

continued to have major depressive episodes, that work had been very stressful and that he felt he was in a hostile work environment. Appellant stated that, on October 26, 2006, he lost his self-control and began yelling at everyone. The employing establishment indicated that after the original injury he was reinstated to the position of patient services assistant but had applied for and was selected as a pharmacist effective March 6, 2005. The employing establishment indicated that appellant's previous "stressor" had retired. It also noted that he had received a paper suspension due to leaving the work area unattended and insubordination, but he did not lose anytime off from work or any pay. The Office considered appellant's claim a new occupational disease claim and assigned it file number xxxxxx975. In a March 2, 2007 letter, it requested additional factual and medical information from him.

In a March 17, 2007 statement, appellant noted returning to work in March 2004 after receiving compensation benefits in file number xxxxxx997. Upon his return, he claimed he was in a hostile work environment. On October 26, 2006 appellant stated that he was working without relief and left the area for a restroom break. When he returned and saw that no one was waiting for a prescription, he left to get coffee. As appellant returned, four minutes later, Brenda George, a supervisor, instructed him to return to his office. He stated that Ms. George was offended when he told her that she could not tell someone they could not "pee and poop." Appellant noted speaking to the chief of pharmacy, a Mr. Wade, about the matter. He stated that his supervisor, Marilyn Wallace, informed him and the other pharmacist that they could not go to the restroom without permission and without someone to relieve them. Appellant alleged that Ms. Wallace's instructions were very embarrassing and loud enough so that Nurse Willese Jenkins and a patient heard them. He stated that he lost his self-control and voiced his opinion about Ms. Wallace's instructions. Appellant indicated that he spent the rest of the morning in employee health but returned to work in the afternoon. He noted that, several times since this incident, he was left without relief, which caused frustration, anguish, anxiety, hostility, depression and anger. Appellant indicated that, when he finally got someone to relieve him, it was demeaning and demoralizing. On October 31, 2006 he stated that Ms. Wallace asked him to write a memorandum of inquiry, which would lead to disciplinary action. Appellant stated that this caused him stress, fear, humiliation and extreme anguish. He noted that during this time Ms. Wallace escorted Phillip Knight, retired pharmacy chief, into his personal work space which increased his anxiety and caused a panic attack. Appellant stated that Mr. Knight caused his depression in 1999. On November 15, 2006 the chief of pharmacy proposed a seven-day suspension for the October 26, 2006 incident. Appellant indicated that, although the director told him on December 18, 2006 that the suspension decision would be within three days, he did not receive it until January 22, 2007. He advised that it was difficult to work knowing that he could be suspended for seven days at anytime. Appellant stated that he felt singled out as other pharmacists did the same thing without adverse consequences. He asserted that Mr. Knight repeatedly returned to the restricted pharmacy area without signing in. This caused extreme anxiety since Mr. Knight caused his condition in file number xxxxxx997. Appellant stated that Mr. Knight stood behind him in his personal work space and harassed him on May 14 and December 23, 2005, October 31, 2006 and January 10, 2007. He advised that several insulting and derogatory comments were made about him while the front of the pharmacy was under construction. Appellant stated someone drew a valentine heart that stated, "Brenda loves Tom C, (Brenda George)." He found this very humiliating and disturbing because his wife could see it from a pick-up window in front of the pharmacy. Appellant indicated that the valentine heart remained up for several months even though he told his supervisor it was offensive. He stated

that Ms. Wallace finally marked it out on December 22, 2006. Appellant advised that another drawing showed him looking at his watch with the caption, “[W]hat time is it?” He found the drawing offensive and derogatory as it wrongly insinuated that he was always gone. Appellant also asserted that, on December 13, 2006, another pharmacist, Phelicia Bush, made a derogatory comment to him when she said, “I would ask [appellant] to do it but he would say, Oh! My blood pressure is too high!”

Appellant submitted a copy of the January 5, 2007 suspension decision; reports of contact and witness statements regarding the October 26, 2006 employment incident; documentation of when Mr. Knight came into the pharmacy; and reports dated March 2, 2007 from B.J. Bunn, Ph.D., LCSW, and March 26, 2007 from Dr. William C. Freeman, a Board-certified psychiatrist, diagnosing major depression and anxiety disorder and rendering him totally disabled due to current work-related stressors.

By decision dated May 3, 2007, the Office denied appellant’s claim, finding that he failed to establish a compensable factor of employment.

On June 18 and 27, 2007 appellant requested reconsideration. In his June 18, 2007 letter, he asserted his March 17, 2007 letter described several incidents which were detrimental to his condition, but the Office’s decision focused only on the October 26, 2006 incident and did not consider the medical documentation. Appellant indicated the staffing shortage within the pharmacy increased his work-related stress as he previously indicated that its affect on his requests for relief and extra help. He also submitted a copy of a photograph along with copies of his employee health record.

