

began to prepare to mount the photograph. Mr. Peterson entered the room “delaying and interfering” with the job. He refused to leave when asked by appellant. Appellant again asked Mr. Peterson to leave, but he declined. He “started to move around the table” in a highly agitated state when John E. Foley, a museum employee, stepped between him and Mr. Peterson. Appellant filled out a military leave form requesting sick leave, before Mr. Peterson provided him with the correct form. He alleged that Mr. Peterson had a history of yelling and screaming and that there was no money for projects, equipment or supplies. Appellant listed his title as exhibit master.

Mr. Foley completed a statement on January 22, 2007. He stated that on January 16, 2007 he found appellant at work preparing to mount pictures on boards for a decoration briefing scheduled for that day. Alan T. Jones, a museum employee in his January 21, 2007 statement, stated that, when Mr. Peterson arrived and realized that the pictures were not mounted, he immediately began screaming obscenities and calling appellant names. Appellant began mounting the pictures and Mr. Peterson entered the workroom. He asked Mr. Peterson to please leave so he could finish the job, but Mr. Peterson responded that he could not tell him what to do. Mr. Foley further stated:

“At this time Mr. Spencer became quite agitated and cursed, said ‘Fine, you finish the job,’ opened the back door, and looked out the back. Mr. Peterson repeated his remark ‘You can’t tell me what to do!’ Mr. Spencer was very agitated at this and then Mr. Peterson said ‘Fine, then quit!’ Then Mr. Spencer approached Mr. Peterson without saying anything. At that point I interposed myself between the two men (Mr. Peterson said nothing at this point, was simply standing there grinning) and gently directed Mr. Spencer back to his side of the work table [so] we could finish mounting pictures.”

Rosario Quintero, a museum gift shop worker, in her January 27, 2007 statement, stated that on two different occasions she heard Mr. Peterson raise his voice in an unacceptable manner yelling at appellant. Petra Wong, the manager of the gift shop, completed a statement on January 26, 2007 and noted that she had heard Mr. Peterson raise his voice at appellant during business hours. She noted that Mr. Peterson had raised his voice with her on two occasions.

In a statement dated March 9, 2007, Mr. Jones reiterated that on January 16, 2007 appellant informed Mr. Peterson in a loud voice that he did not want him in the workroom and that he was incompetent and useless. Mr. Peterson used a “forceful voice” to inform appellant that there was additional time for the project and that he could go as he pleased. Appellant had to be physically restrained from “rushing” Mr. Peterson. Mr. Jones stated that appellant was in a “highly agitated, excited state.”

Mr. Peterson responded to appellant’s allegations on March 6, 2007, noting that appellant volunteered to work overtime in order to receive compensatory time or overtime pay, but not complete his assigned. He stated that appellant was not ordered to do this work, but placed his name on the calendar months in advance to take every possible extra-duty assignment. Mr. Peterson noted that, if appellant did not volunteer for the extra duties, the duties would be assigned on a rotating basis among the remainder of the staff. He stated that, after filing a stress claim, appellant stopped work but volunteered to come in on weekends and nights to build exhibits and purchase items for other employees. Mr. Peterson noted that the museum’s lack of funds could not contribute to appellant’s stress as this reduced his workload. He stated that

appellant was not held accountable for a lack of materials or if exhibits were not completed on time due to funding.

Mr. Peterson stated that he raised his voice after he discovered that appellant had “done absolutely nothing” on a project for which he was allotted 16 hours to complete. He denied using profanity in appellant’s presence and stated that appellant’s allegation of “yelling and screaming” was a gross exaggeration and that appellant had instigated the raised voices, loudly directing Mr. Peterson to “Get out of his office.” Mr. Peterson instructed appellant to go downstairs and complete the assigned project. Appellant allegedly stated that due to the weather he could not get the foam board to complete his project. Mr. Peterson discovered that appellant had additional time to complete the project and went to inform him; however, appellant “flew into an uncontrollable rage” insulting him and lunging forward in a threatening manner. He denied hiding the correct leave form and stated that appellant refused to turn his keys into him. Appellant subsequently asserted that Mr. Peterson interfered and compromised exhibits leading him to believe that Mr. Peterson wanted his position.

On March 16, 2007 Dr. Michael H. McGhee, a Board-certified psychiatrist, diagnosed major depressive disorder with paranoid ideation, insomnia and anxiety.

On May 8, 2007 appellant requested seven days of compensatory time to complete a new exhibit.

By decision dated June 26, 2007, the Office denied appellant’s claim finding that he had not substantiated his claim of overwork, that the method in which Mr. Peterson exercised his supervisory discretion was not error or abuse, that appellant did not substantiate stress due to shortage of museum funds, leave issues or that Mr. Peterson desired his position.

Appellant, through his attorney, requested reconsideration on June 11, 2008. Counsel contended that appellant was subjected to a hostile work environment, that appellant’s statements regarding the events of January 16, 2007 should stand, that he had provided sufficient medical evidence to meet his burden of proof in an occupational disease claim and that Mr. Peterson’s actions were unreasonable. In a supplement statement dated September 24, 2007, Mr. Foley noted that he did not physically restrain appellant, but merely put his arm between both men when it appeared that they might lose their tempers. Appellant also submitted an e-mail from Mr. Foley describing contact with Mr. Peterson.

