United States Department of Labor
Employees' Compensation Appeals Board

D.G., Appellant	)	
and	)	**Docket No. 06-1673**
	)	**Issued: September 11, 2007**
DEPARTMENT OF LABOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, Washington, DC, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 17, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated April 27, 2006 denying his emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On December 17, 2003 appellant, a 52-year-old hearing representative, filed an occupational disease claim for compensation (Form CA-2), alleging that he sustained an emotional condition as a result of his federal employment. He experienced anxiety, high blood pressure and major depression as a result of attempting to meet the demands of his supervisors.

In an undated statement, appellant indicated that on August 22, 2003 he went to a local hospital with symptoms of depression, severe headaches, sleep difficulty, irritability and difficulty concentrating with severe short-term memory loss. His blood pressure was 40 points above normal. Appellant stated:

> 1. That he was not welcome or wanted when he began working as a claims examiner on December 12, 2002;
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> 2. That he was incorrectly placed on probation for one year, as a condition of his new employment;
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> 3. That he was not provided with complete equipment, training or support, or included in the same manner as other employees;
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> 4. That he was denied overtime (in order to keep up to date with work) in February of 2003, when he was scheduled to be away at training for two weeks;
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> 5. That the tone in the office was aggressive, demeaning and generally hostile;
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> 6. That his performance standards were unclear, unrealistic, constantly changing, and inconsistent;
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> 7. That the environment was "harassing" due to a need to meet increased standards; and
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> 8. That he was continually advised that he was not performing at expected levels.

Michael Johnson, appellant's supervisor, controverted the claim, indicating that appellant had been accorded a professional and courteous atmosphere since being promoted to the position of hearing representative. He contested that the office atmosphere was aggressive, demeaning or generally hostile and indicated that appellant's allegations of disparate treatment were without basis. Mr. Johnson stated that he never denied appellant's overtime requests. He indicated that he did not encourage appellant to take work home and that he would not have allowed him to do so, had he been aware of the practice. Mr. Johnson stated that appellant regularly met his numbers and timeliness standards, but had increasing difficulty related to the quality component of his job as he dealt with more complex decisions.

In an undated statement, Jean M. Ayers, a licensed clinical social worker, indicated that appellant was hospitalized in August 2006 in the Behavioral Health Unit at Potomac Hospital, due to stress in the work environment. She stated that appellant's managerial staff set unrealistic expectations of accuracy and success, while at the same time failing to give him tools that he needed to perform his job. Ms. Ayers characterized appellant's work environment as hostile and that returning to it could cause a relapse of his symptoms.

Appellant submitted a Potomac Hospital discharge summary from Dr. Peter L. Campbell, a Board-certified psychiatrist, reflecting that he was admitted on August 27, 2003 and discharged on September 4, 2003. Dr. Campbell diagnosed major depressive disorder, moderate, recurrent,

nonpsychotic. He noted that, when appellant discovered that management was trying to fire him, he felt crushed, distressed and hopeless.

On January 14, 2004 the Office informed appellant that the information submitted was insufficient to establish his claim. It requested details of employment-related incidents that he believed contributed to his illness, including names, dates, locations and witnesses, as well as a medical report providing a diagnosis and a reasoned medical opinion as to the cause of the diagnosed condition.

Appellant submitted numerous interoffice e-mails and memoranda to claims examiners, for the period January 23 to August 19, 2003. E-mails and memoranda from Luanne Kressley addressed: changes in the DOE website address; language to be used in cover letters; procedures to be used on "Portsmouth GDP" decisions; the treatment of evidence following the issuance of decisions; information on "Niosh dose reconstruction cases;" the format to be used for hearing reversals and undeliverable decisions; drafting congressional correspondence; quality control; notification of all reversals; changes in decisional format; and procedures for cases and hearings. E-mails and memorandums from Mr. Johnson addressed: use of tape recorders at hearings; "filing versus received dates;" and the address of the new director. Other e-mails and memoranda addressed: recommended decisions returned undelivered; representatives' fees; and citations to the Office procedure manual.