On July 5, 2007 appellant’s representative argued appellant’s prior case (file number xxxxxx997) should be considered with the present case. He alleged that there was an unresolved issue about wage loss in the initial claim. In the present case, appellant’s representative argued that the employing establishment should have treated appellant with special support and understanding in view of his fragile psyche due to an accepted emotional condition. He asserted that the Office erred in its decision as being berated publicly in front of another employee and patient was not a “normal” administrative action and reasonable administrative action would have discouraged a former employee who caused appellant much conflict and stress in his original claim from being allowed where appellant works. The former employee noted enclosing photographs of drawings that embarrassed and belittled appellant and which remained in view for months after appellant complained, was objective evidence of a hostile work environment. He alternatively argued that appellant’s reactions to administrative matters should be compensable as a consequential injury.

On September 26, 2007 the Office denied modification of its prior decision. It found that appellant’s allegation about the drawings which he alleged embarrassed and belittled him was unsubstantiated. Appellant was advised that, since he identified new employment factors in his request for reconsideration, he must file a new claim to have them considered.

In a February 9, 2008 letter, appellant requested reconsideration. His representative reiterated arguments that the two claims should be considered together and for a possible consequential injury. Counsel asserted that appellant’s exposure to drawings made on a

workplace wall was not denied by the employer and was attested to in enclosed witness statements. He contended that the employing establishment took no action to timely remove the drawings and that allowing them to be displayed for an unnecessary length of time was error. Counsel contended that the employing establishment violated its own access policies and that the employing establishment had a responsibility to employee's with a known emotional disorder to provide a level of protection at work to minimize or eliminate exposure to obvious stressors.

In an undated statement received March 28, 2008, Ms. Wallace, supervisor, indicated that the drawings on the temporary wall were of various persons in the pharmacy and were not malicious. The one which said "Brenda loves Tom C or Tom Cruise" was marked out when appellant mentioned that it bothered him. Ms. Wallace also indicated that Mr. Knight frequently visited to see how the ScriptPro machine worked. She indicated that the person who let him in must have forgotten to make him sign in. Ms. Wallace did not recall any contact between Mr. Knight and appellant. A February 1, 2008 report from Dr. Freeman was also received.

By decision dated May 8, 2008, the Office denied modification of its prior decision. It noted that the photograph/drawing incident could not be introduced as a factor of employment during the reconsideration process and appellant was advised in its previous decision that this issue was not part of the original denial.

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 illness has some connection with employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to his regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of his work or his fear and anxiety regarding his ability to carry out her work duties.¹ By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.²

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.³ Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its

¹ *Ronald J. Jablanski*, 56 ECAB 616 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

² *Id.*

³ *Charles D. Edwards*, 55 ECAB 258 (2004).

administrative or personnel responsibilities, such action will be considered a compensable employment factor.⁴

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.⁵ 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.⁶ As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim, but rather, must be corroborated by the evidence.⁷ Mere perceptions and feelings of harassment will not support an award of compensation.⁸

ANALYSIS

Appellant attributed his emotional condition to stress related to a hostile work environment upon his return to work.⁹ The Board must thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the Act.

Appellant's allegations include the October 26, 2006 incident when he left his work area unattended and the resulting discussion with his supervisor. This led to a suspension and other incidents where he asserted that he was again left without relief. Appellant has also attributed his emotional condition to Mr. Knight being allowed into the restricted pharmacy area. The Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.¹⁰ The Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the

⁴ *Kim Nguyen*, 53 ECAB 127 (2001).

⁵ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁶ *Id.*

⁷ *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Arthur F. Hougens*, 42 ECAB 455 (1991) and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence established such allegations).

⁸ *Beverly R. Jones*, 55 ECAB 411 (2004).

⁹ As appellant alleged new incidents following his return to work, the Office properly developed the present claim as a new claim.

¹⁰ 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).

employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹¹

Appellant stated on October 26, 2006 that he left the work area for a restroom break and to get a cup of coffee. He was initially instructed to return to his work area and later instructed that permission was needed for restroom breaks and someone was needed to provide relief while he was gone from the work area. Appellant indicated that he was embarrassed as Ms. Jenkins and a patient might have overheard the supervisor's instructions. In giving instructions to an employee, a supervisor is performing an administrative function, which, absent evidence of error abuse, is not a compensable factor of employment.¹² While appellant may not have liked the manner in which his supervisor issued instructions and the content of such instructions, generally complaints about the manner in which a supervisor performs his or her duties or the manner in which a supervisor exercises his or her discretion fall, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor or manager in general must be allowed to perform his or her duties and employees will, at times, dislike the actions taken. Mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent evidence of error or abuse.¹³ The Board finds that the evidence of record does not establish error or abuse on the part of either supervisor in issuing instructions on October 26, 2006.

Appellant has alleged that he was unable to follow the employing establishment's directives concerning not leaving the work area unattended as there were times no one was available to relieve him. The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable under the principles of *Cutler*.¹⁴ To the extent appellant is alleging that he had an emotional reaction due to a staff shortage, he did not provide a detailed allegation or supporting evidence to establish such allegation has a factual basis.¹⁵ The Board therefore finds that appellant has not established a compensable employment factor.