Dr. McGhee completed a report on February 22, 2008 diagnosing major depressive disorder due to anxiety about his job and a hostile work environment.

By decision dated September 5, 2008, the Office denied modification of the June 26, 2007 decision.

LEGAL PRECEDENT

Workers’ compensation law does not apply to each and every injury or illness that is somehow related 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 worker’s compensation. Where the disability results from an employee’s emotional reaction to his regular of specially assigned duties or to a requirement imposed by the

employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ 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.²

Generally, actions of the employing establishment in administrative or personnel matters unrelated to the employee's regular or specially assigned work duties, do not fall with the coverage of the Act.³ While an administrative or personnel matter will be considered an employment factor where the evidence discloses error abuse on the part of the employing establishment, mere perceptions are insufficient. In determining whether the employing establishment erred or acted abusively, the Board determines whether the employing establishment acted reasonably.⁴ The Board has held that the manner in which a supervisor exercises his or her discretion falls outside the coverage of the Act. This principal recognizes that a supervisor or manager must be allowed to perform their duties and that employee's will at times disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.⁵ Furthermore, the Board has held that the mere fact that a supervisor raised his voice during the course of a conversation does not warrant a finding of verbal abuse.⁶ However, verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. 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.⁷

ANALYSIS

Appellant filed an emotional condition claim and attributed his major depressive disorder to overwork, the denial of the proper leave form, shortages of funds and outbursts by his supervisor, Mr. Peterson.

The Board has accepted that overwork when substantiated is a compensable factor of employment. However, appellant has failed to submit any evidence substantiating his allegations of overwork. Mr. Peterson noted that appellant sought out opportunities to work overtime, not to complete his regular or specially assigned projects, but in order to accumulate overtime pay and compensatory time.

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387, 390-91 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

³ *James E. Norris*, 52 ECAB 93, 100 (2000).

⁴ *Bonnie Goodman*, 50 ECAB 139, 143-44 (1998).

⁵ *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

⁶ *Carolyn S. Philpott*, 51 ECAB 175 (1999).

⁷ *Marguerite J. Toland*, 52 ECAB 294 (2001).

Appellant also alleged that the employing establishment had a funding shortfall which caused or contributed to his emotional condition. Mr. Peterson acknowledged that funding for the museum had been delayed but that resulted in less work for appellant to perform. Appellant has not sufficiently explained how he was affected by the budget issues at the employing establishment. He has not alleged and there is no evidence that he was responsible for the budget issues. The Board finds that the budget of the employing establishment is an administrative issue not related to appellant's regular or specially assigned duties. Appellant has submitted no evidence of error or abuse in the handling of the budget and therefore has not established a compensable factor of employment in this regard.

Although the handling of leave requests and attendance matters are generally related to employment, they are administrative functions of the employer and not duties of the employee. As a general rule, a claimant's reaction to administrative or personnel matters fall outside the scope of the Act. However, to the extent that the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.⁸ Appellant alleged that Mr. Peterson allowed him to complete a military leave form, before providing him with the correct one. The records does not support that this was error or abuse on the part of Mr. Peterson and appellant has not established this factor of employment.

Appellant further attributed his emotional condition to the events of January 16, 2007. He submitted several witness statements which substantiated his claim that he and Mr. Peterson engaged in a loud discussion. At least one witness, Mr. Foley, asserted that both Mr. Peterson and appellant used profanity, raised their voices and that he stepped between the two. The remainder of the witnesses supported that Mr. Peterson raised his voice. The mere fact that his supervisor raised his voice during a conversation with appellant is insufficient to warrant a finding that his actions amounted to verbal abuse. It further appears from the record that appellant participated in and escalated the verbal exchange. Appellant has not shown how Mr. Peterson's statements that appellant could not tell him what to do would rise to the level of verbal abuse.⁹ Thus, he has not established a compensable employment factor.

Appellant also alleged that he was subjected to a hostile work environment through Mr. Peterson's actions. For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹⁰ Appellant has not substantiated allegations of harassment or discrimination with probative and reliable evidence. While the witnesses establish that Mr. Peterson raised his voice, this fact alone is not sufficient to establish harassment. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹¹ A claimant must establish a factual basis for his

⁸ *James P. Guinan*, 51 ECAB 604, 607 (2000).

⁹ *David C. Lindsey, Jr.*, 56 ECAB 263, 270 (2005).

¹⁰ *Reco Roncoglione*, 52 ECAB 454, 456 (2001).

¹¹ *Penelope C. Owens*, 54 ECAB 684, 686 (2003).

allegations of harassment or discrimination with probative and reliable evidence.¹² As appellant has not established a factual basis for his allegations of harassment, he has not established a compensable factor of employment.

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.¹³

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof in establishing that he developed an emotional condition due to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the September 5, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 15, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹² *Beverly R. Jones*, 55 ECAB 411, 417 (2004).

¹³ 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).