Appellant submitted a performance evaluation for the period July 10, 2001 to April 30, 2002 reflecting a rating of "highly effective." He also submitted numerous undated and unsigned partial performance reviews describing appellant's excellent job performance. Appellant also submitted a job description for a claims examiner. Duties included independently planning and carrying out claims case reviews, presiding as the hearing official during hearing proceedings and issuing final decisions.

In a January 19, 2004 attending physician's report, Dr. Campbell diagnosed adjustment disorder with depression. He opined that appellant's condition was caused or aggravated by employment activities, stating that he experienced "severe stress in harassing, pressuring workplace."

In a February 10, 2004 letter, appellant identified the incidents and conditions he believed contributed to his emotional illness. He stated:

> 1. He was made to feel unwanted in November and December 2002; that management was cold; and he was forced to quickly accept or reject an employment offer;
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> 2. The employing establishment set him up to fail from the first day, as evidenced by the fact that he was provided with a computer monitor that was too small and was not given speakers;
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> 3. He was demeaned by being asked if his work was up-to-date before being granted leave;

4. He felt belittled by his supervisors' responses to questions asked to clarify procedures;

5. He observed coworkers being chastised for poor work performance;

6. His requests for overtime were unreasonably denied and his leave requests were "lost" on the supervisor's desk;

7. He was not allotted enough time to travel to, attend and return home from out-of-town hearings, was required to fly rather than drive and was expected to return to work the day following his return;

8. When he complained of the hectic pace, he was dismissed by his supervisor, who said, "That's what hearing reps do.";

9. The FAB Chief shouted from her desk at the supervisors and staff;

10. Most days something went wrong, someone was shouted at and a change in procedure would follow. Appellant found this situation unsettling;

11. When coworker, Linda Parker, suggested training in teamwork, the FAB Chief stated that it was of no value and a waste of time;

12. FAB's overall effort lacked adequate planning, resulting in crisis after crisis and an atmosphere of continuous change;

13. Management perceived and treated staff as incompetent, stating they "should have known better as GS-13s, which some of [us] might not be much longer;"

14. During the first quarter of 2005, Carmelita Thompson Smith was counseled for a late release of a decision, implying that the standard of 100 percent had not been met;

15. A union representative told him that FAB wanted to fire him, even though he had been incorrectly placed on probation; and

16. Lack of training caused stress.

Appellant provided: a "partial listing of on-going changes made in 2003," including: "January 15 [h]earing representatives to take tape recorders to all hearings; January 23 EN20 language; January 30 Citations to PM; March 7 All PGDP contractors' decisions using unclear new EE-2 procedures; March 26 All NIOSH decisions require FAB chief review; March 31, All reversals to FAB chief; April 1 FAB Chief and supervisor argue over congressional requirements; April 1-2 Returned undelivered; April 2 Notify FAB Chief of NIOSH case receipt; April 25 Do not forward congressional on letterhead; May 6 Correction to decision format; May 6 Filing and received dates redefined; May 7 telephone call objections; May 8 Director address change/stationary incorrect; May 8 More precise decision format; May 8 Filing and receipt dates; May 14 New medical conditions; May 28 Cover letter change; June 2 Supervisors

to review everything; June 4 Change covered employee to employee; July 15 New evidence not review of written record; July 30 Voice & e-mail requirements when out of office; August 5 (est.) Language in submissions was deleted prior to approval that I was required to add in January; August 19 Fee schedule notification requirement; March 14 Staff informed of coding limitations for appeals, timeliness required manual tracking as system in use for some time does not work; May 8 Office informed of change in address for the program director, we were advised that use of the old address resulted in a $10.00 charge per item forwarded from the old address. My supervisor informed staff by e-mail that this change had no effect on our office (true except our pre-addressed envelopes contained the old director's office address, this stationary should have been replaced."

On February 14, 2004 Mr. Johnson, assistant branch chief, controverted appellant's claim and denied his allegations on behalf of the employing establishment. He stated that appellant's job involved duties with deadlines and travel and required overtime on rare occasions. Mr. Johnson indicated that appellant had traveled to Jacksonville, Florida for a week-long training session. He reported that there had been no extra demands or staff shortages affecting appellant's workload. Mr. Johnson was unaware of any conflict that appellant had with his coworkers or of any duties that were "unofficially changed," as alleged by appellant. He stated that appellant was not notified prior to August 2003 that he was going to be fired.

