

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

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**A.G., Appellant**

**and**

**DEPARTMENT OF STATE, PASSPORT OFFICE,  
San Francisco, CA, Employer**

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**Docket No. 07-2383  
Issued: June 19, 2008**

*Appearances:*  
*Appellant, pro se*  
*No appearance, for the Director*

Oral Argument March 18, 2008

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 17, 2007 appellant filed a timely appeal from a June 20, 2007 merit decision of the Office of Workers' Compensation Programs, which denied his claim for an emotional condition. Under 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 causally related to factors of his federal employment.

**FACTUAL HISTORY**

On January 31, 2007 appellant, then a 52-year-old passport specialist, filed a Form CA-2, occupational disease claim, alleging that he sustained an emotional condition causally related to factors of his employment. He experienced depression, anxiety, fear and feelings of rejection due to harassment at the employing establishment, which resulted in his hospitalization.

Appellant alleged that, although the hospital submitted workman's compensation forms to the Office, it never responded to him.

Appellant submitted a position description form and a Form SF-50 notice of promotion.

By letter dated May 4, 2007, the Office advised appellant that he needed to submit additional information in support of his claim. It asked appellant to describe in detail the employment-related conditions or incidents, which he believed contributed to his emotional condition, and to provide specific descriptions of all incidents, which he believed affected his condition. The letter noted that it was appellant's responsibility to provide the requested information to the Office within 30 days. Appellant did not submit any additional information.

By decision dated June 20, 2007, the Office denied appellant's claim on the basis that he failed to establish any compensable factor of employment and thus fact of injury was not established.

### **LEGAL PRECEDENT**

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.<sup>1</sup> There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.<sup>2</sup>

The first issue to be addressed is whether appellant has established factors of employment that contributed to his alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>3</sup> On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.<sup>4</sup>

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<sup>1</sup> See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

<sup>2</sup> See *Ruth C. Borden*, 43 ECAB 146 (1991).

<sup>3</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Id.*

## ANALYSIS

The Board finds that appellant has failed to submit factual evidence in support of his claim for an emotional condition. Appellant indicated that he experienced harassment at the employing establishment which resulted in his hospitalization. However, he did not provide any evidence to establish that he was harassed or treated in a discriminatory manner.<sup>5</sup> Mere perceptions of harassment or discrimination are not compensable; a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.<sup>6</sup> Appellant provided no corroborating evidence, such as witness statements, to establish that the harassment and mistreatment actually occurred.<sup>7</sup> He failed to provide any description of the incidents or the identity of the individuals he believed had harassed him.

An employee's emotional reaction to an administrative or personnel matter is not covered under the Act unless there is evidence that the employing establishment acted unreasonably.<sup>8</sup> Appellant has not presented any evidence that any individuals or supervisors acted unreasonably or committed error with regard to actions involving personnel matters on the part of the employing establishment.

Appellant has not described the alleged incidents of harassment and discrimination with details of individuals involved, time and place of the incidents or any factual evidence in support of his allegations. The Board finds that appellant has not established a compensable work factor. For this reason, the medical evidence will not be considered.<sup>9</sup> The Board will affirm the June 20, 2007 decision, denying compensation for an alleged emotional condition.<sup>10</sup>

## CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

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<sup>5</sup> See *Joel Parker, Sr.*, 43 ECAB 220 (1991). (The Board held that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.)

<sup>6</sup> *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>7</sup> See *William P. George*, 43 ECAB 1159, 1167 (1992).

<sup>8</sup> See *Alfred Arts*, 45 ECAB 530, 543-44 (1994).

<sup>9</sup> See *Margaret S. Krzycki*, *supra* note 6.

<sup>10</sup> With his appeal to the Board, appellant submitted medical and factual evidence which was not previously provided to the Office. The Board cannot consider this evidence for the first time on appeal, as its review is limited to the evidence of record which was before the Office at the time of its final merit decision. 20 C.F.R. § 501.2(c). Appellant may submit this evidence to the Office with a request for reconsideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 20, 2007 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: June 19, 2008  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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