

FACTUAL HISTORY

On May 8, 2006 appellant, then a 42-year-old letter carrier, filed a claim alleging that he sustained an emotional condition in the performance of duty.¹ He asserted that he was being harassed by a coworker, Pat Petit, who filed grievances every day, complained about forms not being completed properly and made him read complaints that specifically mentioned him as “a worker who should not be there.” Appellant claimed that he was manipulated by the coworker to do unwanted work. He submitted several unsigned progress notes from the Marquette General Health System which described his emotional state.

On June 20, 2006 the Office requested that appellant submit additional factual and medical evidence in support of his claim.

In statements received by the Office in July 2006, appellant claimed that Ms. Petit routinely asked him if he worked at the Employing establishment as retaliation for her filing an Equal Employment Opportunity (EEO) complaint. Ms. Petit asked him to spy on coworkers and about the medications he was taking. Appellant asserted that Ms. Petit made him read her job application which “had page after page demeaning me about working in [the employing establishment].” Ms. Petit would talk to him as he worked in order to slow him down and make him “look bad,” and had filed a large number of grievances. Appellant indicated that he was bothered by Ms. Petit’s work habits which included watching a July 4th parade while she was supposed to be working, spilling coffee in her truck, leaving work for an unknown amount of time without punching out and refusing to deliver certain types of mail. He asserted that Ms. Petit yelled at everyone on the work floor for not properly completing vehicle time cards and that she would “continually stretch by throwing her arms back and thrusting her chest towards me.”

Appellant further claimed that on July 30, 2005 Ms. Petit followed him on foot for six blocks and stared at him. Ms. Petit also followed him and Jim Drew and watched them deliver their routes. Appellant claimed that Ms. Petit stated that a customer on her route and her boyfriend “go at it like jackrabbits all night.” He claimed that she never changed her schedule to accommodate coworkers’ leave requests and that she tried to accuse him and everyone in the office, including George Kendzieski, of putting a Victoria’s Secret catalogue in her hamper. Appellant was offended when an older man asked her if he could get her husband’s permission to go swing dancing with her. Ms. Petit asked appellant why he told everyone in town that he liked the employing establishment and that she accused everyone of gluing the door on her vehicle shut.

In a November 8, 2006 decision, the Office denied appellant’s emotional condition claim on the grounds that he did not establish any compensable employment factors. The Office found that certain of appellant’s claims about Ms. Petit’s actions and statements made in his presence were factually established but found that they did not constitute compensable employment factors because they did not rise to the level of harassment or discrimination. The Office found

¹ Appellant filed a claim for a recurrence of disability but it was determined that he actually intended to file a claim for a new occupational injury. It appears that appellant had a claim accepted for anxiety in 2002 and that he moved to another postal facility in 2003.

that it had been accepted that Ms. Petit asked him if he worked at the employing establishment as a form of retaliation, that she asked him to spy on coworkers and that she asked him about the medications he was taking. The Office indicated that appellant's responses to such matters were self-generated.

Appellant submitted a statement in which he discussed his medical condition and indicated that Ms. Petit's husband had assaulted a coworker. He also submitted statements from coworkers. In a December 1, 2006 statement, David Baril asserted that Ms. Petit would come into his cubicle and "stretch and thrust her chest" at him. Ms. Petit told him that appellant was "milking the system and really wasn't sick," and he witnessed her screaming at Mr. Drew for stomping his feet. In a November 30, 2006 statement, Mr. Drew claimed that on August 28, 2004 Ms. Petit called him a moron and yelled at him for making his mail case squeak and stomping his foot. Ms. Petit would often attempt to get her coworkers to sign complaint letters regarding various matters. On February 16, 2005 she followed and videotaped him and appellant while they were on their delivery routes.² Mr. Drew asserted that Ms. Petit stated on several occasions that she "was getting rid of us one at a time."

In a December 5, 2006 statement, Mr. Johnson testified about the actions of Ms. Petit. He asserted that she accused him of putting a Victoria's Secret catalogue in her hamper, that she called Mr. Drew a moron, and that her husband assaulted him on September 2, 2006. In an undated statement, Mr. Kendzieski detailed various actions of Ms. Petit. He indicated that Ms. Petit questioned him and coworkers about who put a Victoria's Secret catalogue in her hamper and that she screamed at Mr. Drew and called him a "freak" because his shoes were squeaking on a rubber mat.