Mr. Johnson indicated that appellant had some difficulties with his job as a claims examiner. He had trouble issuing decisions in a timely manner. With regard to the writing component of the job, Mr. Johnson stated that appellant handled routine and simple cases well, but had difficulty with more complex cases and issues. Case quality was also a problem. His supervisor worked with appellant addressing areas of difficulty, including attention to detail, grammar and identification of issues. Mr. Johnson acknowledged that in April 2003 appellant received a "proposal to suspend," which may have resulted in stressful feelings. In response to appellant's allegations, he stated that equipment deficiencies did not play any role in appellant's work performance or responsibilities; that some of appellant's equipment may have been defective, but that the situation was not unique to him; that appellant never informed management that he was unable to perform his duties due to defective equipment; and that lack of speakers in no way prevented appellant from receiving messages, which were obtained by telephone. Mr. Johnson also denied appellant's allegations that FAB chief counsel shouted at him over a discussion of his "draft congressional." He denied that appellant was improperly refused overtime, indicating that overtime was routinely assigned to veteran examiners. Mr. Johnson stated that he was unaware that appellant was taking work home and working through lunch and breaks and after hours, and that had he known, he would have advised him of the employing establishment's policy against taking work home. He indicated that appellant never informed management of his need for overtime to keep up with his work.

The record contains performance standards for a hearing representative – GS-13, signed by appellant on January 28, 2003. The standards reflect that performance is successfully completed when no substantive changes are required in 94 to 97 percent of final, and 90 to 92 percent of initial, reviews of decisions.

In a report dated February 17, 2004, Ms. Ayers stated that she had been seeing appellant since September 10, 2003, upon his discharge from Potomac Hospital. She opined that he could

return to part-time work, but should distance himself from his former work environment and supervisors.

In a report dated February 14, 2004, Dr. Campbell opined that appellant's adjustment disorder with depression was "specifically caused by severe stress in a harassing pressuring workplace." He stated that appellant's condition was not self-generated due to job dissatisfaction or disappointment. Dr. Campbell recommended that appellant be restricted from working under Mr. Johnson or Ms. Kressley.

By decision dated April 29, 2004, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that the claimed condition was causally related to compensable incidents of employment.

On May 17, 2004 appellant requested an oral hearing. At the October 20, 2004 hearing, he reiterated his claims of discriminatory and harassing treatment by the employing establishment. Appellant alleged that he worked as a hearing representative from December 2002 to August 2003; that he struggled with his work assignments; that his training did not address areas in which he needed help; that he felt very pressured to complete his work in a given period of time; and that he was never comfortable or confident with the process of writing decisions. He claimed that he had difficulty understanding the revisions of his drafts, and that the lack of clarity delayed release of the decisions and caused him stress about meeting his deadlines as he struggled to keep up. Appellant stated that he "didn't fall behind. [He] got everything done but it took extra work, extra effort and an extreme amount of anxiety to make sure [he] was getting things through and getting an O.K. to release them by the deadlines." He testified that he worked until 8:00 p.m. because that "met his needs." Appellant also worked through lunch and took work home.

Appellant testified that there were ongoing changes in policies and procedures, although he was provided no procedure manual and no training. David Benedict, a coworker, testified that Mr. Johnson had a history of yelling at employees and that he seemed to edit appellant's decisions with more scrutiny than those of other employees. He indicated that the policies and rules were confusing and that the tracking system used was faulty. Mr. Benedict noted that changes in procedure were not always in writing. Linda Copening, a union representative, testified that the agency was trying to terminate appellant's employment. She was told by personnel employees that appellant was hired because he was a "veteran," but that they did not really want him there. Ms. Copening stated that appellant was treated "far more poorly and in a far more hostile nature than his coworkers." Avery Brown, a coworker, testified that templates provided to appellant were returned with incomprehensible comments, which were inconsistent with those received by his coworkers. As a result, appellant was required to spend inordinate amounts of time on his cases and struggled to meet his standards. He reported that, at that time, they "were being told to run at 100 percent level." Mr. Brown testified that in the summer of 2003, appellant was required to hold 12 or 13 hearings in Buffalo, New York on one day, and to return to work in Washington, DC the next. Appellant's trip was complicated by a blackout, but his restrictions were not modified to accommodate the emergency situation. Mr. Brown was aware of another such training session that occurred in Florida. Other employees were not given such strict restrictions. Mr. Brown also stated that appellant worked until 8:00 p.m.

