

conditions at work. In a February 4, 2011 statement, he claimed that in April 2009 photographs were taken of his work vehicle in a location where he was not actually present and he asserted that he was wrongly suspended from work for 30 days in connection with this matter. Appellant alleged that on September 27, 2010 Juan Carlos Garcia, a supervisor, saw him in front of Building 504 and made a call on his cell phone. He received a call from Felix Colon, a supervisor, who asked him what he was doing in front of that building and told him to “stop looking for trouble.”

In a January 25, 2011 report, Dr. William Julio, an attending Board-certified psychiatrist, indicated that he had treated appellant since October 2010 for psychosis and mood disorder.

In a February 8, 2011 letter, OWCP requested that appellant submit additional factual and medical information in support of his claim.

In a February 9, 2011 statement, Mr. Colon indicated that he was aware that appellant was upset about the matter in April 2009 regarding the possible use of his vehicle for nonwork purposes, but stated that he was not involved in this matter in a supervisory capacity. He noted that appellant was placed on absent without leave status because he did not have sick leave and he failed to submit medical documentation justifying his absence.

In an undated statement, appellant asserted that management treated him in a negligent, irresponsible and hostile manner, discriminated against him because he was Dominican and failed to complete the appropriate forms for his OWCP claims. In a March 8, 2011 statement, he again charged that management did not have sufficient reason in April 2009 to claim that he used his work vehicle for personal purposes when it presented pictures of his alleged work vehicle at a bowling alley on base. Appellant submitted additional medical evidence, including reports of Dr. Julio.

The record contains an October 4, 2010 letter in which the employing establishment advised appellant that he was barred from the premises for 30 days for making life-threatening remarks to the employing establishment personnel.

In a July 27, 2011 decision, OWCP denied appellant’s claim on the grounds that he did not establish any compensable work factors. It found that appellant did not show error or abuse with respect to administrative matters and that he did not establish harassment or discrimination.

Appellant submitted an August 18, 2011 witness statement from Teodoro Quiñones, a former coworker, which indicated that appellant was injured in 2007 and sustained a laceration. Mr. Quiñones noted that when appellant told Manuel Ayala about the injury he stated that the injury was “nothing” and that he should continue to work. Mr. Ayala filled out paperwork for the injury, but he did so in an incomplete manner. Mr. Quiñones asserted that the paperwork still had not been completed.²

² In an undated statement, appellant claimed that he sustained a work injury on June 8, 2007 for which management failed to complete the proper paperwork.

In an August 18, 2011 statement, Jose Gabino, a coworker, asserted that Mr. Garcia advised him to not hang around with appellant because he had legal problems with a coworker and that, on several occasions, Mr. Garcia questioned why he was talking to appellant at work. He indicated that he did not believe accusations made by Mr. Garcia and Maria Lopez, the Division Chief, that appellant misused his work vehicle and asserted that the actions of Mr. Garcia and Ms. Lopez “were racist and discriminating towards [appellant].”³

Appellant requested a telephonic hearing before with an OWCP hearing representative. He asked that Mr. Gabino and Mr. Quiñones be subpoenaed to appear at the hearing and testify. In a November 10, 2011 letter, OWCP indicated that subpoenas were not necessary as testimony could be obtained through other means.

At the hearing held on January 10, 2012, appellant testified that in 2007 he injured himself at work when a lamp fell on his head, but management did not fill out the correct forms and he had to use his own personal and sick time because his supervisor did not want him to take time off. He alleged that management discriminated against him because he was Dominican and black and asserted that management falsely accused him of not working when it presented alleged pictures of his work vehicle at a bowling alley. Appellant testified that six people were given cash awards after there was a hurricane in Puerto Rico, but that he discovered that the other people received \$100.00 or \$200.00 more than him. When he questioned a superior about this matter, he was told he was insubordinate.

Appellant stated that, every time he went into the office, Mr. Garcia would look at him in a “wrong way” because he was not blond and blue-eyed. He claimed that he was told not to come to the office because Mr. Garcia did not like his presence. Appellant indicated that he had not been able to return to work since the September 27, 2010 incident and noted that his psychiatrist advised him not to return because he had been discriminated against and mistreated. He stated that “there might even be a massacre” if he returned to work. Appellant further discussed the September 27, 2010 incident, noting that he met with Mr. Garcia and experienced anxiety and a lot of anger due to having been persecuted by management on numerous prior occasions.

