

pressure to hypertensive levels. He first became aware of his claimed condition and its relationship to his work on December 3, 2009.² Appellant stopped work on December 4, 2009.

In a December 3, 2009 report, James R. Hagen, Ph.D., an attending clinical psychologist, found that appellant was disabled. In a January 10, 2010 statement, Susan McClincy-Woods, a supervisor, described his leave usage and noted that he was subject to disciplinary actions for unsatisfactory performance.

In a February 2, 2010 letter, OWCP requested that appellant submit additional factual and medical evidence in support of his claim.

In a February 28, 2010 statement, appellant described the incidents and conditions at work which caused him to sustain stress and anxiety, which in turn adversely affected his cardiac condition. In December 2008, Ms. McClincy-Woods unfairly denied his request to use leave after he suffered chest pains and hypertension. On January 15, 2009 appellant was wrongly taken into her office for a predisciplinary interview. Ms. McClincy-Woods was “nasty and aggressive” and he started to have chest pains. Appellant claimed that she refused to let a coworker take him to the emergency room and she called an emergency squad to visit him at the workplace instead. He stated that in August 2009 Ms. McClincy-Woods unfairly denied his request for sick leave to address a leg wound he sustained while fishing. On December 3, 2009 Becky Liston, another supervisor, unfairly denied his request to use leave to go to a medical appointment. Appellant alleged that he sustained stress because he had been wrongly terminated from the employing establishment three times in the prior year. He asserted that he had been disciplined for no reason.

Appellant submitted medical evidence reports detailing his treatment for cardiac matters dated between late 2008 and early 2010. The record also contains several unsigned statements from May 2010, presumably from coworkers, describing the working relationship between him and Ms. McClincy-Woods.³

In an undated letter received on June 9, 2010, appellant asserted that Ms. McClincy-Woods unfairly denied his request in October 2009 to take leave to visit his wife’s family in Brazil. He advised that a treating cardiologist stated that the actions of Ms. McClincy-Woods triggered his hypertension condition. Appellant was in fear of being fired by her and other managers and this circumstance was the main cause of his claimed condition.

In a July 22, 2010 decision, OWCP denied appellant’s claim on the grounds that he did not establish any compensable employment factors. It found that he had not shown that the employer committed error or abuse with respect to such administrative matters as handling leave requests and disciplinary matters.

² Appellant later claimed that his work stress caused him to sustained depression and an anxiety condition.

³ Appellant also submitted a step-B decision dated September 8, 2005, it was found that management did not have just cause to issue him a notice of 14-day suspension. In a step-B decision dated May 18, 2006, it was found that management did not have just cause to issue appellant a notice of 10-day suspension.

Appellant requested a telephonic hearing with an OWCP hearing representative. During the November 3, 2010 hearing, counsel argued that appellant was unjustly fired several times as evidenced by the fact that the employer rehired him after each termination. He stated that Ms. McClincy-Woods unjustly fired appellant about two and a half years ago and his job was reinstated as a result of a Military Review Board or Merit Systems Protection Board decision, which determined that his firing was unjustified. Appellant testified that he was fired a second time in June 2008, but this firing was overturned following a grievance. He indicated that his third firing was in April or May 2009, due to leaving his vehicle unattended and his employment was reinstated after he filed a grievance. Appellant noted that he reacted to the improper denial of his sick leave but he felt that the unjust firings were the main factor in causing his depression and hypertension.

Appellant submitted a number of documents relating to disciplinary actions leveled against him and grievances he filed to challenge these actions, including a September 7, 2007 document advising him that he was being issued a 14-day suspension for unsatisfactory performance; a February 20, 2008 letter of decision finalizing a January 10, 2008 notice of proposed removal for conduct; a February 26, 2008 step-B decision determining that he would have a step-A grievance meeting related to his January 8, 2007 proposed removal for improper conduct; and a September 2, 2009 notice of proposed removal noting work performance issues.