In response to questions from the hearing representative, appellant testified that he never confronted his supervisor as to why he received a "marked-up" decision when it had been "preapproved;" that he had never had a confrontation with his supervisor; that his supervisor never yelled at him, but that she yelled at others on a daily basis; and that he never filed a grievance. He stated that, when he was required to run a significant number of hearings in a single day, he found himself unprepared, because he was unable "to review the files in between, and there were just too many people and too many issues." In addition to the Buffalo, New York trip, during which he was required to hold 12 to 13 hearings in one day, appellant reported that he also drove round trip on consecutive days to conduct a number of hearings in North Carolina.

Appellant submitted numerous performance ratings from January 15, 1994 to April 30, 2002, evaluating his performance as a rehabilitation specialist. In all cases, appellant received ratings of "outstanding" or "highly effective."

In an undated response, Ms. Kressley stated that she had informed appellant at the time of his interview that hearing representatives were expected to "hit the ground running." She indicated that appellant never requested a 21-inch computer monitor; that a large monitor is not critical to appellant's job performance; and that he never arrived late or missed a meeting. Ms. Kressley stated that appellant received basic claims examiner training, which did not address how to write decisions, but that he did receive such instruction in February 2003. She indicated that prototype decisions were developed, used and circulated among the staff, but that they were not intended to be fill-in-the-blank documents. Appellant was expected to use his skills as a writer and claims examiner to craft decisions appropriate to the case at hand. Ms. Kressley stated that appellant's work received the same scrutiny as every other employee. Appellant was not expected, asked or required to work longer than the 40-hour week. Ms. Kressley noted that appellant was permitted to work between the hours of 6:00 a.m. and 8:00 p.m. and had every right to do so. She contended that his assertion that he was expected to issue decisions in a timely manner 100 percent of the time was belied by his January 28, 2003 performance standards, whereby he was held to a 74 to 77 percent standard. Ms. Kressley stated that appellant was using the reports effectively and meeting his percent performance standard. She reported that Mr. Johnson's demeanor did not create stress in the workplace; that appellant had a positive experience with Mr. Johnson; and that he was relieved to find that he had been assigned to Mr. Johnson's unit. Ms. Kressley contended that Mr. Benedict's testimony was not probative because he did not witness Mr. Johnson yelling at an employee. She stated that at no time during appellant's employment as a hearing examiner was there any intention of firing him. Ms. Kressley further stated that claims examiners have found the tracking system used to be effective in managing their caseloads. She acknowledged that the practice of the agency was to schedule hearings in such a way as to maximize the number of hearings on a given trip. However, Ms. Kressley denied appellant's allegations that he was required to schedule and hold an oppressive number of hearings within a short period of time during a blackout. In fact, she stated that she knew of no contact between appellant and management during the referenced blackout. Ms. Kressley denied yelling at or using obscenities in any conversation with appellant. Rather, she "treated him with kid gloves."

By decision dated May 3, 2005, an Office hearing representative affirmed the April 29, 2004 decision, finding that appellant had failed to establish any compensable factors of employment.

On July 28, 2005 appellant requested review by the Board. By decision dated March 27, 2006, the Board granted the motion of the Director of the Office, remanding the case on the grounds that appellant's representative was not served with a copy of the May 3, 2005 decision.[1]

By decision dated April 27, 2006, an Office hearing representative reaffirmed the prior decision, finding that appellant failed to establish any compensable factors of employment.

