

appellant's pay stubs showed that money was being deducted improperly. Mr. Jasch provided a May 9, 2003 statement indicating that appellant had been reported and charged as being absent without leave (AWOL) on multiple occasions.

By letter dated May 23, 2004, the Office requested further information to support appellant's claim.

Appellant submitted a March 31, 2003 report from Dr. Clyde Burch, a clinical psychologist, who treated him with pain management psychotherapy. He diagnosed appellant as having pain disorder, a depressive disorder, chronic lumbar pain and post multiple lumbar surgeries.

In a June 16, 2003 letter, appellant noted that he had been prescribed an ergonomic chair which the other employees moved around such that he could not find it or use it. Appellant claimed that he had to look for his chair almost every day to find where it was. He alleged that this stress caused his eczema to break out. Appellant also alleged that the employing establishment was improperly deducting health insurance benefits from his pay, making him pay twice for the same service.

Various coworkers provided witness statements noting incidents in which appellant's chair was missing.

In a decision dated June 26, 2003, the Office found that the evidence was insufficient to establish any compensable employment factors.

On July 25, 2003 appellant, through his representative, requested an oral hearing of the June 26, 2003 decision. He submitted further evidence, including a June 5, 2003 report from Dr. Burch, who stated that appellant's physical symptoms were likely exacerbated by anxiety. The evidence reflects that he was being treated by a dermatologist for eczema and for stress and low back pain. Appellant was prescribed the use of an ergonomic chair for his low back pain. Further witness statements noted incidents when his ergonomic chair was missing.

Appellant also alleged that he was asked to carry survey boxes that exceeded his weight lifting limitations which resulted in pain and swelling of his lumbar spine. Magnetic resonance imaging (MRI) scan results were provided as were reports related his left knee. It was also noted that appellant had a right knee military injury and wore a lumbar brace.

Appellant submitted a report from Dr. Jose K. Reyes, an internist, who stated that he had low back pain from a previous 2000 injury, for which he had physical limitations. He noted that his chronic low back pain affected appellant's daily functions and compromised his emotional and interpersonal functioning. Dr. Reyes opined that appellant was disabled through May 10, 2003.

Appellant also submitted an October 16, 2003 settlement agreement form, including handwritten findings in which the employing establishment agreed to accommodate his medical condition in return for appellant's agreement to withdraw his grievance. It also agreed to pay

him \$500.00 to offset the cost of his grievance and found that appellant was not, in fact, AWOL in April 2003, after all information was received and the records were reviewed by management. The agreement also provided that, when he received a return to work date, the employing establishment would ensure an ergonomic chair would be available.

In a decision dated September 10, 2004, the Office hearing representative affirmed the June 26, 2003 decision, finding that appellant had failed to indicate compensable factors of employment in causing his condition.

LEGAL PRECEDENT

To establish a claim that he has sustained an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.¹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.²

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. 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.³ However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee, but caused by the employing establishment.⁴

When working conditions are alleged as factors in causing 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

¹ See *Alice F. Harrell*, 53 ECAB 713 (2002); *Victor J. Woodhams*, 41 ECAB 345 (1989).

² *Id.*

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991).

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. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁶ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.⁷

It is well established that for harassment to give rise to a compensable disability under the Act, there must be some evidence that the implicated incidents of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable.⁸ An employee's charges that he or she was harassed or discriminated against are not determinative of whether or not harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁹

In *Thomas D. McEuen*,¹⁰ the Board held that 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. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment's superiors in dealing with the claimant.¹¹

ANALYSIS

In the present case, the Board finds that appellant has established a compensable factor of employment. He experienced stress due to being charged AWOL for multiple days during the spring and summer of 2003. Coverage under the Act attaches if the factual circumstances surrounding an administrative or personnel action establishes error or abuse.¹² In an October 16, 2003 settlement agreement, the employing establishment acknowledged that finding appellant AWOL was an administrative error and it removed that adverse action from his personnel

⁵ See *Barbara Bush*, 38 ECAB 710 (1987).

⁶ See *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁷ See *Gregory J. Meisenberg*, *supra* note 7; see *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁸ *Helen Casillas*, 46 ECAB 1044 (1995); *Ruth C. Borden*, 43 ECAB 146 (1991).

⁹ See *Anthony A. Zarcone*, 44 ECAB 751 (1993).

¹⁰ 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

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

¹² *Id.*

records. The Board finds that the settlement agreement documents error in an administrative matter that was later rescinded by the employing establishment. This establishes administrative error by the employing establishment. As the Office did not find a compensable factor, it did not examine the medical evidence to make a determination of whether there is a causal relationship of appellant's conditions to this compensable factor. The case will be remanded to the Office for further development consistent with this decision.

CONCLUSION

The Board finds that appellant has established a compensable factor of employment. The case will be remanded for development of the medical evidence to establish causal relationship of his emotional condition to this factor.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 10, 2004 be and is set aside and the case remanded for further development in accordance with this decision of the Board.¹³

Issued: January 13, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

¹³ Willie T.C. Thomas, who participated at oral argument and in the preparation of this decision, retired effective January 3, 2006.