from the VA Medical Center dated April 21 and 28, 2005 and a report from Dr. Schroff dated May 25, 2005 noted appellant's treatment for gout, arthritis of the toes, back pain and anxiety associated with urinary frequency. The Kaiser treatment records also reflect treatment prior to April 20, 2005 for recurrent low back pain attributed to military service. No other medical reports from 2005 mention any incident or back injury sustained at work on April 20, 2005.

Appellant has not satisfied the first component of fact of injury, establishing that he actually experienced an employment incident on April 20, 2005. There are too many inconsistencies in the evidence to accept that the incident occurred as alleged.

For these reasons, the Board finds that appellant has not established that the claimed incident occurred as alleged. Consequently, appellant has not met his burden of proof in establishing his back condition claim.

LEGAL PRECEDENT -- ISSUE 2

To establish his claim that he sustained an 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.¹²

¹² Donna Faye Cardwell, 41 ECAB 730 (1990).

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*,¹³ the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Act.¹⁴ 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 under the Act.¹⁵ When an employee experiences 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.¹⁶ 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 under the Act. 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. 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.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

ANALYSIS -- ISSUE 2

Appellant alleged that he was harassed and discriminated against by his supervisor, Mr. Weatherspoon, on April 20, 2005 when confronted about confidential discussions which

¹³ 28 ECAB 125 (1976).

¹⁴ 5 U.S.C. §§ 8101-8193.

¹⁵ See *Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

¹⁶ *Lillian Cutler*, *supra* note 13.

¹⁷ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, *supra* note 13.

¹⁸ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁹ *Id.*

occurred in an EEO mediation on April 19, 2005. To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.²⁰ However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.²¹

Appellant has not submitted sufficient evidence to establish that he was harassed or retaliated against by Mr. Weatherspoon. He alleged that his supervisor made statements and engaged in actions which he believed constituted harassment, but he provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred. The factual evidence fails to support appellant's claim that he was harassed by Mr. Weatherspoon.²² Thus, he has not established a compensable employment factor with respect to these allegations.

Appellant alleged that on April 20, 2005 Mr. Weatherspoon approached him in a threatening manner and questioned him about discussions which occurred in a confidential EEO mediation on April 19, 2005. Appellant did not submit evidence or witness statements in support of his allegation. General allegations of harassment are not sufficient²³ and in this case appellant has not submitted sufficient evidence to establish disparate treatment by his supervisor.²⁴ Although he alleged that his supervisors engaged in actions which he believed constituted harassment, appellant provided insufficient evidence to establish his allegations.²⁵ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

Appellant indicated that he filed an EEO claim for harassment and discrimination; however, the Board further notes that grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.²⁶ He submitted an EEO complaint dated April 25, 2005 that summarized his pending EEO complaint for harassment against Ms. Carreras. However, none of the information submitted establishes improper action by the employing establishment with regard to appellant. The evidence regarding the EEO matter does not establish a compensable employment factor under the Act.

²⁰ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

²¹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

²² *See Michael A. Deas*, 53 ECAB 208 (2001).

²³ *See Paul Trotman-Hall*, 45 ECAB 229 (1993).

²⁴ *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

²⁵ *See William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

²⁶ *James E. Norris*, 52 ECAB 93 (2000).

Other allegations by appellant regarding his work assignments relate to administrative or personnel actions. In *Thomas D. McEuen*,²⁷ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.²⁸

Appellant alleged that his supervisors improperly denied his requests for overtime. The Board notes that the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.²⁹ Appellant has presented no corroborating evidence to support that the employing establishment erred or acted abusively in this matter. The Board finds that the employing establishment acted reasonably in this administrative matter and appellant has not established a compensable factor of employment with respect to this allegation.

Finally, appellant alleged that Mr. Weatherspoon did not assist him in filing an occupational disease claim, traumatic injury claim and a CA-7 claim for compensation. The Board notes that the development of any 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.³⁰ Appellant presented no corroborating evidence to support that the employing establishment erred or acted abusively with regard to this matter. The employing establishment acted reasonably in its administrative capacity. The Board finds that appellant failed to establish a compensable factor pertaining to his allegation that the Office failed to assist him in handling his compensation claim.³¹

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a back injury on April 20, 2005 in the performance of duty, causally related to factors of his federal employment. The Board further finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

²⁷ See *Thomas D. McEuen*, *supra* note 17.

²⁸ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

²⁹ See *Judy Kahn*, 53 ECAB 321 (2002).

³⁰ See *George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

³¹ As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the July 18, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 21, 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