



21 and August 8, 2006. He realized his condition was caused or aggravated by his employment on August 11, 2006. Appellant stopped work on August 8, 2006. He submitted reports dated August 21, 2006 in which Dr. William W. Friday, a Board-certified psychiatrist, diagnosed dysthymic disorder and generalized anxiety. Dr. Friday checked a box "yes" indicating that appellant's condition was work related. He listed as an example that appellant was called the district manager's "boyfriend by his supervisors and coworkers." Dr. Friday indicated that appellant was partially disabled from August 11 to 25, 2006 and could return to regular duty on August 26, 2006.

In a September 2, 2006 e-mail to Angie Strathie, a manager of distribution operations, appellant addressed an Equal Employment Opportunity (EEO) matter in which he "wanted compensation and my high three salary." In a September 18, 2006 statement, appellant alleged that, on July 3, 2006, Don Lewis, a coworker, was chatting with Tonya Weems, when Larry Wilson, a manager of district operations, appeared and angrily started using expletives and chased him up an aisle while saying "this is my woman, I got to protect her from you." He stated that Mr. Wilson approached Ms. Weems and used expletives toward her and then got into his car and drove away. Appellant alleged that, on July 19, 2006, Mr. Wilson told him to "[k]eep smiling, Kate Wiley's boyfriend, I got to protect my job and my women." He asserted that this statement was uttered in front of Colleagues Barry Prysock and Allen New and was an example of unequal treatment. Appellant alleged unfair treatment regarding promotions, job assignments, reasonable accommodations, retaliation, race, color, sex, age and also alleged a hostile work environment and harassment. He alleged that several of his coworkers had asked for the opportunity to be assigned for "upward mobility." However, the employing establishment did not give training to these individuals and appellant alleged that this was an example of not giving the training to black males which had continued since 1980. Appellant alleged that this caused a feeling of hopelessness, being irritated and depression. He stated that he became depressed with the weight of the black males asking for help on his shoulders.

In a September 1, 2006 statement, Mr. Wilson stated that appellant worked in the same unit as his wife. He noted that on July 3, 2006 he stopped by to speak with his wife and asked appellant "[d]o you know that's my wife?" Mr. Wilson alleged that appellant immediately walked away without responding. He also denied that he was angry, used expletives or made any comments that appellant was the boyfriend of another individual. Mr. Wilson noted that appellant was interested in a new position but that, while he initially supported the move, he was informed that appellant had "cussed Mr. Bob Cadegan (supervisor) out a few days prior." Mr. Wilson later advised appellant that he could not support him if he was going to "continue to disrespect and cuss people out on the workroom floor."

In a letter dated September 5, 2006, Elizabeth Adams, an employing establishment case manager, controverted the claim. In a September 8, 2006 statement, Ms. Strathie indicated that, when she questioned appellant regarding his allegations of harassment and discrimination, she could not get "any straight answers." For example, she noted that appellant alleged that he sustained property damage to his car when someone wrote on his car in the parking lot and he believed that it was Supervisor Jeff Acker. Ms. Strathie noted that Mr. Acker did not know appellant at the time or what type of car he drove. She informed the Office that appellant had been demoted in the 1980's and was "bitter" ever since. Ms. Strathie alleged that she spoke with individuals in appellant's work unit, but could find no one who had witnessed any person

harassing appellant. She denied appellant's allegations that he was "being threatened or assaulted or exposed to a hostile work environment" at the employing establishment.

By letter dated September 21, 2006, the Office informed appellant of the evidence needed to support his claim. No additional evidence was received.