LEGAL PRECEDENT

The Federal Employees' Compensation Act[2] provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[3] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of employment.[4]

To establish his occupational disease claim that he has sustained an emotional condition in the performance of duty, a claimant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.[5] Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion must be based on a complete factual and medical background of the claimant, 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 employment factors identified by appellant.[6]

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 illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to his regular or specially assigned employment duties, or to a requirement imposed by the employing establishment, the disability comes within

[1] Docket No. 05-1653 (issued March 27, 2006).

[2] 5 U.S.C. §§ 8101-8193.

[3] 5 U.S.C. § 8102(a).

[4] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

[5] *Claudio Vazquez*, 52 ECAB 496, 498 (2001).

[6] *Id.*

coverage of the Act. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of his work or his fear and anxiety regarding his ability to carry out his duties.[7] By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, 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.[8] Moreover, although administrative and personnel matters are generally related to employment, they are functions of the employer and not duties of the employee. The Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.[9]

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 factors of employment which may be considered by a physician when providing an opinion on causal relationship and which are not deemed factors of employment and may not be considered. 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.[10] 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.[11] 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.[12] However, 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.[13]

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[7] *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[8] *Id. See also Peter D. Butt, Jr.*, 56 ECAB ___ (Docket No. 04-1255, issued October 13, 2004).

[9] *See Charles D. Edwards*, 55 ECAB 258 (2004); *see also Ernest J. Malagrida*, 51 ECAB 287, 288 (2000).

[10] *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

[11] *See Charles D. Edwards, supra* note 9.

[12] *Charles E. McAndrews, supra* note 4; *see also 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 to determine whether or not the evidence corroborated such allegations).

[13] *See Thelma Rogers*, 42 ECAB 866 (1991).

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of his employment conditions. The Board finds that appellant has not submitted rationalized medical evidence establishing that his claimed condition is causally related to compensable employment factors.

Appellant alleged: the employing establishment improperly denied him overtime; lost his leave requests; provided insufficient training and support; incorrectly placed him on probation; improperly criticized his performance; provided performance standards that were unclear, unrealistic, constantly changing and inconsistent; and provided him inadequate travel time. The Board finds that these allegations relate to administrative or personnel matters, unrelated to his regular or specially assigned work duties and do not fall within the coverage of the Act.[14] Although the handling of disciplinary actions and leave requests, the assignment of work duties and the monitoring of work activities are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[15] However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[16] In this case, appellant has not submitted sufficient evidence to show that the employing establishment committed error or abuse with respect to these matters. The record reflects that appellant received basic claims examiners' training, as well as instruction regarding decision writing. His supervisor also assisted him with areas of difficulty. The employing establishment controverted appellant's claim that he was unreasonably denied overtime, indicating that veteran examiners were routinely granted overtime. Mr. Johnson stated that he was not made aware of appellant's need for overtime to complete his work, or that appellant was taking work home and working through lunch. Appellant did not provide documentation that his requests for overtime was denied. He provided e-mails and memorandums in support of his contention that performance standards were constantly changing and inconsistent. However, the correspondence from the employing establishment to the supervisors shows a continuing communication and an effort to inform the claims examiners, and thus does not support appellant's claim. His allegation that he was provided with inadequate travel time is not supported by the record. The Board finds that the practice of the establishment to schedule hearings in such a way as to maximize the number of hearings in a given trip was reasonable. Appellant failed to prove his claim, which was controverted by the employing establishment, that he was required to conduct an oppressive number of hearings within a short period of time.

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[14] *See Lori A. Facey*, 55 ECAB 217 (2004). *See also Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[15] *Id.*

[16] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

Appellant alleged that, at the time of his promotion to claims examiner, he was incorrectly assigned to a probationary status. This situation was ultimately corrected, with no alleged or proven negative consequence to appellant. The mere fact that personnel actions are later modified or rescinded does not, in and of itself, establish error or abuse on the part of the employing establishment.[17] The Board finds that he has not established a compensable employment factor.