The October 26, 2006 incident resulted in a suspension due to leaving the work area unattended and insubordination. Appellant indicated that this caused him stress as he had to write a memorandum of inquiry and wait past the time he was told the suspension decision would be issued. He also stated that he felt singled out as other pharmacists did the same thing without consequences. Appellant, however, did not submit any evidence to support error or

¹¹ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹² *Paul L. Stewart*, 54 ECAB 824 (2003).

¹³ See *T.G.*, 58 ECAB ____ (Docket No. 06-1411, issued November 28, 2006).

¹⁴ *Peter D. Butt, Jr.*, 57 ECAB 117 (2004); *Lillian Cutler*, *supra* note 1.

¹⁵ *Sherry L. McFall*, 51 ECAB 436 (2000).

abuse in the handling or issuance of his suspension decision. Thus, he has failed to establish a compensable employment factor.¹⁶

Appellant also alleged that his emotional condition was due in part to Mr. Knight's presence in the restricted pharmacy area. He alleged that Mr. Knight did not have to sign in as a guest and Mr. Knight stood behind him in his work space and harassed him on several occasions from May 14, 2005 to January 10, 2007. The Board has held that frustration with the policies and procedures of the employing establishment¹⁷ are not compensable factors of employment. In this case, appellant provided nothing to substantiate his allegations. He therefore failed to show error or abuse with the policies and procedures of the employing establishment. Appellant further failed to establish a factual basis for his claim of harassment by probative and reliable evidence.¹⁸ Accordingly, the record is not sufficient to establish harassment but constitutes appellant's perception that he was harassed. As appellant did not establish as factual a basis for his allegation of harassment, he did not establish that harassment or discrimination occurred.¹⁹ The evidence instead suggests that the employee's feelings were self-generated and thus not compensable under the Act.²⁰ Furthermore, the employing establishment was under no obligation to make any special accommodations as the present claim is based on exposure to new employment factors and is separate from file number xxxxxx997.

Appellant's representative has alleged that appellant's previous case and the current case should be administratively doubled or reviewed for relevance to this claim. As appellant claimed new factors after he returned to work, the Office properly adjudicated this case as a new and separate claim. Additionally, arguments pertaining to his prior claim should be addressed in that claim as it is a separate claim. Furthermore, any assertion that the employing establishment was obliged to provide appellant with special accommodations when he returned to work relative to his condition in file number xxxxxx997 should be addressed in that claim.

While the Office addressed the majority of appellant's alleged employment factors, the Board notes the Office neglected to address his allegations and evidence pertaining to drawings and comments made by coworkers as well as additional evidence and arguments raised pertaining to Mr. Knight. The Board notes that appellant referred to photographs of drawings that embarrassed him in his March 17, 2007 statement. In both of his subsequent requests for reconsideration, appellant submitted evidence or argument pertaining to this issue. While the Office's September 26, 2007 decision found that the drawing incidents were an unsubstantiated allegation, the Office's subsequent decision of May 8, 2008 failed to consider appellant's evidence and argument. It specifically noted that the photograph incident could not be

¹⁶ See *V.W.*, 58 ECAB ____ (Docket No. 07-234, issued March 22, 2007) (although the handling of disciplinary actions and the monitoring of work activities are generally related to the employment, they are administrative functions of the employer and not duties of the employee).

¹⁷ See *William Karl Hansen*, 49 ECAB 140 (1997).

¹⁸ See *Mary J. Summers*, 55 ECAB 730 (2004).

¹⁹ *Jeral R. Gray*, 57 ECAB 611 (2006).

²⁰ See *Gregorio E. Conde*, 52 ECAB 410 (2001).

introduced as a factor of employment during the reconsideration process. In its May 8, 2008 decision, the Office failed to address additional evidence and arguments pertaining to Mr. Knight, the retired chief of pharmacy. The Board notes that appellant made allegations regarding the drawings and Mr. Knight in his March 17, 2007 statement, which was submitted in response to the Office's March 2, 2007 request for additional evidence.

Statements from a claimant in amplification and expansion of a claim are as much a part of the claim as the claim form itself.²¹ Technical requirements of pleading are inconsistent with the remedial purposes of the statute.²² Therefore, on remand, the Office should consider evidence and assertions regarding these matters and determine whether they constitute compensable factors of employment and, if so, whether the medical evidence establishes that appellant's condition is causally related to this factor or any other compensable factor of employment.

CONCLUSION

From the alleged employment factors reviewed by the Office, the Board finds that appellant has not established a compensable employment factor. With regards to appellant's allegation pertaining to drawings and comments by coworkers as well as additional evidence and argument pertaining to Mr. Knight, the Board finds that the Office failed to review relevant evidence and argument in its merit decision of May 8, 2008 and the case will be remanded to the Office to determine whether these factors constitutes compensable factors of employment.

²¹ See *Wilfred M. Hamilton*, 41 ECAB 524 (1990); *Josephine B. Lampariello*, 8 ECAB 626 (1956).

²² See *Grady L. Frazier*, 40 ECAB 1298 (1989) (the Act and the regulations promulgated thereunder, are remedial in nature).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 8, 2008 and September 26, 2007 are affirmed in part and set aside in part and the case remanded to the Office for action consistent with this decision of the Board.

Issued: May 8, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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