

due to factors of his federal employment. He was required to process 24 passport applications each hour but had difficulty meeting his production standard due to medical problems. Appellant experienced difficulty reading passport application materials due to his vision impairment. Due to his diabetes, he experienced fatigue, dizziness, blurred vision, mood swings and had to interrupt work frequently to visit the restroom. The pressure to meet production quotas caused a spike in appellant's blood pressure and migraine headaches. His medications caused nausea, insomnia and fatigue. Appellant's medical conditions affected his work efficiency and caused him to miss work frequently.

Appellant alleged that management took improper disciplinary actions against him. On November 5, 2002 leave restrictions were imposed due to excessive absenteeism. In a 2004 performance evaluation, he received a rating of "unacceptable" due to problems with two critical elements, Knowledge of Adjudication and Production and Technical Skill. Appellant was placed on a Performance Improvement Plan from October 1 to November 14, 2004 but his job performance remained unacceptable. The employing establishment proposed to terminate him in June 2005 for unacceptable job performance. It noted that appellant had been provided with assistive technology regarding his vision impairments to help him perform his duties. Management rejected his request to lower the production standards for his position. Appellant applied for another position with the employing establishment which did not require hourly quotas. He filed an Equal Employment Opportunity (EEO) complaint when the position was withdrawn. In various EEO complaints, appellant alleged discrimination on the basis of race (African American), gender (male), physical disability (impaired vision), reprisal (prior EEO complaints) and sexual orientation (homosexual). Supervisors allegedly made derogatory statements regarding his vision impairment and job competence. Appellant was closely monitored by supervisors. Management improperly denied him opportunities for job promotions and suggested that he take disability retirement. It conducted an improper background check. Employees took passport applications and other items from his desk, poured water on his desk and left crumpled receipts. Employees looked through papers on appellant's desk when he was absent to find errors which were reported to supervisors. A coworker, Wah Tom, pretended to spit on him.

On February 2, 2006 Supervisor Qui Nguyen stated that appellant had been provided with assistive technology to address his visual impairment, including progressively advanced technology upgrades of hardware and software. Management offered him a part-time position which he declined.¹ Appellant's requests for leave were approved when properly requested and documented. Management provided mediation to improve communication with his supervisors. Through a Performance Improvement Plan, appellant received closer and more frequent supervisory counseling regarding his job performance. Management issued a notice of proposed termination on May 10, 2005 due to the unsuccessful completion of his Performance Improvement Plan. This action was postponed when appellant and management entered into a settlement agreement on July 15, 2005. However, the settlement agreement was terminated when he failed to complete requirements of the agreement. The employing establishment then resumed processing the termination.

¹ Appellant explained at an oral hearing that he could not afford to work part time.

On September 29, 2004 Maria Chavez stated that she sat next to appellant for one month. She saw a supervisor take boxes of work from his desk to her office. It was unusual for supervisors to do this. Another employee told Ms. Chavez that the supervisor was reviewing appellant's work to tally his errors. On another occasion, appellant told her that he had been unfairly accused of returning late from lunch. Ms. Chavez never saw anyone tampering with appellant's desk, belongings or passport applications. She did not witness Mr. Tom harass appellant or make any derogatory comments. Ms. Chavez stated her opinion that other employees had problems with their job performance but appellant was singled out for discipline due to his impaired vision. On September 30, 2004 Antoinette Wood stated that on one occasion she observed water on appellant's desk and believed that it had been poured deliberately. She observed supervisors looking through items on his desk when he was absent. However, Ms. Wood had not witnessed any incidents that caused her to believe that appellant was being discriminated against. She never saw anyone deliberately misplace his passport applications. In an October 6, 2004 statement, Mr. Tom denied that he had ever harassed appellant. He stated that appellant had filed numerous complaints against supervisors and coworkers but he had never witnessed any incidents of harassment or discrimination.

Appellant submitted medical evidence in support of his claim. On November 8, 2002 Dr. Richard Caplin, an attending internist, stated that appellant had a history of hypertension and had recently developed diabetes. Appellant experienced intermittent symptoms of stress associated with his work environment. On February 16, 2005 Dr. Arthur W. Allen, an attending ophthalmologist, stated that appellant had myopia and a congenital cataract in his left eye. Appellant's right eye vision was impaired due to a small hemorrhage. Dr. Allen opined that appellant could not perform his job due to his visual difficulties. In an August 1, 2005 report, Dr. Donald C. Fletcher, an attending ophthalmologist, stated that appellant's job required extensive reading and examination of documents of poor quality. Appellant had difficulty meeting production requirements.

On December 26, 2005 Robert A. Kaplan, Ph.D, a licensed clinical psychologist, provided a history that appellant was harassed at work following the resolution of an EEO complaint where management was found to have discriminated against him and was ordered to retroactively promote him to a higher grade. Appellant alleged harassment, discrimination, retaliation, unfair treatment, lack of accommodation for his vision impairment, denial of promotions and inequitable work assignments. Dr. Kaplan discussed appellant's medical treatment and mental status evaluation findings. He diagnosed severe recurrent major depression. Dr. Kaplan stated:

“[Appellant's] depression was triggered by the hostile atmosphere and the punitive, harassing and disparate manner in which he was treated by [the employing establishment] and his supervisors.

