

supervisor and other employees to have no contact with him. Appellant also alleged that the staff judge advocate, Lieutenant Thomas Rutledge, told appellant in August 2001 that he overheard Captain Cooper say she wanted appellant out of the naval station. According to appellant, in the spring of 2002 he was removed from his employing establishment work duties as a traffic court judge and during a discussion about his removal Captain Cooper screamed at him, threw a binder and had to be physically restrained. He indicated that he had filed a complaint against Lieutenant Rutledge for allegedly operating a real estate business at work and he was retaliated against through disciplinary actions that included suspensions and proposed removals. Appellant alleged that there was further retaliation due to a renovation that resulted in him losing his office.

The record contains a complaint filed by appellant with the Office of Special Counsel of Reprisal for Whistleblowing. He indicated on April 10, 2002 that he filed a complaint against Lieutenant Rutledge for abusing his position by operating a real estate business at work. An employing establishment "hotline completion report" dated August 23, 2002 found that the main allegation was unsubstantiated, but did find that the evidence substantiated improper use of government equipment and created an appearance of impropriety.

A hotline completion report dated August 26, 2003 contains findings that allegations against Captain Cooper relating to improper spending of government funds were substantiated by the record. The allegation that Captain Cooper retaliated against appellant in violation of the Whistleblower Protection Act was found to be not substantiated. With respect to the 2002 meeting between appellant and Captain Cooper, the report noted conflicting recollections of the meeting. Captain Cooper strongly denied throwing any object and stated that it was appellant who screamed at her. One witness heard appellant yelling and screaming and another witness reported hearing Captain Cooper yelling at appellant.

There are a number of statements from witnesses submitted to the record. A coworker, Marie Hartnett, stated that in December 2001 she heard Captain Cooper state words to the effect that appellant was "gay," in early 2002 she heard the supervisor say he was not going to have his job for long and that he was a "loser." Coworkers Amy K. Pitts and Allison Morgan reported that Lieutenant Rutledge stated that Captain Cooper hated appellant and she would promote Lieutenant Rutledge if he harassed appellant. Another coworker, Alexander Joe, indicted that Lieutenant Rutledge had stated that he would get promoted if he could "get [appellant]." A Robert Coulter reported that in October 2002 Captain Cooper asked him about a closed door conversation with appellant and said words to the effect of "you are not to talk to [appellant]." A former supervisor, R. Lee Freitag, Jr., reported in a December 2, 2002 statement, that Captain Cooper told him not to speak with appellant and threatened to fire him if he did.

In an October 20, 2005 letter, the employing establishment discussed the disciplinary actions taken against appellant. He received a June 27, 2002 notice of proposed removal for repeated acts of misconduct which was reduced to a 10-day suspension. A 10-day suspension was issued in November 2002 for unauthorized absence and a notice of proposed removal for excessive unauthorized absences was issued in March 2003 which was reduced to a 21-day suspension. There were also letters of reprimand in April 2000 and March 2001, as well as a five-day suspension on April 9, 2002.

By decision dated January 23, 2006, the Office denied the claim for compensation. It found that appellant had not establish any compensable work factors. Appellant requested a review of the written record. By decision dated June 14, 2006, the hearing representative affirmed the January 23, 2006 decision.

LEGAL PRECEDENT

A claimant 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 her federal employment.¹ This burden includes the submission of 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 A claimant must also submit rationalized medical opinion evidence establishing a causal relationship between the claimed condition and the established, compensable work factors.³

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.⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors causing a condition or 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 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. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

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

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

³ *See Bonnie Goodman*, 50 ECAB 139, 141 (1998).

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *See Norma L. Blank*, 43 ECAB 389-90 (1992).

⁶ *Id.*

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.⁷ 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.⁸

ANALYSIS

In the present case, appellant's allegations primarily involve actions of a supervisor, Captain Cooper. The initial question is whether he has substantiated with probative evidence any compensable work factors. If there are compensable work factors then the medical evidence is examined to determine if there is probative evidence on causal relationship between a diagnosed condition and the compensable work factors.

According to appellant, he was subject to harassment from his supervisor commencing in June 2001. He also alleges retaliation for the filing of a complaint in April 2002 regarding the activities of Lieutenant Rutledge, as well as a complaint against Captain Cooper for authorizing improper spending. A claim of harassment or retaliation must be substantiated by probative and reliable evidence.⁹ In this case, the record does not contain sufficient evidence to establish a compensable work factor based on harassment or retaliation. While appellant filed a claim for reprisal with the Office of Special Counsel, no findings of reprisal were submitted to the record. The employing establishment's report found the allegations were unsubstantiated. The record does not contain other probative evidence sufficient to establish a compensable factor based on harassment or retaliation in this case.

As noted, a specific administrative action of the employing establishment may be a compensable work factor if the evidence establishes error or abuse by the employing establishment. The record indicated that appellant was subject to disciplinary actions, including notices of removal that were reduced to suspensions. There is no admission or acknowledgment of error by the employing establishment and the mere fact that an administrative action is later modified or rescinded does not, in and of itself, establish error or abuse.¹⁰ There is no reliable evidence in the record that any of the disciplinary actions were erroneous or abusive.

Appellant alleged that there were "illegal" orders given to employees not to talk to him. There are witness statements such as from Mr. Freitag and Mr. Coulter, that Captain Cooper told them not to talk to appellant. The statements are not detailed and the context of these statements is not clear. The evidence does not establish error or abuse in this regard.

⁷ See *Brian H. Derrick*, 51 ECAB 417, 421 (2000).

⁸ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

⁹ *Lori A. Facey*, 55 ECAB 217 (2004).

¹⁰ 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).

Additional witness statements report that the supervisor made negative comments about appellant. There is no indication that any comments were made directly to appellant or any evidence that he was subject to verbal abuse. It is well established that not every statement uttered in the workplace will give rise to coverage under the Act.¹¹ The record also contains statements indicating that Lieutenant Rutledge had stated that Captain Cooper did not like appellant and felt he would get promoted if he harassed appellant. Again, these statements were not made to appellant and with respect to a claim of harassment do not discuss any specific action taken by a supervisor to support a claim of harassment.

A specific allegation made by appellant was that his supervisor screamed at him and threw a binder during a 2002 meeting regarding his work as a traffic court judge. The employing establishment report, however, noted conflicting versions of the incident and the supervisor denied throwing any objects. The evidence of record does not establish error or abuse with respect to this allegation.

The Board accordingly finds that the evidence of record is not sufficient to establish a compensable work factor. The evidence does not establish harassment or retaliation or substantiate a claim of error or abuse in the administration of a personnel matter. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.¹²

CONCLUSION

The evidence of record does not substantiate a compensable work factor and therefore appellant has not met his burden of proof to establish an emotional condition in the performance of duty.

¹¹ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹² *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 14 and January 23, 2006 are affirmed.

Issued: December 20, 2007
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