



of management. Appellant alleged that Patsy A. Pigue, the postmaster, would not pay him back pay as awarded by an arbitrator on January 26, 2004.

In a letter dated February 14, 2005, the Office requested additional factual and medical evidence in support of appellant's claim. In a statement dated January 28, 2005, appellant alleged that he was falsely accused of an assault and that the employing establishment fabricated a case against him. Following the arbitrator's January 26, 2004 decision, he requested to be removed from a hostile work environment with the back pay he felt awarded by arbitrator. Appellant stated that his badge did not open the door and that his accuser was stationed directly across from him.

Dr. Shahidul Islam, a Board-certified psychiatrist, diagnosed reaction to stress and found appellant totally disabled.

Dr. Thomas E. Staats, a clinical neuropsychologist, examined appellant on November 23 and December 9, 2004 and diagnosed occupational problem, anxiety disorder and depressive disorder.

Ronnie Vercher, appellant's supervisor, completed a statement on March 21, 2005. He noted that appellant was awarded back pay as the result of a grievance regarding a notice of proposed removal dated July 26, 2002. Appellant had filed an additional grievance alleging that he was not allowed to complete his back pay paperwork properly causing him to receive less money. On September 21, 2005 Mr. Vercher agreed to allow appellant to resubmit his paperwork. Appellant did not complete the paperwork and Mr. Vercher agreed to help him do so. However, he failed to submit the necessary documentation supporting efforts to seek outside employment. Mr. Vercher denied appellant's allegations of harassment, intimidation, retaliation, threats, bullying, lying or fraud.

Ms. Pigue responded to appellant's allegations on March 21, 2005. She stated that appellant failed to provide documentation supporting that he sought outside employment in order to receive back pay.

By decision dated March 25, 2005, the Office denied appellant's claim finding that he failed to substantiate a compensable factor of employment.

Appellant requested a hearing on April 15, 2005. He submitted a statement dated November 15, 2004 alleging that he was harassed regarding his work schedule and that his badge no longer worked as of November 12, 2004. Appellant also submitted an August 25, 2004 statement alleging that he attempted to properly process his back pay forms and was given incorrect information. He requested reasonable accommodations in his work schedule on February 11, 2004 due to his daughter's disabilities.

The arbitrator issued a decision on January 26, 2004, sustaining appellant's grievance regarding a notice of proposed removal. She found that on June 25, 2002 appellant engaged in a verbal exchange with a coworker and that there were some problems with the investigation. The arbitrator stated that the evidence failed to support the intolerable threat of violence necessary to support appellant's removal. She found that the witnesses did not substantiate any contact or threat and that there was not a fair investigation based on this lack of substantiation of violence.

However, the arbitrator noted that appellant did create a disturbance and behaved improperly interfering with the business of management such that some form of discipline was appropriate. She approved a suspension of 14 days. On October 20, 2005 appellant again attributed his emotional condition to the investigation of an alleged threat on June 25, 2002, as well as the denial of back pay.

In a grievance decision dated September 21, 2004, the grievance was resolved by allowing appellant another opportunity to complete his back pay paperwork. Appellant testified at his oral hearing before an Office hearing representative on October 19, 2005.

By decision dated January 30, 2006, the hearing representative found that appellant had failed to establish a compensable factor of employment and denied his claim.

### **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>

Generally, actions of the employing establishment in administrative or personnel matters unrelated to the employee's regular or specially assigned work duties, do not fall within the coverage of the Act.<sup>3</sup> While an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment, mere perceptions are insufficient. In determining whether the employing establishment erred or acted abusively, the Board determines whether the employing establishment acted reasonably.<sup>4</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>5</sup>

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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 E. Norris*, 52 ECAB 93, 100 (2000).

<sup>4</sup> *Bonnie Goodman*, 50 ECAB 139, 143-44 (1998).

<sup>5</sup> *James P. Guinan*, 51 ECAB 604, 607 (2000).

Reactions to disciplinary matters such as letters of warning and inquiries regarding conduct pertain to actions taken in an administrative capacity and are not compensable until it is established that the employing establishment erred or acted abusively in such capacity.<sup>6</sup> Investigations are an administrative function of the employing establishment and are not considered to be an employment factor unless there is evidence of error or abuse on the part of the employing establishment.<sup>7</sup>

The Board has held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform his regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.<sup>8</sup>

The determination of an employee's rights or remedies under other statutory authority does not establish entitlement to benefits under the Act. While determinations of other administrative agencies or courts are instructive, such findings are not determinative with regard to disability under the Act. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and Equal Employment Opportunity complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.<sup>9</sup> The issue is whether the claimant has submitted sufficient evidence under the Act to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence. The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.<sup>10</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>11</sup>

### ANALYSIS

Appellant attributed his emotional condition to the investigation of an alleged threat which resulted in a proposed removal, the processing of his back pay request and the denial of reasonable accommodations in his work schedule. The Board finds that these are administrative matters and that appellant must establish error or abuse on the part of the employing establishment to establish these events as compensable employment factors.

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<sup>6</sup> *Sherry L. McFall*, 51 ECAB 436, 440 (2000).

<sup>7</sup> *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>8</sup> *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

<sup>9</sup> *Beverly R. Jones*, 55 ECAB 411, 417 (2004).

<sup>10</sup> *C.S.*, 58 ECAB \_\_\_\_ (Docket No. 06-1583, issued November 6, 2006).

<sup>11</sup> *Reco Roncoglione*, 52 ECAB 454, 456 (2001).

Appellant has submitted no evidence that the employing establishment acted unreasonably in denying his request for a schedule change. He has also failed to establish that the employing establishment improperly denied his back pay. Further, appellant has submitted no evidence substantiating harassment or discrimination on the part of the employing establishment through these actions.

Appellant has submitted an arbitrator's January 26, 2004 decision that the employing establishment did not properly investigate the allegation of a threat by appellant and that it exceeded its reasonable disciplinary authority by proposing to remove appellant due to the allegations. However, he did not submit the evidence upon which the arbitrator relied in reaching these findings of error on the part of the employing establishment. The decision, while setting aside the proposed removal, did note that appellant had created a disturbance and upheld a 14-day suspension. The arbitrator's decision alone is not sufficient to establish compensable factors of employment in regard to the alleged errors and abuse in disciplinary actions and investigations. The arbitrator's decision does not contain a detailed factual explanation of the factual basis for the findings which the Board can review to make its own determination of whether the employing establishment's actions were erroneous or abusive. Due to this defect, appellant has not submitted sufficient evidence to substantiate a compensable factor of employment.

#### **CONCLUSION**

The Board finds that appellant has not established a compensable factor of employment as he failed to submit sufficient evidence to substantiate the findings of the arbitrator or to submit any other evidence substantiating error or abuse on the part of the employing establishment. The Office's decision must be affirmed.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 30, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 13, 2007  
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