

The Office requested additional factual and medical information in a letter dated April 6, 2007. It allowed appellant 30 days for a response. Appellant noted that he had filed a complaint against Ms. Powell on December 13, 2006 for creating a hostile work environment. He stated, "I am not claiming Ms. Powell's grabbing of me as the cause of the harm." Instead, appellant attributed his emotional condition to learning that Ms. Powell had been promoted. He learned on December 26, 2006 that she had received a promotion to operations manager and appellant became fearful of retaliation as she would be in a position of control over his working conditions and status. Appellant felt his job was in jeopardy. He also attributed his emotional condition to the investigation of the hostile work environment claim. Appellant contended that the investigation was grossly unfair as he had not been interviewed during the course of the investigation, noting that a coworker, Terrence Accoo, had been interviewed. He submitted a copy of Mr. Accoo's statement which noted that Ms. Powell had grabbed appellant and him by the arms and ushered them from a hallway where they had been discussing a football game.

By decision dated September 6, 2007, the Office denied appellant's claim on the grounds that he failed to submit the necessary medical opinion evidence to establish a *prima facie* case for a traumatic injury. It noted that a licensed clinical social worker was not a physician for the purposes of the Federal Employees' Compensation Act.¹

Appellant requested reconsideration on December 3, 2007 and reiterated that the investigation of his hostile work environment complaint was inadequate as he was not interviewed. He also submitted a copy of the formal complaint that he filed. Appellant submitted a report dated March 11, 2008 from Dr. Jennifer James, a Board-certified internist, who noted appellant's history of injury and diagnosed adjustment disorder with anxious mood.

By decision dated June 10, 2008, the Office modified the September 6, 2007 decision to deny his claim on the grounds that he failed to substantiate a compensable factor of employment as causing or contributing to his diagnosed emotional condition.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related 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 Act.² 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

¹ See *Arnold A. Alley*, 44 ECAB 912 (1993); *Debbie J. Hobbs*, 43 ECAB 135 (1991).

² 5 U.S.C. §§ 8101-8193.

³ 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).

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.⁴

ANALYSIS

Appellant attributed his emotional condition to learning of the promotion of Ms. Powell to operations manager on December 26, 2006. He feared retaliation and the loss of his position due to her promotion following a complaint against her. The record does not establish that Ms. Powell had assumed the duties of her new position or had taken any action against appellant. Appellant addressed the possibility that she might take negative actions against him. The possibility of a future injury does not constitute an injury under the Act.⁵ Appellant therefore has not established any compensable factor of employment in this regard.

Appellant also attributed his emotional condition to the employing establishment's handling of the investigation into his hostile work environment complaint against Ms. Powell. He alleged that the investigation was inadequate as Mr. Accoo was interviewed while he was not. An investigation by the employing establishment is an administrative matter.⁶ 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 coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded. The Board finds that the evidence of record is insufficient to establish administrative error or abuse in the investigation of appellant's complaints. The record reflects that appellant was dissatisfied with the course of the investigation as he was not interviewed. However, this fact alone is not sufficient to establish error or abuse on the part of the employing establishment in conducting the investigation. Appellant has not established a compensable factor of employment in regards to the investigation.⁷

CONCLUSION

The Board finds that appellant failed to substantiate a compensable factor of employment as causing or contributing to his emotional condition claim.

⁴ *James P. Guinan*, 51 ECAB 604, 607 (2000).

⁵ *Ernest St. Pierre*, 51 ECAB 623, 625 (2000).

⁶ *J.F.*, 59 ECAB ____ (Docket No. 07-308, issued January 25, 2008).

⁷ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the June 10, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 1, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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