After the hearing, a December 18, 2011 statement was submitted in which Mr. Gabino asserted that appellant’s supervisors, including Mr. Ayala, discriminated against him.⁴

In a March 30, 2012 decision, the hearing representative affirmed OWCP’s July 27, 2011 decision. She indicated that the submitted statements lacked probative value and did not show error or abuse in administrative matters or the commission of harassment or discrimination.

³ In a December 9, 2010 statement, Mr. Gabino asserted that in 2005 Mr. Garcia told him that he should be careful about associating with appellant because he had filed a grievance. He claimed that in 2007 Ms. Lopez told him that appellant should not visit him at his desk during lunchtime because appellant was a contractor. Mr. Gabino felt that Ms. Lopez “was racial and bias” [sic] against appellant.

⁴ On January 31, 2012 the employing establishment advised appellant that it proposed to terminate him for staying off work without justification and for making life-threatening remarks about personnel at Fort Buchanan in October 2010 and January 2012.

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 FECA.⁵ 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.⁶

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 FECA.⁷ However, the Board has held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.⁸ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁹

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹⁰ However, for harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under FECA.¹¹

Appellant 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.¹² This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁷ *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

⁸ *William H. Fortner*, 49 ECAB 324 (1998).

⁹ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁰ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹¹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹² *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.¹³

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, 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.¹⁴ If a claimant does implicate a factor of employment, OWCP 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, OWCP must base its decision on an analysis of the medical evidence.¹⁵ Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors.¹⁶

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions at work. OWCP denied his emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA. The Board notes that appellant's allegations do not pertain to his regular or specially assigned duties under *Cutler*.¹⁷ Rather, appellant has alleged error and abuse in administrative matters and harassment and discrimination on the part of his supervisors and managers.

Appellant claimed that management committed wrongdoing with respect to various administrative matters, including improperly disciplining him, unfairly handling leave matters and inequitably distributing bonus awards. He did not submit any evidence to show that management committed error or abuse when handling leave matters or distributing bonus awards. Appellant submitted a witness statement in which a coworker asserted that Mr. Ayala, a supervisor, minimized the severity of appellant's 2007 work injury and did not file complete paperwork for it, but this witness did not clearly identify the basis for these assertions and the record contains no probative evidence, such a grievance finding, showing that appellant's claim was mishandled. He claimed that in 2009 he was unfairly accused of misusing a work vehicle as

¹³ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹⁴ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁵ *Id.*

¹⁶ *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

¹⁷ *See Cutler*, *supra* note 5.

a result of photographs being taken of his alleged work vehicle at the bowling alley on base. However, there is no evidence that appellant was issued a reprimand or suspension or that any disciplinary action was taken as a result of any matter relating to the use of his work vehicle. Rather, the employing establishment's October 4, 2010 letter clearly stated that he was barred from the work premises for 30 days due to threats he made against personnel working at Fort Buchanan. Appellant has not shown that the employing establishment acted improperly with respect to any investigation into the use of his work vehicle. For these reasons, he has not established any compensable work factors with respect to administrative or personnel matters.

Appellant alleged that he was subjected to harassment and discrimination by supervisors and managers on the basis of race and national origin. In the present case, the employing establishment denied that he was subjected to harassment or discrimination and he has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors or managers.¹⁸ Appellant provided no corroborating evidence, such as witness statements or the results of grievances, to establish that he was subjected to harassment or discrimination.¹⁹ His claims of harassment and discrimination were brief and vague in nature. Appellant submitted statements in which coworkers asserted that he was treated in a discriminatory manner, but these statements did not describe specific instances of harassment or discrimination committed against appellant. A witness indicated that, two managers, Mr. Garcia and Ms. Lopez, suggested that he not associate with appellant, but this statement does not establish any direct harassment or discrimination committed against appellant.²⁰ Therefore, appellant has not established a compensable employment factor under FECA with respect to the claimed harassment and discrimination.²¹

For the foregoing reasons, appellant has not established any compensable employment factors under FECA and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.²² As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

¹⁸ 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).

¹⁹ See *William P. George*, 43 ECAB 1159, 1167 (1992). Appellant claimed that on September 27, 2010 Mr. Colon, a supervisor, asked him what he was doing at Building 504 and told him "to stop looking for trouble." He did not submit any evidence to support this assertion. Appellant also suggested that Mr. Garcia harassed him on this date, but he did not show that Mr. Garcia's interaction with him constituted harassment.

²⁰ Moreover, even if these alleged statements were established as being made by Mr. Garcia or Ms. Lopez, the witness did not establish an improper intent in making them.

²¹ On appeal, appellant claimed that OWCP made errors regarding the names of some of his supervisors and coworkers. He did not explain how any such errors related to his failure to establish compensable work factors.

²² See *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the March 30, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 25, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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