

In an incident report by the employing establishment, a patrolman noted that on March 1, 1997 appellant's vehicle was vandalized in that both driver side and passenger side windows were shattered and both permanent portions of back sliding glass windows were also shattered. The patrolman observed a small hole about the size of a dime in each side of the back windows, but noted that he found no bullet casings in the perimeter. Nothing was reported missing from the vehicle. Witness statements indicated that when Rick Carroll was leaving the employing establishment at 1330 hours he noticed that appellant's truck had broken windows. Mr. Carroll did not see anyone else in the area. In a statement Pam Wingate indicated that she arrived at 1035 hours to work and that she had not left the building since her arrival. She noted that appellant and she were always joking around but they never had any altercations. Ms. Wingate noted a "friendly disagreement" since appellant's arrival about giving her special cuts of meat, but as appellant refused, she asked another employee who gave her the cuts. Copies of pictures of appellant's damaged vehicles were also submitted. A March 7, 1997 internal note of the employing establishment noted that the officer investigating appellant's case said that it was only a possibility that the windows of appellant's vehicle were shot out as they did not find enough evidence to confirm that a gun was used. He noted that the investigation was continuing.

Appellant wrote a letter to "T. Jones" stating that, as per a telephone conversation on November 4, 1996, that this was a request for written permission for him "not to tell anyone about the stealing and other things I see going on at [the employing establishment]." He alleged that he had seen someone reduce produce under cost and put more product into a friend's package without upping the price. Appellant alleged that management had a "do n[o]t tell attitude" and that no one in management would do anything about it. Finally, he alleged that he was attacked by another employee. Appellant also submitted a note to his union dated May 10, 1997, stating: It has come to my attention that (another employee of the employing establishment) gave a written statement about appellant's truck in which he stated that appellant was crazy and shot out his own windows in order to get a transfer. He requested that the union obtain statements and lie detector tests from the other employees.

Appellant also submitted evidence with regard to his unsuccessful attempts to be transferred. He wrote to his congressman requesting assistance in getting a transfer to Stockton, California. In a letter dated April 24, 1997, the employing establishment replied that appellant's request for reassignment to Stockton, California was being considered, but there were no projected openings appropriate for him at the time.

In a note from appellant, received by the Office on November 11, 2003, he alleged that A.S. wanted him out of his job so that a friend of his could get the job. He also alleged that people on his witness list were harassed and he feared for their lives.

By letter dated February 10, 2004, the Office requested that appellant submit further information. Appellant responded by saying that it had been five years after the incident and that he was no longer in contact with any witnesses. He related that on his first day at work he became aware that one of the employees was upset because he thought that appellant had taken his job. Appellant contended that this individual was stealing but that other employees covered it up. He alleged that this person threatened to kill him several times but that all reports were taken out of the employee's record. Appellant alleged that his car was "shot up" and that the head of

security told him that someone was paid to shoot his truck but that it could not be proven. He also said that after the incident someone put about 200 razor blades on his windshield.

By decision dated March 9, 2004, the Office denied appellant's claim for an emotional condition as it found that he had not established any compensable employment factors.

On March 16, 2004 appellant requested an oral hearing which was held on May 12, 2005.

At the hearing held on May 12, 2005, the hearing representative indicated that it was agreed that the issue to be decided was whether the medical evidence demonstrated that appellant sustained a medical condition in connection with the reported injury. Appellant indicated that he last saw a doctor in 2000. He contended that management tried to put him out of work in 1997 and 1998 by putting him on a different shift when he returned from surgery. Appellant noted that, after his car was "shot up," he found a box or two of single-bladed razor blades dumped on his windshield. He testified that the acting commissary manager was a friend of the person who felt that he should have had appellant's job. Appellant contended that A.S. purged R.G.'s file so that he could stay employed. He indicated that he was separated from employment in 1999 due to a previous arm injury.

In a May 7, 1999 report, William A. Goggin, a licensed social worker, suggested a psychiatric consultation due to appellant's depression and extreme paranoia.

In a May 16, 2005 report, Dr. James G. Reid, a family practitioner, indicated that he has treated appellant intermittently since 1998. He noted that he initially saw appellant on June 1, 1998 for depression and an actual suicide attempt. Appellant related numerous problems due to stress while working at the employing establishment. He indicated that his fellow workers were harassing him and stated that there had been numerous acts of vandalism against his personal property. To the best of Dr. Reid's knowledge, appellant was never been seen by a psychiatrist, but had been treated with antidepressants and most recently risperdal. He noted that appellant became quite obese and developed related diabetes mellitus. Since that time, appellant has lost a considerable amount of weight and that his diabetes had been controlled. At the present time, he continued to have feelings of anxiety and expressed evidence of possible auditory hallucinations which raised the possibility that he might have a psychotic disorder. Dr. Reid stated: "It is reasonable to assume that his present psychiatric illness may have been exacerbated by his work environment while working for the [F]ederal [G]overnment at [the employing establishment]." He opined that appellant was presently totally disabled and unlikely to engage in gainful employment in the future. Dr. Reid diagnosed: (1) chronic pain and weakness in the upper extremities secondary to bilateral carpal and cubital tunnel syndromes; (2) diabetes mellitus; (3) hypothyroidism; (4) exogenous obesity; and (5) nonspecific psychosis. He recommended that appellant be evaluated and followed by a psychiatrist for management of his mental health problems.

