

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

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**R.D., Appellant**

**and**

**DEPARTMENT OF THE ARMY, MATERIAL  
COMMAND, Fort Belvoir, VA, Employer**

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**Docket No. 09-1891  
Issued: March 15, 2010**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 20, 2009 appellant filed a timely appeal of a June 10, 2009 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2 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 due to factors of his federal employment.

**FACTUAL HISTORY**

On February 19, 2009 appellant, then a 66-year-old supervisory historian, filed an occupational disease claim, alleging that he developed emotional stress and anxiety attacks due to a hostile work environment caused by his supervisor, Col. Joseph B. Coleman. In a letter dated February 20, 2009, the Office requested additional factual and medical evidence in support of his claim.

On March 23, 2009 appellant stated that his position involved deadlines and that he occasionally worked from home. He attributed his anxiety attacks to mistreatment and harassment by his immediate supervisor concerning to sick leave he used to care for his wife. Appellant stated that his supervisor had a denigrating attitude, gave preferential treatment to others and had belittled him in public. Since July 2009, he had used much of his sick and annual leave, upsetting Col. Coleman who harassed him. Appellant had an anxiety attack on September 10, 2008. He filed an Equal Employment Opportunity (EEO) complaint which resulted in a settlement. Appellant stated that meetings with his supervisor from September 10 to 30, 2009 were hostile, embarrassing and harassing. On September 10, 2008 Col. Coleman allegedly pointed his fingers at him and asked why he did not retire if he could not come to work. Appellant's wife had a stroke and he had hundreds of hours of sick and annual leave. His supervisor requested a note from a physician regarding his wife's condition. Appellant found this meeting stressful and sought treatment at a local hospital.

By decision dated March 23, 2009, the Office denied appellant's claim, finding that he failed to establish a compensable factor of employment.

Appellant requested a hearing. On May 28, 2009 an Office hearing representative set aside the March 23, 2009 decision, finding that the claims examiner did not make adequate findings.

On September 30, 2008 appellant received a memorandum regarding leave usage. Col. Coleman cautioned appellant about use of sick leave that was not scheduled in advance. He also informed appellant that annual leave should be scheduled in advance. Appellant's supervisor also denied his request for telework.

In a memorandum dated December 11, 2008, Col. Coleman requested additional written documentation regarding appellant's request for leave under the Family and Medical Leave Act to care for his wife on Friday afternoons. An e-mail dated October 23, 2008 addressed the documentation necessary for appellant's sick leave usage or Family and Medical Leave Act usage.

Appellant submitted a February 4, 2009 memorandum to the EEO Office regarding his allegation that Col. Coleman treated him in a hostile manner on September 10, 18 and 25, 2008 by pointing, yelling and "eyeballing" despite appellant's statements that he found these actions hostile. On those dates, he claimed Col. Coleman denied his requests for sick leave to care for his wife. Appellant also claimed his supervisor put pressure on him to retire by scheduling a meeting on September 18, 2008 to discuss retirement options.

Appellant submitted an e-mail regarding his request for sick leave on October 24, 2008 and the request for a slip and a statement of whether appellant wanted to use sick leave or family medical leave. He opined that this was an act of reprisal.

On March 18, 2009 Col. Coleman submitted a statement noting that he met with appellant on September 10, 2008 to inform him of the medical documentation needed to support his sick leave requests. He stated that appellant did not work overtime, performed little or no travel and did not have stressful deadlines.

In a decision dated June 10, 2009, the Office found that appellant failed to substantiate a compensation factor of employment. It found that his emotional reaction was to an administration matter concerning the use of leave. The Office found that the evidence did not establish error or abuse by his supervisor.

### **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.<sup>1</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>2</sup>

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 falls 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.<sup>3</sup>

The Board has held that the manner in which a supervisor exercises his or her discretion falls outside the coverage of the Act. This principle 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.<sup>4</sup> Although the handling of leave requests and attendance matters are generally related to employment, they are administrative matters and not a duty of the employee.<sup>5</sup>

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.<sup>6</sup> A claimant must substantiate allegations of harassment or discrimination with probative and

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> 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).

<sup>3</sup> *James P. Guinan*, 51 ECAB 604, 607 (2000).

<sup>4</sup> *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

<sup>5</sup> See *Joe M. Hagewood*, 56 ECAB 479 (2005).

<sup>6</sup> *Reco Roncoglione*, 52 ECAB 454, 456 (2001).

reliable evidence. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.<sup>7</sup> A claimant must establish a factual basis for his or her allegations of harassment or discrimination with probative and reliable evidence.<sup>8</sup>

### ANALYSIS

Appellant alleged that his supervisor caused his emotional condition during meetings scheduled to address appellant's leave requests, through the requirement that he submit medical documentation to support his sick leave or Family and Medical Leave Act usage and by the denial of his request for reasonable accommodations. These allegations relate to the administration matter of scheduling leave. Appellant had not submitted any witness statements or other evidence to support his allegation that Col. Coleman acted abusively in denying appellant's request for leave by requesting medical documentation to support his requests. He has not submitted sufficient evidence to establish error or abuse in the handling of his leave requests.

Appellant alleged that his supervisor acted in a hostile manner while conducting the meetings by pointing, yelling and "eyeballing" him. As noted, he did not submit any supporting statements or documentation to support his allegations that his supervisor acted inappropriately in the means or method by which he conducted the meetings. The mere fact that appellant did not see the necessity for the meetings or disagreed with his supervisor's body language does not establish error or abuse.

Appellant alleged that he was harassed and discriminated against at the meetings, by the denial of his leave requests and the body language of his supervisor. As noted, the mere perception of harassment or discrimination is not compensable under the Act. Appellant has not submitted any documentation, witness statements or other findings to support his allegations of harassment or discrimination. He has not substantiated his allegations that Col. Coleman acted in any manner that may reasonably be construed as harassing or discriminating. The evidence of record reflects that the supervisor advised appellant in writing as to why certain requests for leave were found deficient and to submit additional medical evidence documenting the manner in which appellant had to care for his wife.

For the foregoing reasons, appellant has not established a compensable employment factor under the Act. He has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty.<sup>9</sup>

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<sup>7</sup> *Penelope C. Owens*, 54 ECAB 684, 686 (2003).

<sup>8</sup> *Beverly R. Jones*, 55 ECAB 411, 417 (2004).

<sup>9</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).

**CONCLUSION**

The Board finds that appellant has failed to submit any factual evidence to substantiate a compensable factor of employment as causing or contributing to his emotional condition.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 10, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 15, 2010  
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