

environment. The employing establishment disputed appellant's claim of a hostile work environment and his allegations of illegal, intentional and willful discriminatory practices and retaliatory acts.

On July 30, 2001 Dr. Roberta J. Jones, a psychiatrist, reported that appellant alleged severe stress at his job due to a continuing lawsuit. She diagnosed major depressive disorder, single episode, severe, without psychotic features. Dr. Jones stated: "[Appellant's] condition has definitely been exacerbated by his work situation, and most likely was caused by the same. [He] has no prior psychiatric history, and no history of depression before the described symptoms of the past year."

In a decision dated March 27, 2006, the Office denied appellant's claim for workers' compensation benefits. The Office found that he had implicated factors of employment that were not compensable or were unsubstantiated.

Appellant requested an oral hearing before an Office hearing representative, which was held on November 16, 2006. At the hearing, he submitted an affidavit with supporting documents, which he addressed. Appellant focused on the realignment or reorganization that began in 1995, which he explained was used as a vehicle to correct minority representation at different locales within the agency. He described this as "perhaps the most massive conspired coordinated discrimination case in this nation's history in private industry or government industry and these were the relocation of hundreds of minorities and their families and I'm stepping on a lot of people's toes and I know that." Appellant noted that he never received a favorable ruling in any of the complaints or suits he filed. He added that he had submitted, he believed, 360 documents to show a whole array of activities that took place during his employment that demonstrated that he had no choice but to contest the issues of retaliation and hostile work environment. Appellant testified that eventually it became too much for him: "I was filing these issues and trying to do what work they would assign me and trying to fight them at the same time and everything was just snowballing on me. In 2001, I -- finally I just -- I couldn't -- I went to see a doc and I stayed away from work."

In a decision dated January 22, 2007, the hearing representative affirmed the denial of appellant's claim for workers' compensation benefits. The hearing representative found that appellant failed to establish a factual basis for his claim.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.¹ It is well established, however, that there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.² Thus, the Board has held that an oral reprimand generally does not constitute a

¹ 5 U.S.C. § 8102(a).

² *Lillian Cutler*, 28 ECAB 125 (1976).

compensable factor of employment,³ neither do disciplinary matters consisting of counseling sessions, discussion or letters of warning for conduct;⁴ investigations;⁵ determinations concerning promotions and the work environment;⁶ discussions about an SF-171;⁷ reassignment and subsequent denial of requests for transfer;⁸ discussion about the employee's relationship with other supervisors;⁹ or the monitoring of work by a supervisor.¹⁰

Workers' compensation law does not cover an emotional reaction to administrative or personnel actions unless the evidence shows error or abuse on the part of the employing establishment.¹¹ The Board has held that actions of an employer which the employee characterizes as harassment or discrimination may constitute a factor of employment giving rise to coverage under the Act, but there must be some evidence that harassment or discrimination did in fact occur. Generally, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.¹² Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.¹³ The primary reason for requiring factual evidence from the claimant in support of his allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.¹⁴

A claimant seeking compensation under the Act has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.¹⁵

³ *Joseph F. McHale*, 45 ECAB 669 (1994).

⁴ *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

⁵ *Sandra F. Powell*, 45 ECAB 877 (1994).

⁶ *Merriett J. Kauffman*, 45 ECAB 696 (1994).

⁷ *Lorna R. Strong*, 45 ECAB 470 (1994).

⁸ *James W. Griffin*, 45 ECAB 774 (1994).

⁹ *Raul Campbell*, 45 ECAB 869 (1994).

¹⁰ *Daryl R. Davis*, 45 ECAB 907 (1994).

¹¹ *Thomas D. McEuen*, 42 ECAB 566, 572-73 (1991), *reaff'd on recon.*, 41 ECAB 387 (1990).

¹² *See Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

¹³ *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

¹⁴ *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

¹⁵ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

ANALYSIS

Appellant has filed a claim that is generally not covered by workers' compensation. He claims compensation benefits for his emotional reaction to administrative or personnel actions. Although the actions of management are obviously related to his federal employment, as a general rule they lie outside the scope of the Act. There is one exception: Appellant must prove error or abuse on the part of the employing establishment. He must prove his allegations of discrimination and retaliation.

Appellant has failed to submit evidence of error or abuse or prove his allegations of misconduct by management. He has pursued such allegations since 1995, through administrative bodies and the federal courts, and has not ever received a ruling in his favor. Appellant has submitted a multitude of documents to support his claim for workers' compensation, but nothing that establishes his allegations of discrimination or retaliation. He has drawn inferences about what management was doing and why, but his perceptions -- however firmly held -- do not establish an award of compensation. Appellant bears the burden of proof, and there is no proof of the error or abuse alleged. Without probative and reliable evidence that management did in fact discriminate or retaliate against him, evidence such as a favorable ruling on one of his administrative complaints or court filings, appellant's claim does not fall within the exception to the general rule that such matters are not covered by workers' compensation. The Board will affirm the denial of benefits.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained a compensable emotional condition.

ORDER

IT IS HEREBY ORDERED THAT the January 22, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 2, 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