Appellant alleged that the agency's overall effort lacked adequate planning, resulting in crisis after crisis and an atmosphere of continuous change. However, an employee's dissatisfaction with perceived poor management is not compensable under the Act.[18] Appellant also complained that his computer lacked speakers and was equipped with a monitor that was too small. An employee's frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable.[19] Moreover, the record does not establish that the equipment provided negatively impacted appellant's performance.

Appellant has not demonstrated that the employing establishment committed error or abuse with regard to these managerial functions and his dislike of or disagreement with the actions is not a compensable factor of employment. For these reasons, the Board finds that appellant has not established a compensable employment factor under the Act with respect to administrative matters.

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[20] However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[21] In the present case, the employing establishment has denied the allegations, and appellant has not submitted sufficient evidence to establish his claim.[22] He alleged: that he was not welcome or wanted when he began working as a claims examiner; that the tone in the office was aggressive, demeaning and generally hostile; that the environment was "harassing" due to a need to increase standards; that the employing establishment set him up to fail; that he was demeaned by being asked if his work was up-to-date before being granted leave; that he was belittled by supervisors when he asked for clarification of

[17] *Paul L. Stewart*, 54 ECAB 824 (2003).

[18] *Barbara J. Latham*, 53 ECAB 316 (2002).

[19] *Id.*

[20] *See Lori A. Facey, supra* note 14. *See also 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 Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

procedures; and that he had been told the agency planned to fire him. Appellant's allegations alone are insufficient to establish a factual basis for his claim.[23] General allegations that appellant was treated unfairly and disrespectfully by management are insufficient to establish that harassment or discrimination did, in fact, occur. Davis Benedict and Mr. Brown, coworkers, testified at appellant's hearing. Mr. Benedict stated generally that Mr. Johnson had a history of yelling at employees; that he "seemed" to edit appellant's decisions with more scrutiny than those of other employees; that the policies and rules were confusing; and that the tracking system was faulty. Mr. Brown testified that templates provided to appellant were returned with incomprehensible comments, which were inconsistent with those received by his coworkers. He stated that appellant was required to hold 12 to 13 hearings in one day in Buffalo, New York, and to return to work in Washington, DC the next day, and that, although the Buffalo trip was complicated by a black-out, appellant's restrictions were not modified to accommodate the emergency situation.

The Board finds the testimony of appellant's coworkers insufficient to substantiate appellant's claims. Mr. Benedict cited no specific incidents of harassment or discrimination. Neither Mr. Brown nor Mr. Benedict provided documentation to support their claim that appellant's decisions received more scrutiny than those of his coworkers. The Board notes that appellant testified that he never questioned his supervisor as to why he received a "marked-up" decision when it had been "pre-approved." Moreover, as Mr. Brown did not accompany appellant on the trip to Buffalo, his testimony regarding appellant's restrictions on that trip has diminished probative value. Ms. Copening stated that she was told by unidentified personnel employees that the employing establishment was trying to terminate appellant, and indicated that he was treated more poorly and in more hostile manner than his coworkers. However, she provided no first-hand knowledge of any harassing or discriminatory treatment. The Board finds that appellant has not established a compensable employment factor under the Act with respect to these above-described allegations.

Appellant alleged several instances of verbal abuse. He claimed that coworkers were chastised for poor work performance; that the FAB Chief shouted from her desk at the supervisor and staff; and that, when he complained of the hectic pace, his supervisor said, "That's what hearing reps do." The Board has recognized the compensability of verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.[24] Appellant did not provide sufficient evidence to corroborate that the alleged statements were actually made. However, assuming arguendo that the statements were made, the Board finds that they do not constitute verbal abuse or harassment. While the statements may have engendered offensive feelings, they did not sufficiently affect the conditions of employment to constitute a compensable factor.[25]

Appellant reported that he felt belittled by his supervisors' responses to questions asked to clarify procedures, and was demeaned by being asked if his work was up-to-date before being

[23] *Charles E. McAndrews*, *supra* note 4.

[24] *See Mary A. Sisneros*, 46 ECAB 155, 163-64 (1994); *David W. Shirey*, *supra* note 20.

