

and high blood pressure in the performance of duty. Regarding the relationship of the claimed illness to his employment, he stated:

“Subject to harassment that has created [an] ongoing hostile and violent environment since October 2, 2006 in the form of verbal threats, inappropriate language. On October 18, 2006 I was harassed due to my involvement as an [Equal Employment Opportunity] representative which led to chest pain, shortness of breath and high blood pressure. The harassment is ongoing. On November 3, 2006 I was denied medical treatment for chest pain, shortness [of] breath and high [blood pressure] due to a heart attack.”¹

On December 29, 2006 the Office requested that appellant submitted additional factual and medical evidence in support of his claim.

Appellant submitted medical reports concerning his treatment in October and November 2006 for various medical problems, mostly related to his cardiac condition.² In an October 23, 2006 report, Dr. John W. Ellis, an attending Board-certified family practitioner, stated that appellant sustained panic and anxiety attacks, increased blood pressure and chest pain due to being harassed by a supervisor at work.

In a December 26, 2006 statement, Jennafer Gutierrez, a human resources specialist for the employing establishment, asserted that appellant was not subjected to harassment for his Equal Employment Opportunity (EEO) activities on October 18, 2006 or any other date. She indicated that after appellant reported to his new position in October 2006 he improperly continued to perform union steward duties without notifying his new supervisor, Janice Brown.³ Ms. Gutierrez indicated that, as part of her supervisory duties, Ms. Brown visited the EEO office to see if appellant was present. Ms. Brown took this action because she had been informed that appellant had previously claimed official time for working on EEO cases that were actually closed.⁴ Ms. Gutierrez indicated that appellant was not denied medical care on November 3, 2006 in that Ms. Brown called 911 and he was transported to the hospital by ambulance. Ms. Gutierrez denied that appellant was subjected to a hostile or violent work environment; he was not subjected to threats or inappropriate language.

In an undated statement received by the Office on January 9, 2007, Ms. Brown indicated that on November 3, 2006 she advised appellant that he had to file a “949 form” if he wished to claim official time for union activities. She advised appellant that he could not use a self-generated form as he had done under his prior supervisor. Ms. Brown indicated that appellant

¹ Appellant stopped work on November 3, 2006.

² Appellant was hospitalized on November 3, 2006 for a probable myocardial infarction.

³ In a February 23, 2007 statement, Ms. Gutierrez indicated that since October 2006 when appellant started working in his new position he was allowed to perform his additional duties as a union representative.

⁴ In a November 1, 2006 memorandum, Ranelle Newport, an investigator with the claims review unit of the employing establishment, indicated that Ms. Brown advised her that appellant became upset and took off work on October 19, 2006 after she attempted to verify the amount of time appellant was claiming for union business.

proceeded to contest her instructions that he had to use a 949 form and became “irate” and “started shouting” at her.⁵ She stated that appellant reported having chest pain and she asked him whether she should call 911. After appellant responded in the affirmative, Ms. Brown called 911 and stayed with him until an ambulance took him away. She denied that she ever harassed appellant, threatened him, or subjected him to inappropriate language.

In an undated statement received by the Office on January 29, 2007, Ms. Brown provided additional discussion of her attempts to ensure that appellant’s claiming of official time for union and EEO work was proper. In October 2006 she visited the EEO office and asked it to verify that the 32 EEO cases for which appellant requested official time were legitimate. The EEO office advised her that 13 of the 32 EEO cases were closed and that appellant was not the representative for 4 of the 32 cases. Ms. Brown asserted that these actions were within her duties and rights as a supervisor. She provided additional details regarding the events of November 3, 2006 indicating that it was appropriate for her to request that appellant complete a 949 form. Ms. Brown noted that she called 911 upon appellant’s request after he complained of chest pains and stayed with him until medics transported him away in a chair with rollers. She indicated that while appellant was damp mopping with a coworker he had a misunderstanding about the job and told the coworker that he “already had it out with my supervisor, I don’t need it with you.”⁶

In a November 6, 2006 statement, Aleisa Blanson, the chief of the support section for the employing establishment, stated that on November 3, 2006 she was present when appellant complained of chest pains and asked Ms. Brown to allow someone to “take him to medical” or call emergency services. Ms. Blanson indicated that Ms. Brown handed appellant a 949 form and then called emergency services. She noted that emergency services arrived a few minutes later, asked appellant some questions and performed some tests, and then took him away.