By decision dated October 30, 2006, the Office denied the claim on the basis that the alleged incidents were not established as having occurred. It found that appellant did not establish any compensable factors as arising in the performance of duty.<sup>1</sup>

On December 2, 2006 appellant requested reconsideration, provided evidence and commented on the claims process. He alleged that harassment or teasing of employees was a compensable work factor and he repeated allegations about the incidents of July 3 and 19, 2006. Appellant also alleged that on July 26, 2006 he filed an EEO claim and on August 8, 2006 a plant manager, Lauren Harkins, discussed the low score of "employee and supervisor relationships in the plant." He noted that on August 29, 2006 he was sent for a fitness-for-duty examination for preexisting injuries. On September 1, 2006 appellant requested a reasonable accommodation and sick leave, which were denied. He stated that, on September 8, 2006, his request for a pay adjustment for leave without pay was signed a month after the fact. On October 20, 2006 appellant alleged that he was in the performance of duty when Karen Moreno, a supervisor, called a "service talk" and "poked" a memorandum in his face and laughed. He stated that, in February 2006, she ridiculed him about being "[Ms.] Wiley's ex-boyfriend." Appellant alleged that, on November 4, 2006, his acting supervisor, Roberta Bricker, harassed him about his case not being full, whether he had the job offer that she had given to him on November 3, 2006 and whether he was asleep on the job. Appellant alleged these were examples of a hostile work environment. He further alleged as work factors that Ms. Strathie discriminated supervisors under her; a confrontation with Ms. Bricker in the fall 2004 regarding "special privileges"; an October 1, 2005 dispute resolution concerning Mr. Acker; an October 11, 2005 request for upward mobility; a September 1, 2006 denial of an unspecified payment; and a November 4, 2006 reasonable accommodation dispute.

In a November 4, 2006 memorandum, Ms. Bricker stated that she observed appellant on that date for several minutes and saw no movement, approached him and lightly tapped his shoulder. She alleged that appellant stood up and began yelling that she should "quit profiling him and leave the 'black boy' alone." Ms. Bricker alleged that appellant began using profanity and asked where her ex-husband was. She ignored him and he later came back and asked her not to call him by his first name. Thereafter, she called appellant by his last name. Ms. Bricker also alleged that appellant had been involved in several altercations with other employees.

In a December 17, 2006 affidavit, appellant alleged that on December 13, 2006 he noticed several employees and observed the amount of mail they were processing. He alleged that Managers Moreno, Bricker and Strathie confronted him and told him to "stay away" from that work unit "and that's an order." Appellant alleged that fraud was being committed because

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<sup>1</sup> Appellant subsequently filed several claims for recurrences of disability for the dates of October 16, November 4 and December 13, 2006. The Office advised appellant that no action would be taken on his recurrence claims as his claim was denied.

there were five clerks doing nothing and that this showed unequal treatment. In a January 6, 2007 statement, Ms. Strathie denied appellant's allegations regarding the December 13, 2006 incident and explained that it was a supervisor's responsibility to monitor the work of employees.

In a December 29, 2006 statement, appellant alleged a December 20, 2006 incident occurred where James Cochran, a coworker, shouted at him and told him that he had to "protect these white girls from the likes of you and your kind." He alleged that Mr. Cochran was racist. In a January 6, 2007 statement, Mr. Cochran denied appellant's allegations. The Office also received articles on "white privilege" and articles defining various types of behavior and the penalties for false claims.

In a January 17, 2007 decision, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that insufficient evidence was submitted.

### **LEGAL PRECEDENT -- ISSUE 1**

Workers' compensation law does not apply to each and every 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 disability results from an employee's emotional reaction to his regular or specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>2</sup> 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.<sup>3</sup>

A claimant 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.<sup>4</sup> 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.<sup>5</sup>

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 the physician when providing an opinion on causal relationship and, which working conditions are not deemed

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 126 (1976).

<sup>4</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>5</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

factors of employment and may not be considered.<sup>6</sup> 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 the matter establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>7</sup>

### ANALYSIS -- ISSUE 1

Appellant alleged that he sustained an emotional condition as a result of employment incidents and conditions at work. The Board must initially review whether the alleged incidents and conditions of employment are compensable under the terms of the Act.