[25] *See Denis M. Dupor*, 51 ECAB 482, 486 (2000).

granted leave. However, under the circumstances of this case, the Board finds that appellant's emotional reaction must be considered self-generated, in that it resulted from his perceptions regarding his supervisors' actions.[26]

Appellant alleged that he experienced emotional stress in carrying out his regular employment duties, which included conducting hearings and processing cases at a hectic pace. He was often required to travel out of state, conduct numerous hearings in a single day, and return to the employing establishment on the following day. Appellant claimed that he struggled with his work assignments; that he felt very pressured to complete his work in a given period of time; and that he was never comfortable or confident with the process of writing decisions. He stated that, although he did not "fall behind" in his work, he worked through lunch and took work home, and that "it took extra work, extra effort and an extreme amount of anxiety to make sure [he] was getting things through and getting an O.K. to release [the decisions] by the deadlines." The position description for workers' compensation claims examiner supports appellant's depiction of his duties, which included independently planning and carrying out claims case reviews; presiding as the hearing official during hearing proceedings; and issuing final decisions. The employing establishment confirmed that appellant's job involved duties with deadlines and required travel and occasional overtime. Mr. Johnson acknowledged that appellant had difficulty issuing decisions in a timely manner and handling complex cases and issues, and stated that appellant's supervisor worked with him to improve case quality, including attention to detail, grammar and identification of issues.

Where a disability results from a claimant's emotional reaction to his regular or specially assigned work duties, or to a requirement imposed by the employment, the disability comes within coverage of the Act.[27] The Board has held that conditions related to stress from situations in which an employee is trying to meet his or her position requirements are compensable.[28] In the instant case, the Board finds that appellant has established a compensable employment factor under *Cutler*. However, appellant's burden of proof is not discharged by the fact that he has identified an employment factor which may give rise to a compensable disability under the Act. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical opinion evidence establishing that he has an emotional condition or psychiatric disorder, and that such disorder is causally related to an accepted compensable employment factor.[29] Appellant has not submitted medical evidence explaining how or why the employment factor caused or contributed to the alleged emotional condition.

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[26] *See David S. Lee*, 56 ECAB ___ (Docket No. 04-2133, issued June 20, 2005).

[27] *See Lillian Cutler, supra* note 7. *See also Tina D. Francis*, 56 ECAB ___ (Docket No. 04-965, issued December 16, 2004) (where claimant alleged that stress related to her regular supervisory duties and to specially assigned duties associated with complaint investigations caused her emotional condition, the Board found that she had established compensable employment factors).

[28] *Trudy A. Scott*, 52 ECAB 309 (2001); *see Richard H. Ruth*, 49 ECAB 503 (1998) (claimant's stress, as related to his regularly assigned duties, constituted a compensable factor of employment); *see also Lillian Cutler, supra* note 7.

[29] *See Roger W. Robinson*, 54 ECAB 846 (2003).

Appellant submitted reports from Ms. Ayers, a licensed clinical social worker. As Ms. Ayers is not a physician, as defined by the Act, her reports do not constitute probative medical evidence.[30]

Dr. Campbell diagnosed major depressive disorder, moderate, recurrent, nonpsychotic. He opined that appellant's condition was caused or aggravated by employment activities, stating that he experienced "severe stress in harassing, pressuring workplace," Dr. Campbell indicated that his condition was not self-generated due to job dissatisfaction or disappointment. Dr. Campbell noted that, when appellant discovered that management was trying to fire him, he felt crushed, distressed and hopeless. He did not express an opinion that appellant's regular work activities caused his alleged emotional condition, or explain how those activities contributed to the condition. Rather, Dr. Campbell attributed appellant's condition generally to harassment and erroneous actions on the part of management. Therefore, his reports are insufficient to discharge appellant's burden of proof. The Board finds that appellant has not submitted rationalized medical evidence establishing that his claimed condition is causally related to compensable employment factors.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an emotional condition in the performance of duty.

[30] 5 U.S.C. § 8101(2) of the Act provides as follows: "(2)'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." A report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as "physician" as defined in 5 U.S.C. § 8101(2); *Phillip L. Barnes*, 55 ECAB 426 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 27, 2006 is affirmed, as modified.

Issued: September 11, 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