

**United States Department of Labor
Employees' Compensation Appeals Board**

N.D., Appellant)

and)

DEPARTMENT OF HEALTH & HUMAN)
SERVICES, NATIONAL INSTITUTES OF)
HEALTH, Bethesda, MD, Employer)

Docket No. 08-1525
Issued: December 12, 2008

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 6, 2008 appellant filed a timely appeal from an April 30, 2008 decision of the Office of Workers' Compensation Programs that denied his 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 met his burden of proof to establish that he sustained an emotional condition in the performance of duty causally related to his federal employment.

FACTUAL HISTORY

On February 2, 2008 appellant, then a 52-year-old Equal Employment Opportunity (EEO) Commission program assistant, filed an occupational disease claim alleging that severe stress and overwork caused depression. He stopped work on April 25, 2006. Appellant stated that he was first aware of the condition and its relationship to his employment on that date. Lawrence Self, Director of the Office of Equal Opportunity and Diversity Management at the employing establishment, stated that appellant had never reported that he experienced a

workplace illness and that he was not asked to do more than his position required. He enclosed a position description and a notification of personnel action showing that appellant resigned effective November 11, 2006. The notice stated that appellant gave no reason for his resignation.

A Merit Systems Protection Board (MSPB) settlement agreement signed on October 4 and 5, 2007, advised that the employing establishment would pay appellant's attorney's fees, that his voluntary resignation on November 11, 2006 was irrevocable, that the employing establishment would convert appellant's absence without leave to leave without pay, and would promptly process his disability retirement. Appellant agreed to withdraw all other claims relating to or arising from his federal employment.

Appellant submitted medical reports from Dr. Paul van Ravenswaay, a Board-certified psychiatrist. On October 19, 2007 Dr. van Ravenswaay stated that appellant first presented in June 2005 with a six-month history of depressed mood and stated that conditions at work were very stressful. He noted that appellant was hospitalized in a psychiatric unit in May 2006 following repeated episodes of amnesia. In July 2006, appellant was treated for seizure episodes, characterized by confusion, disorientation and amnesia. Dr. van Ravenswaay noted appellant's report that he was involved in a motor vehicle accident in October 2006 and was carjacked in November 2006. He last saw appellant on October 1, 2007. Dr. van Ravenswaay diagnosed major affective disorder, depressed with atypical elements; the possibility of a mixed mood in the bipolar spectrum; and a history of seizure disorder. He advised that appellant was too depressed to work effectively "and that he finds that the work environment is difficult to cope with and aggravates his symptoms."

By letter dated March 27, 2008, the Office informed appellant of the evidence needed to support his claim. It requested a detailed description of the employment-related conditions that he believed contributed to his condition. Appellant was advised to identify relevant dates, locations, coworkers, supervisors, required duties, etc., and describe events and how often they occurred. He was further asked if he was required to meet deadlines, had quotas, was adequately equipped and trained for his assigned duties, or had to work overtime or take work home in order to complete his assigned duties. In a second March 27, 2008 letter, the employing establishment was asked to respond to appellant's claim.

In response, appellant stated that it did not appear that the Office had received his medical documentation. He alleged, "I was subjected to harassment, hostile work environment, and sex discrimination. All aspects of the work environment were detrimental to my health, both physical and mental." Appellant contended that "in general" his employment required him to meet deadlines and quotas, noting that the job entailed counseling and filing EEO complaints and grievances for employees. He advised that his personal EEO complaints and grievances were resolved with the employing establishment supporting his disability. Appellant advised that he had no stresses outside his federal employment and referred the Office to medical documentation previously submitted.

By decision dated April 30, 2008, the Office denied appellant's claim on the grounds that the evidence submitted was insufficient to establish any work-related factors and the medical evidence did not provide a diagnosis which could be connected to his employment.

LEGAL PRECEDENT

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or stress-related 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 employment factors are causally related to his stress-related condition.¹ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.² 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.³

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*,⁴ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁵ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁶ When an employee experiences emotional stress in carrying out his or her employment duties, and the medical evidence establishes that the disability resulted from an emotional 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 or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁷ A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.⁸

For harassment or discrimination to give rise to a compensable disability, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis

¹ *Leslie C. Moore*, 52 ECAB 132 (2000).

² *Dennis J. Balogh*, 52 ECAB 232 (2001).

³ *Id.*

⁴ 28 ECAB 125 (1976).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *See Robert W. Johns*, 51 ECAB 137 (1999).

⁷ *Lillian Cutler*, *supra* note 4.

⁸ *Roger Williams*, 52 ECAB 468 (2001).

for his or her allegations that the harassment occurred with probative and reliable evidence.⁹ With regard to emotional claims arising under the Act, the term “harassment” as applied by the Board is not the equivalent of “harassment” as defined or implemented by other agencies, such as the EEO Commission, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers’ compensation under the Act, the term “harassment” is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by coemployees or workers. Mere perceptions and feelings of harassment will not support an award of compensation.¹⁰

ANALYSIS

The Board finds that appellant has not established a compensable factor that occurred in the performance of his regular duties or to any special work requirement arising from his employment duties that would fall under the *Cutler* standard. Rather, appellant alleged being subjected to harassment, a hostile work environment and sex discrimination and that all aspects of his employment contributed to his emotional condition. Although instructed by the Office to identify relevant dates, locations, coworkers, supervisors, required duties, and describe events and how often they occurred, he did not do so. Appellant has not established a compensable *Cutler* factor.¹¹

Appellant alleged in general that he was overworked and was required to meet deadlines, quotas and accomplish tasks within a certain time frame. The Board has held that an emotional reaction to situations in which an employee is trying to meet his or her position requirements is compensable.¹² Overwork, if substantiated by sufficient factual information to corroborate the claimant’s account of events, may be a compensable factor of employment.¹³ Appellant, however, did not submit any evidence describing specific situations or evidence to show that he was overworked or worked overtime. He therefore failed to establish this as a compensable factor.

While the record contains an MSPB settlement agreement, a finding of no fault was made. The agreement settled appellant’s EEO claims and grievances against the employing establishment without any admission of wrongdoing or fault on the part of the employer. The MSPB settlement agreement does not substantiate appellant’s general allegations of harassment or discrimination by employing establishment personnel.¹⁴

Appellant made general allegations regarding harassment but submitted nothing to substantiate his allegations. As the record lacks probative evidence supporting that he was

⁹ *James E. Norris*, 52 ECAB 93 (2000).

¹⁰ *Beverly R. Jones*, 55 ECAB 411 (2004).

¹¹ *Lillian Cutler*, *supra* note 4.

¹² *Tina D. Francis*, 56 ECAB 180 (2004).

¹³ *Bobbie D. Daly*, 53 ECAB 691 (2002).

¹⁴ *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

harassed at the employing establishment, the Board finds that he has not established a compensable employment factor with respect to the claimed harassment.¹⁵ Appellant therefore did not establish that he sustained an emotional condition in the performance of duty as alleged.¹⁶

CONCLUSION

The Board finds that appellant failed to establish that he sustained an employment-related emotional condition in the performance of duty causally related to his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 30, 2008 be affirmed.

Issued: December 12, 2008
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

¹⁵ *James E. Norris, supra* note 9.

¹⁶ As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Katherine A. Berg, 54 ECAB 262* (2002).