“[T]his treatment began as a form of retaliation after [appellant] won an EEO [complaint] decision.... The retaliation took the form of harassment and the institution of unrealistic production quotas that seem to have been designed to [e]nsure that [he] would fail in his attempts to meet these quotas.

“These quotas were especially unrealistic for an individual with an accepted disability, a severe visual impairment and [management] refused to provide accommodation to account for his visual impairment. [Appellant’s] depression arose from his awareness that [management] was unfairly using these artificial quotas to harass and punish him in an attempt to drive him from [the employing establishment].”

By decision dated April 7, 2006, the Office denied appellant’s claim on the grounds that the evidence did not establish that his emotional condition was causally related to a compensable factor of employment.

Appellant requested a telephonic hearing that was held on August 11, 2006. He testified that he began working for the employing establishment in 1996 under a program for individuals with severe disabilities. Appellant wished to obtain a career position but was denied reasonable accommodations for his vision impairment. He experienced problems with promotions and filed an EEO complaint which resulted in a retroactive promotion. Management retaliated against him because of his EEO complaints. Appellant met his performance standards until 2001 when complex cases and an hourly production requirement were added. He testified that management unfairly accused him of abusing sick leave and issued a proposed removal letter. Appellant’s work was closely monitored and he was cited for minor errors. Management rejected his request to lower his production standards, advising that a lower production standard would apply only to a lower grade position. Employees tampered with his magnifying equipment and spilled water on his desk. Crumbled passport application receipts were left on his desk and his supplies were stolen. Employees made derogatory comments about his visual impairment. Mr. Tom pretended to spit on him when he walked past.

By decision dated November 17, 2006, the Office hearing representative affirmed the April 7, 2006 decision.

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 employment but nevertheless does not come within the coverage of workers’ compensation. Where the disability results from an employee’s emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees’ Compensation Act.² On the other hand, the disability is not covered where it results from such factors as an employee’s fear of reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.³

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 coverage

² 5 U.S.C. §§ 8101-8193.

³ *Lillian Cutler*, 28 ECAB 125 (1976).

of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.⁴

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors of employment, which may be considered by a physician when providing an opinion on causal relationship and which are not deemed compensable factors of employment and may not be considered.⁵ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.⁶ 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.⁷ Where the claimant alleges compensable factors of employment, he must substantiate such allegations with probative and reliable evidence.⁸ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.⁹

ANALYSIS

The Board finds that certain allegations made by appellant are not established as factual. Appellant alleged that he was harassed and discriminated against and subjected to a hostile work environment because of his vision impairment and his EEO complaints. Supervisors made derogatory statements regarding appellant's vision impairment and job competence. Management retaliated against him because of his EEO complaints. Employees made derogatory comments about his visual impairment. He was unfairly scrutinized by supervisors and cited for minor errors. Management unfairly accused him of abusing sick leave. Leave restrictions were unfairly imposed due to his absenteeism. Management unfairly denied him opportunities for job promotions and suggested that he take disability retirement. Management conducted an improper background check. Employees took passport applications and other items from appellant's desk, poured water on his desk, tampered with his equipment and left crumpled receipts on his desk. Supervisors and coworkers looked through papers on his desk when he was absent. Mr. Tom pretended to spit on him. Mere perceptions of harassment or discrimination are not compensable under the Act. Appellant's burden of proof is not discharged with allegations alone. He must support his allegations with probative and reliable evidence.¹⁰

⁴ *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁵ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁶ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁷ *See Charles E. McAndrews*, 55 ECAB 711 (2004).

⁸ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁹ *See Charles D. Edwards*, 55 ECAB 259 (2004).

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

Management denied appellant's allegations of harassment and discrimination. Appellant's requests for leave due to his medical conditions were approved when properly requested and documented. It provided mediation to improve communication with his supervisors. Through a Performance Improvement Plan, appellant received supervisory counseling regarding his job performance. Management issued a notice of proposed termination only when he failed to successfully complete his Performance Improvement Plan.

The witness statements do not support appellant's allegations of harassment or discrimination. Ms. Chavez stated that she saw a supervisor take boxes of work from appellant's desk to her office and it was unusual for supervisors to do this. However, as noted, appellant's work was monitored by his supervisors before and during a Performance Improvement Plan. The statement of Ms. Chavez does not establish error or abuse in reviewing appellant's work. Appellant told Ms. Chavez that he had been unfairly accused of returning late from lunch. However, there is insufficient detail regarding this allegation to establish harassment or discrimination by the employing establishment. Ms. Chavez acknowledged that she never saw anyone deliberately tampering with appellant's desk or belongings and that she did not witness Mr. Tom harass appellant or make derogatory comments. She opined that other employees had problems with their job performance but appellant was singled out for discipline due to his impaired vision. However, Ms. Chavez provided no details regarding any unfair disciplinary actions such as dates, who was involved and what occurred. Her statement does not establish error or abuse in these matters. Ms. Wood stated that on one occasion she observed water on appellant's desk that she believed had been poured deliberately. However, she did not explain why she came to this conclusion. Ms. Wood observed supervisors looking through items on his desk when he was absent but she did not explain how this constituted harassment or discrimination. She acknowledged that she did not witness any incidents of discrimination against appellant. Mr. Tom denied that he had harassed appellant and indicated that he had never witnessed any incidents of harassment or discrimination towards him.