By decision dated August 3, 2005, the hearing representative found that, although appellant had established that his truck was vandalized while parked at the employing establishment, there was no evidence to support that such vandalism was a form of harassment by his coworkers or management. Therefore, this incident was not considered to have arisen out of his employment. The hearing representative also found that appellant had not established that

any of the other incidents that he alleged had actually occurred, including harassment by his supervisor or coworkers, that stealing was covered up by a supervisor or that a supervisor was trying to get him fired so a friend could get appellant's job. The hearing representative affirmed the March 9, 2004 decision.¹

By letter dated August 17, 2005 to the hearing representative, appellant contended that the Office did not make all witness medical reports and documentary evidence available. The Office interpreted this letter as a request for a new hearing and by letter dated October 20, 2005, advised appellant that a new hearing was not an option available to him. Appellant was referred to the appeal rights accompanying the hearing representative's decision.

By letter dated July 15, 2006, appellant requested reconsideration on the grounds that the Office did not issue subpoenas or supply medical reports and documents as requested.

By decision dated December 8, 2006, the Office denied modification of the August 3, 2005 decision.

LEGAL PRECEDENT

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 factors are causally related to his emotional condition.²

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*,³ the Board explained that there are distinctions to the types of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁴ There are situations where an injury or an illness has some connection with employment but nevertheless does not come within the concept or coverage under the Act.⁵ When an employee

¹ By letter dated April 28, 2004, but hand-delivered at the hearing, appellant requested that subpoenas be issued for various persons and documents. The documents requested by appellant included copies of all documents and correspondence between his doctor and the Office and the employing establishment, copies of his time cards and scheduled workdays, a transcript of a different case and copies of his doctor's reports. He also requested that subpoenas be issued for Commissary Secretary Priscilla Nugent, Meat Manager Cynthia Padgett and Commissary Officer Bruce Graff. Subsequent to the hearing representative's decision, appellant's sought assistance from his congressman with regard to these subpoenas. The Office replied that subpoenas were not issued in this case primarily because appellant had hand-delivered the request at the hearing and that, due to the late submission, the request could not be considered. Although appellant alleged in a note received by the Office on October 5, 2005 that he had asked for the subpoenas earlier, the Board notes that no documents establishing this were enclosed.

² *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ 28 ECAB 125 (1976).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ See *Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

experiences emotional stress in carrying out his employment duties and the medical evidence establishes that the disability resulted from his 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.⁶

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. Rather, the issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his allegations with probative and reliable evidence.⁷

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.⁸ 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.⁹

ANALYSIS

In the instant case, appellant alleged that razor blades were placed on the windshield of his vehicle, death threats were made to him, an employee stole from the commissary, appellant's supervisor wanted another employee to have his job and that someone called him "crazy" and accused him of shooting his own vehicle. He submitted no factual evidence to support these allegations. There are no witness statements or other corroborative evidence substantiating his allegations. Therefore, appellant has not established these incidents as compensable employment factors.

Appellant also made general allegations of harassment. The perception of harassment or mistreatment is not sufficient to establish a compensable work factor. There must be probative

⁶ *Lillian Cutler*, *supra* note 3.

⁷ *James E. Norris*, 52 ECAB 93 (2000).

⁸ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁹ *Id.*

and reliable evidence in support of the allegation.¹⁰ Appellant has provided no probative evidence in support of his allegations sufficient to establish his allegations of harassment or other inappropriate treatment by supervisors or coworkers.

Appellant has established that his vehicle was vandalized on March 1, 1997. However, he has not established this as a compensable factor of employment. Clearly, the vandalism of appellant's vehicle did not arise from carrying out his employment duties. The Board notes that the individual responsible for this incident was never identified or apprehended. There is no evidence that this vandalism was the result of harassment by his coworkers.

Appellant made general allegations with regard to the employing establishment failing to reassign him to another duty station. His allegations regarding work assignments relate to administrative or personnel allegations taken by the employing establishment are not covered under the Act, as such matters do not bear a direct relation to the work required of the employee. Coverage under the Act could attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with appellant. However, the record does not establish such error or abuse. Appellant was denied a transfer as no appropriate position was available in the location where he wished to be transferred. This is not a compensable factor of employment.

Based on the evidence of record, appellant has not substantiated a compensable work factor. Since he has not established a compensable work factor, the Board will not address the medical evidence.¹¹

CONCLUSION

The Board finds that appellant has not established an emotional condition in the performance of duty.

¹⁰ See *Beverly R. Jones*, 55 ECAB 411 (2004). In evaluating workers' compensation claims, the term harassment is synonymous with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by coemployees or coworkers.

¹¹ *T.G.*, 58 ECAB __ (Docket No. 06-1411, issued November 28, 2006); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 8, 2006 is affirmed.

Issued: September 13, 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