The Board notes that appellant made several allegations related to administrative or personnel matters. These allegations are unrelated to his regular or specially assigned work duties and do not generally fall within the coverage of the Act.<sup>8</sup> The Board has held however that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse. In determining whether the employing establishment erred or acted abusively, the Board has examined whether management acted reasonably.<sup>9</sup>

Appellant noted the employing establishment's failure to promote him. Although evaluations and job performance issues are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>10</sup> The employing establishment controverted appellant's claim and denied acting unreasonably with regard to such matters. In a September 1, 2006 statement, Mr. Wilson indicated that he was aware that appellant was interested in a new position. While he supported the move, initially, he was informed that appellant swore at a supervisor a "few days prior." Mr. Wilson stated that he could not support appellant's promotion if he was going to "continue to disrespect and cuss people out on the workroom floor." Ms. Strathie advised the Office that she had questioned appellant regarding his allegations, but that she could not get "any straight answers from him." She also indicated that appellant was demoted in the 1980's and was bitter ever since. Additionally, Ms. Strathie indicated that she has spoken with persons in appellant's work unit, but could find no one who confirmed appellant's allegations. The Board finds that the evidence does not show that the employing establishment acted unreasonably regarding its consideration of appellant for promotions. Appellant alleged that, on August 11, 2006, several coworkers had asked for the opportunity to receive training or to be assigned for upward mobility. However, no training or opportunity was afforded to them. Appellant alleged that this was another example of

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<sup>6</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>7</sup> *Id.*

<sup>8</sup> An employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. *Sandra Davis*, 50 ECAB 450 (1999).

<sup>9</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>10</sup> See *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).

discrimination which had taken place since 1980. The Board finds that these allegations pertaining to training and promotions relate to administrative or personnel matters, unrelated to appellant's regular or specially assigned work duties and do not fall within the coverage of the Act.<sup>11</sup> Appellant's allegations of unreasonable treatment pertaining to these matters is not supported by the evidence. For example, he did not submit any statements from coworkers corroborating his allegations.<sup>12</sup> Appellant has not presented evidence to show erroneous or abusive actions by management regarding training and promotion. He has not established a compensable employment factor with respect to these administrative matters.

Appellant also asserted that he was harassed and verbally abused by his supervisors. He alleged that, on July 3, 2006, Mr. Lewis, a coworker, was chatting with Ms. Weems, when Mr. Wilson appeared and angrily used expletives and chased him up the aisle. Appellant also alleged that, on July 19, 2006, Mr. Wilson told him to "[k]eep smiling, [Ms.] Wiley's boyfriend, I got to protect my job and my women." He alleged that this statement was uttered in front of several coworkers. However, appellant did not provide any corroborating evidence such as witness statements to support his allegations.<sup>13</sup> Mr. Wilson denied appellant's allegations that on July 3, 2006 he was angry, used expletives or made any comments that appellant was the boyfriend of another individual. He explained that he had stopped to speak with his wife and asked appellant "[d]o you know that's my wife?" Mr. Wilson alleged that appellant immediately walked away without responding. The Board finds that appellant has not established that he was subjected to harassment or verbal abuse by his supervisors. Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.<sup>14</sup> Appellant has not submitted evidence to establish how Mr. Wilson's identification of his wife would rise to the level of verbal abuse or otherwise fall within the coverage of the Act.<sup>15</sup>

To the extent that appellant asserted that the actions on the part of his supervisors constitute harassment and discrimination and contributed to his claimed stress-related condition; the Board has held that these could constitute employment factors.<sup>16</sup> 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

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<sup>11</sup> See *Lori A. Facey*, 55 ECAB 217 (2004).

<sup>12</sup> See *William P. George*, 43 ECAB 1159, 1167 (1992).

<sup>13</sup> 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).

<sup>14</sup> *Harriet J. Landry*, 47 ECAB 543, 547 (1996).