The Board finds that there is insufficient evidence to establish that appellant's allegations of harassment and discrimination are factual. Therefore, these allegations are not deemed to be compensable employment factors.

Certain allegations made by appellant concern personnel or administrative matters. He alleged that management improperly issued a notice of proposed removal, refused to lower the production standards for his position and did not provide reasonable accommodations for his vision impairment. The Board has held that an administrative or personnel matter will be considered to be an employment factor only where the evidence discloses error or abuse on the part of the employing establishment.¹¹ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹² The record shows that the employing establishment proposed to terminate appellant in June 2005 for unacceptable job performance. Prior to that, appellant was placed on a Performance Improvement Plan but his performance did not improve. Thus, management provided an opportunity for him to improve his performance before taking action to remove him

¹¹ *Id.*

¹² *Janice I. Moore, 53 ECAB 777 (2002).*

from his position. There is insufficient evidence that management erred or acted abusively in supervising his work or proposing to terminate appellant. Regarding appellant's allegation that management rejected his request to lower his production standards, it advised that a lower production standard would apply only to a lower grade position. It provided a reasonable explanation for refusing to lower the production standards for appellant's position. There is insufficient evidence to establish that management erred or acted abusively regarding his production standards. Supervisor Nguyen stated that management had provided him with assistive technology to address his visual impairment, including progressively advanced technology upgrades of hardware and software. There is insufficient evidence that management acted abusively or in error in the accommodations provided to appellant regarding his vision impairment. Because there is insufficient evidence of error or abuse in the handling of these administrative or personnel matters, these allegations are not deemed compensable factors of employment.

Appellant alleged that he was required to process 24 passport applications each hour but had difficulty meeting his production standard. He received an unacceptable performance evaluation due, in part, to his failure to meet his production standards. The Board has held that conditions related to stress from situations in which an employee is trying to meet his position requirements are compensable.¹³ The evidence in this case is sufficient to establish that appellant experienced stress or anxiety in performing his regular and specially assigned duties. Under *Cutler*,¹⁴ appellant has established a compensable work factor. This is not enough, however, to entitle him to benefits. Appellant must further establish a causal connection between this compensable factor of employment and his diagnosed medical conditions. He must establish that he sustained an injury "arising out of the employment."¹⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's 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, 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 compensable employment factors identified by the claimant.¹⁶

The record in this case contains no such medical opinion. Dr. Kaplan stated that appellant experienced intermittent symptoms of stress associated with his work environment. However, he did not identify any specific employment factors or provide a rationalized medical opinion explaining how appellant's emotional condition was causally related to his job. Dr. Allen stated that appellant could not perform his job due to his visual difficulties. However, he did not address appellant's claim for an emotional condition. Dr. Fletcher stated that

¹³ *Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁴ *Lillian Cutler*, *supra* note 3.

¹⁵ *Beverly R. Jones*, *supra* note 13.

¹⁶ *Gary J. Watling*, 52 ECAB 278 (2001); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

appellant's job required extensive reading and examination of documents and he had difficulty meeting production requirements. However, he did not opine that appellant sustained an emotional condition caused by this employment factor. Dr. Kaplan diagnosed severe recurrent major depression and opined that this condition was caused by harassment and discrimination by management. He stated that appellant's depression began due to harassment and discrimination by management in retaliation for his EEO complaints. The harassment took the form of unreasonable production quotas and lack of reasonable accommodations for his vision impairment. Dr. Kaplan stated that appellant's production quotas were especially unrealistic for an individual with a severe visual impairment and management refused to provide accommodation to account for his visual impairment. He opined that appellant's depression arose from his awareness that management was unfairly using artificial production quotas to harass and punish him. However, Dr. Kaplan's opinion regarding causal relationship is not based on a complete and accurate factual background. The record does not establish that the employing establishment retaliated against appellant for his EEO complaints. It does not establish that his production quotas were unrealistic or designed to cause him to fail in his job performance. The record does not establish that the accommodations provided by management to address appellant's vision problems were not reasonable. Additionally, Dr. Kaplan's report lacks sufficient medical rationale explaining how appellant's depression was causally related to the one accepted compensable employment factor, his emotional reaction to performing his regular and specially assigned duties. There is no rationalized medical evidence of record, based on a complete and accurate factual background, explaining how appellant's emotional condition was caused or aggravated by the accepted compensable factor. Therefore, the Office properly denied his emotional condition claim.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty causally related to a compensable factor of employment. While the evidence is sufficient to establish that he experienced stress in trying to meet his case production requirements, no physician has provided a well-reasoned explanation of how this specific factor of employment caused or contributed to his diagnosed emotional condition. On these grounds, the Board will affirm the Office's denial of compensation benefits.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 17 and April 7, 2006 are affirmed, as modified.

Issued: November 19, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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