

On June 1, 2005 appellant, then a 47-year-old police officer, filed a traumatic injury claim (Form CA-1) alleging that he sustained post-traumatic stress disorder as a result of a May 20, 2005 incident. Appellant stated that he felt threatened by a coworker, who made clenched fists and yelled “why are you here” as he was speaking to a friend. Appellant indicated that he had a flashback to a previous assault incident.

In a narrative statement, appellant alleged that on May 20, 2005 he entered the dispatch area to speak to the dispatcher, Mr. Richardson. While speaking to Mr. Richardson, a coworker Sergeant George Smith came in and yelled "what do you want?" and then "I want you to get out." Appellant stated that Sgt. Smith had clenched fists and he felt threatened.

The record contains several witness statements regarding the May 20, 2005 incident. Sgt. Smith stated that he asked appellant why he was in the dispatch area and for what purpose. Appellant yelled "what is your problem" and stated that he was still a police officer. Sgt. Smith indicated that he told appellant the dispatcher was busy and he should visit with Mr. Richardson on his break. According to Sgt. Smith, appellant was upset and continued to yell upon leaving the area. Mr. Richardson submitted a brief statement indicating that Sgt. Smith asked appellant why he was there and appellant told him he was there to talk to Mr. Richardson. According to Mr. Richardson, Sgt. Smith informed appellant that he was no longer a police officer and he should not be there. Appellant stated that he was still a police officer, and Sgt. Smith stated "don't have me have to forcibly remove you" or words to that effect. Mr. Richardson indicated that approximately 25 minutes later appellant returned and made a "cut your throat motion" with his hand and pointed toward the rear of the station.

A statement from Coworker Roger Vines indicated that he saw appellant in the dispatch area and asked Sgt. Smith why appellant was there since he was not currently a part of police operations. Mr. Vines stated that he heard Sgt. Smith ask appellant in a normal voice why he was there and appellant answered that he was still a police officer. According to Mr. Vines, Sgt. Smith told appellant that if he did not have police business he should leave because the dispatcher was busy and it was shortly after shift change. Mr. Vines stated that he did not observe any threatening action or words from Sgt. Smith. Another witness, Kenneth Jones, stated that appellant responded to Sgt. Smith's inquiry by yelling "why do you want to know?" He stated that he did not see any threatening gestures by Sgt. Smith. A David Bennett submitted a statement indicating that he observed appellant make a throat slashing motion from outside a window.

In a memorandum dated June 6, 2005, Kenneth Stone, a supervisor, noted that appellant had alleged an assault by Sgt. Smith on May 20, 2005. Mr. Stone indicated that he had reviewed the witness statements and there was no evidence to substantiate appellant's allegations.

By decision dated August 12, 2005, the Office denied appellant's claim for compensation. Appellant requested a hearing before an Office hearing representative, which was held on March 29, 2006. At the hearing appellant indicated that in March 2003 he had been assaulted by a coworker. Appellant alleged that he had been subject to retaliation since he filed a letter with the Office of the Inspector General (OIG) regarding racism and as a result Mr. Stone was reprimanded. Appellant also noted that he had been suspended in August 2004 and had filed several Equal Employment Opportunity complaints.

The record contains an unsigned and undated agreement indicating that a proposed removal would be reduced to a 30-day suspension. A letter dated April 20, 2006 from an employing establishment human resources specialist reported that appellant was not suspended but had been detailed to the Primary Mental Health Service in August 2004, and he did not have the authority to be in a restricted area unless on official business. The employing establishment

indicated that appellant was removed from employment on July 29, 2005, but through agreement his removal was changed to reflect disability retirement.

In a decision dated May 2, 2006, the hearing representative affirmed the August 12, 2005 decision.

LEGAL PRECEDENT

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 factors of his federal employment.¹ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.²

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 the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.⁴ Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.⁵

ANALYSIS

Appellant's allegations in this case concern a May 20, 2005 incident between appellant and a coworker, Sgt. Smith. The initial question is whether a compensable work factor has been established; if so, then the medical evidence is considered on the issue of causal relationship between the compensable factor and a diagnosed condition. Appellant contended that he was

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

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

⁴ *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

⁵ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

subject to verbal abuse and felt physically threatened by Sgt. Smith when he clenched his fists. Such an incident could constitute a compensable work factor, if it is substantiated by the evidence of record.⁶

The Board finds, however, the evidence does not substantiate a compensable work factor. The witness statements indicate Sgt. Smith approached appellant and questioned why he was in the dispatchers area, and subsequently asked him to leave the area. None of the witnesses to the incident support that Sgt. Smith was abusive or that he raised his voice.⁷ Moreover, none of the witnesses indicated that Sgt. Smith had clenched fists or otherwise attempted to physically threaten appellant. According to the record, appellant had been removed from police operations, and an inquiry as to why he was in the dispatch area and a request that he leave was not erroneous or unreasonable based on the evidence of record.

Appellant also made an allegation of retaliation for filing a letter with the OIG, without providing any evidence to support an allegation of retaliation. He alleged that he was suspended in August 2004, but the employing establishment indicated that he was not suspended but was detailed to another position. The employing establishment indicated that appellant was removed from employment in July 2005, and the removal was changed to disability retirement. The Board notes the modification or rescission of an administrative action does not, in and of itself, establish error or abuse.⁸ Appellant has not established error or abuse in an administrative action based on the evidence of record.

The Board therefore finds that appellant has not substantiated a compensable work factor in this case. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.⁹

CONCLUSION

Appellant did not meet his burden of proof to establish an emotional condition causally related to compensable work factors.

⁶ See *Denise Y. McCollum*, 53 ECAB 647 (2002).

⁷ The Board has held that the raising of a voice during the course of a conversation does not itself warrant a finding of verbal abuse. *Carolyn S. Philpott*, 51 ECAB 175, 179 (1999).

⁸ See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Richard J. Dube*, 42 ECAB 916 (1991) (reduction of a disciplinary letter to an official discussion did not constitute abusive or erroneous action by the employing establishment).

⁹ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 2, 2006 and August 12, 2005 are affirmed.

Issued: October 6, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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