<sup>15</sup> See, e.g., *Alfred Arts*, 45 ECAB 530, 543-44 (1994) and cases cited therein (finding that the employee's reaction to coworkers' comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction). Compare *Abe E. Scott*, 45 ECAB 164, 173 (1993) and cases cited therein (finding that a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

<sup>16</sup> *David W. Shirey*, 42 ECAB 783 (1991).

discrimination are not compensable under the Act.<sup>17</sup> In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and, as noted, he has not submitted sufficient evidence to establish harassment or discrimination by his supervisors or coworkers. While appellant alleged that his supervisors created a hostile work environment, he has not supported the allegations with specific instances and dates. The employing establishment denied any knowledge of his allegations. Furthermore, in a September 8, 2006 statement, the manager of distribution operations, Ms. Strathie, indicated that, when she questioned appellant regarding the allegations of harassment and discrimination, she could not get any “straight” answers. The Board finds that the evidence is insufficient to establish that the employing establishment harassed or discriminated against appellant

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.<sup>18</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Under section 8128(a) of the Act,<sup>19</sup> the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law;

“(ii) Advances a relevant legal argument not previously considered by the Office;  
or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the [the Office].”<sup>20</sup>

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.<sup>21</sup>

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<sup>17</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>18</sup> 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).

<sup>19</sup> 5 U.S.C. § 8128(a).

<sup>20</sup> 20 C.F.R. § 10.606(b).

<sup>21</sup> *Id.* at 10.608(b).

## ANALYSIS -- ISSUE 2

Appellant disagreed with the denial of his claim for an emotional condition and requested reconsideration on December 2, 2006. The underlying issue on reconsideration was whether he established a compensable factor of employment with regard to his emotional condition claim. Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant new argument not previously considered nor did he provide any relevant or pertinent new evidence regarding whether he sustained an emotional condition in the performance of duty.

In his December 2, 2006 request for reconsideration, appellant essentially reiterated his previous arguments. As noted above, this involved allegations that on July 3 and 19, 2006 he was subjected to a hostile work environment and inappropriate remarks. Appellant also made general allegations regarding harassment. The Board finds that appellant reiterated his prior contentions regarding the actions at the employing establishment which he believed were stressful. The submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.<sup>22</sup>

Appellant also provided his opinion of the claims process. On August 29, 2006 he was sent for a fitness-for-duty examination for preexisting injuries and, on September 1, 2006, his requests for a reasonable accommodation and sick leave were denied. Appellant noted that, on September 8, 2006, his request for a pay adjustment for leave without pay was signed a month after the fact. The Board finds that this evidence is not relevant to appellant's claim for an emotional condition which he alleged occurred during the time period July 3 to August 21, 2006.<sup>23</sup> Appellant noted that, on July 26, 2006, he filed an EEO claim but did not include a copy or finding from that claim or explain how it pertained to incidents he alleged in this claim. Additionally, he alleged that, on August 8, 2006, Ms. Harkins discussed the low score of "employee and supervisor relationships in the plant." The Board notes that appellant has not shown how this is relevant to any aspect of his claim which the Office denied on October 30, 2006. The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>24</sup>

Consequently, the evidence submitted by appellant on reconsideration does not satisfy any of the criteria, noted above, for reopening a claim for merit review. The Office properly denied his request for reconsideration.

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<sup>22</sup> *David J. McDonald*, 50 ECAB 185 (1998); *John Polito*, 50 ECAB 347 (1999); *Khambandith Vorapanya*, 50 ECAB 490 (1999).

<sup>23</sup> To the extent that appellant is alleging a new injury occurred, he may wish to file a new claim.

<sup>24</sup> *Robert P. Mitchell*, 52 ECAB116 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Alan G. Williams*, 52 ECAB 180 (2000).

**CONCLUSION**

Appellant has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty. The Board also finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 17, 2007 and October 30, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 11, 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