In a January 29, 2007 decision, the Office affirmed its November 8, 2006 decision finding that appellant did not establish any compensable employment factors. The Office again found that certain of appellant's claims about Ms. Petit's actions and statements made in his presence were factually established but found that they did not constitute compensable employment factors because they did not rise to the level of harassment or discrimination. For example, the Office stated that it had been established that Ms. Petit watched appellant deliver his route on July 30, 2006 and would stretch and thrust her chest at him.

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 Federal Employees' Compensation Act.³ On the other hand, the disability is not covered where it results from such factors as an

² Mr. Drew asserted that Ms. Petit was attempting to gather evidence to show that he took too long of a break, but he did not explain the basis for this belief.

³ 5 U.S.C. §§ 8101-8193.

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.⁴

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.⁵ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁶

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁷ 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.⁸

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. The Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant has alleged that he was subjected to harassment and discrimination by a coworker, Ms. Petit, who contributed to his claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.⁹ However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination

⁴ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁶ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁷ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁸ *Id.*

⁹ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹⁰

Appellant alleged that Ms. Petit asked him if he worked at the employing establishment as a form of retaliation for her filing an EEO complaint, that she asked him to spy on coworkers, and that she asked him about the medications he was taking. He asserted that Ms. Petit made him read her job application which contained information that demeaned him, that she would talk to him as he worked in order to slow him down and make him “look bad,” that she yelled at everyone on the work floor for not properly completing vehicle time cards, and that she would “continually stretch by throwing her arms back and thrusting her chest towards me.” Appellant further claimed that on July 30, 2005 Ms. Petit followed him at work and that on another occasion she followed him and Mr. Drew, a coworker, and watched them deliver their routes. He claimed that she tried to accuse him and others of putting a Victoria’s Secret catalogue in her hamper.

In the present case, appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by Ms. Petit.¹¹ Appellant alleged that Ms. Petit made statements and engaged in actions which he believed constituted harassment and discrimination, but he provided insufficient corroborating evidence to establish that the statements actually were made or that the actions actually occurred.¹² Appellant submitted several statements of coworkers. The Board has carefully reviewed these statements and notes that they do not establish any compensable employment factors. These statements mostly discuss actions or statements by Ms. Petit which were not directed towards appellant or did not occur in his presence.¹³

Although Mr. Drew indicated that on February 16, 2005 Ms. Petit followed and videotaped him and appellant while they were on their delivery routes, this statement is too vague to establish that harassment occurred. For example, he did not indicate to what extent Ms. Petit ostensibly followed appellant or clearly establish what purpose she had in following him. Two coworkers indicated that Ms. Petit accused them of putting a Victoria’s Secret catalogue in her hamper, but they did not indicate that she accused appellant of doing so. Another coworker asserted that Ms. Petit would come into his cubicle and “stretch and thrust her chest” at him, but there is no indication that she did this in appellant’s presence and, without further information, it is unclear how such an action would constitute harassment. Thus,

¹⁰ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹¹ *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).

¹² *See William P. George*, 43 ECAB 1159, 1167 (1992).

¹³ A coworker indicated that Ms. Petit told him that appellant was “milking the system and really was n[o]t sick,” but there is no indication that appellant was present when this comment was made. The Board notes that appellant alleged a number of actions and statements by Ms. Petit that would not constitute harassment even if they were established. For example, appellant took issue with Ms. Petit’s work habits, her filing of grievances and the manner in which she used leave. Appellant did not adequately explain how such actions related to his own performance of his job duties.

appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.¹⁴

For the foregoing reasons, 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

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' January 29, 2007 and November 8, 2006 decisions are affirmed.

Issued: November 2, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹⁴ In its decisions, the Office found that certain of appellant's claims about Ms. Petit's actions and statements made in his presence were factually established but found that they did not constitute compensable employment factors because they did not rise to the level of harassment or discrimination. The Office did not adequately explain why it accepted that these actions were factually established and, for the reasons noted above, the Board finds that they were not factually established.

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