In a March 6, 2006 decision, the Office denied appellant’s emotional condition claim on the grounds that he did not establish any compensable employment factors. The Office indicated that appellant was provided an opportunity to submit argument and evidence establishing the alleged employment factors but he failed to do so.

Appellant requested reconsideration of his claim on March 13, 2006 and submitted additional medical evidence in support of his claim. In an April 19, 2007 decision, the Office affirmed its March 6, 2006 decision. The Office again found that appellant did not establish any compensable employment factors. It noted that he did not submit sufficient evidence to show that he was subjected to harassment or discrimination as alleged.

⁵ In an undated statement, Toby Smith, a coworker, stated that on November 3, 2006 he heard appellant “getting very loud to the point of almost yelling” near Ms. Brown’s office. In a November 3, 2006 statement, Ruben Almengor, a coworker, stated that on November 3, 2006 he heard appellant “shouting real loud at the supervisor.” In a November 3, 2006 statement, Sharla Matchen, a coworker, stated that on November 3, 2006 she heard appellant “raising his voice to my supervisor.”

⁶ In a November 3, 2006 statement, Samuel Priest, a coworker, indicated that appellant had an “attitude” on that date when he discussed a mopping job with him and stated, “I’ve already had it out with my supervisor. I don’t need it with my coworker.”

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.⁷ On the other hand, the disability is not covered where it results from such factors as an 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.⁸

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.⁹ 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.¹⁰

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.¹¹ 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.¹²

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. The Office denied his 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.

⁷ 5 U.S.C. §§ 8101-8193.

⁸ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁹ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹⁰ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹¹ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹² *Id.*

Appellant alleged that harassment and discrimination on the part of the employing establishment contributed to his claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from his performance of his regular duties, these could constitute employment factors.¹³ 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.¹⁴

Appellant claimed that on October 18, 2006 he was harassed due to his work as an EEO representative. Although he was provided with an opportunity to do so, appellant did not provide any further description of his claim that he was harassed for his service as an EEO representative, nor did he submit any evidence, such as witness statements or the findings of grievances he filed, to establish that he was harassed in this manner.¹⁵ Moreover, the employing establishment has submitted statements in which it denied that it did anything improper in connection with appellant's service as a union and EEO representative.¹⁶

Appellant alleged that on November 3, 2006 he was denied medical treatment for chest pain, shortness of breath and high blood pressure due to a heart attack. However, he did not provide any further description of the events of November 3, 2006 or explain why he felt the employing establishment improperly denied him medical treatment on that date. Appellant did not submit any evidence to support his allegations in this regard. In addition, Ms. Brown indicated that on November 3, 2006 she responded in a timely manner to appellant's request to call medical services after he complained of chest pains and waited with him while medical personnel took him to the hospital in an ambulance.¹⁷

Appellant alleged that since October 2, 2006 he was subjected to harassment and discrimination, including verbal threats and inappropriate language, which created an ongoing hostile and violent environment. He did not provide any further description of particular instances that he felt he was subjected to verbal threats and inappropriate language such that he had to work in a hostile or violent environment. Appellant did not submit any evidence, such as witness statements, to support his claims in this regard. The employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted

¹³ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁴ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁵ *See William P. George*, 43 ECAB 1159, 1167 (1992).

¹⁶ Ms. Brown, an immediate supervisor, acknowledged that in October 2006 she visited the EEO office and asked it to verify that the EEO cases for which appellant requested official time were legitimate. Ms. Brown asserted that these actions were within her duties and rights as a supervisor. Ms. Gutierrez, a human resources specialist for the employing establishment, indicated that Ms. Brown's actions in this regard were legitimate, particularly since she had been informed that appellant had previously claimed official time for working on EEO cases that were closed.

¹⁷ Ms. Brown's account of the events of November 3, 2006 was supported by a November 6, 2006 statement of Ms. Blanson, the chief of the support section for the employing establishment.

sufficient evidence to establish that he was harassed or discriminated against in any way.¹⁸ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

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.¹⁹

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' April 19, 2007 decision is affirmed.

Issued: February 7, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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

¹⁸ Both Ms. Brown and Ms. Gutierrez denied appellant's claims in this regard. Ms. Brown reported that on November 3, 2006 appellant became "irate" and "started shouting" at her. This account of the events of November 3, 2006 was supported by several coworkers who variously indicated that they heard appellant "shouting real loud" or "raising his voice" in the presence of Ms. Brown.

¹⁹ 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).