The record also includes documents relating to settlements of some of these matters, including a March 4, 2008 settlement agreement form dictating that appellant be allowed 78 hours of unscheduled leave over the following 18 months but would be immediately fired if he accumulated more than 78 hours; a March 12, 2008 step-B settlement agreement noting that the dispute resolution team determined that management had just cause for progressive disciplinary actions and that his 14-day suspension should be reduced and remain in his file for six months; and settlement agreement and last chance agreement, signed by him on October 13, 2009, in which he agreed that an August 31, 2009 notice of proposed removal for unsatisfactory performance contained fair and just charges. Appellant agreed to withdraw any grievances relating to the notice of proposed removal and that violation of the last chance agreement would bring about his immediate firing. The settlement agreement was made without prejudice to the employing establishment.⁴

In a January 11, 2011 decision, an OWCP hearing representative affirmed OWCP's July 22, 2010 decision noting that appellant still had not established any compensable employment factors. It was determined that none of the documents relating to grievances he filed showed that the employing establishment committed error or abuse with respect to administrative matters.

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

⁴ Appellant also submitted additional medical evidence in support of his claim.

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 FECA.⁵ 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.⁶

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 employment factors.⁷ This burden includes the submission of a detailed description of the employment factors or conditions which he believes caused or adversely affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.⁸

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, 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.⁹ If a claimant does implicate a factor of employment, OWCP 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, OWCP must base its decision on an analysis of the medical evidence.¹⁰

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.¹¹ However, the Board has held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.¹² In determining whether the employing establishment has erred or acted abusively, the Board will

⁵ *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁷ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁸ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁹ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁰ *Id.*

¹¹ *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹² *William H. Former*, 49 ECAB 324 (1998).

examine the factual evidence of record to determine whether the employing establishment acted reasonably.¹³

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. OWCP denied his emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA. The Board notes that appellant's allegations do not pertain to his regular or specially assigned duties under *Cutler*.¹⁴ Rather, appellant has alleged error and abuse in administrative matters.

Appellant claimed that he sustained stress-related conditions, including depression and hypertension, due to improper actions taken by managers beginning in 2008 in relation to leave requests and disciplinary actions, including suspensions and firings. The Board notes that these claims relate to administrative matters which would not be considered employment factors unless the employing establishment committed error or abuse with respect to them.¹⁵

Appellant reported that the main cause of his stress-related conditions was that he was unfairly fired three times by the employing establishment.¹⁶ However, he did not submit evidence showing that these firings were improper. At the hearing before an OWCP hearing representative, appellant indicated that he would submit decisions that showed the firings were wrongful but he did not submit such evidence. The Board notes that the fact that he was reinstated several times would not, in itself, show wrongdoing by management. The Board has held that the mere fact that the employer lessens or reduces a disciplinary action or sanction does not establish abuse.¹⁷ Appellant indicated that he constantly feared that he would be fired again, but the Board has previously held that a claimant's job insecurity is not a compensable factor of employment under FECA.¹⁸

Appellant also alleged that managers, including Ms. McClincy-Woods, wrongly denied leave requests he made between December 2008 and December 2009. He did not submit any evidence showing that the employing establishment committed error or abuse with respect to these matters. Appellant also alleged wrongdoing with respect to disciplinary actions beginning in 2008, including several suspensions and proposed removal actions. The record contains several documents regarding these matters but they do not provide any indication of employer

¹³ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁴ *See Cutler supra* note 5.

¹⁵ *See supra* notes 11 through 13.

¹⁶ It appears that these firings occurred in 2008 and 2009.

¹⁷ *See Barbara E. Hamm*, 45 ECAB 843 (1994).

¹⁸ *See Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

wrongdoing.¹⁹ In fact, several of the documents explicitly indicate that the employer's actions were justified. Appellant made reference to an incident on January 15, 2009 claiming that Ms. McClincy-Woods wrongly took him into her office for a predisciplinary interview and improperly handled his request for medical attention. However, he did not submit evidence showing that she committed error or abuse with respect to these administrative matters.²⁰

For the foregoing reasons, appellant has not established any compensable employment factors under FECA and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.²¹

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

¹⁹ The record contains step-B decisions, dated September 8, 2005 and May 18, 2006, indicating that management did not have just cause to issue appellant notices of 14-day and 10-day suspensions, respectively. However, appellant did not relate his claimed conditions to these matters; they concern disciplinary actions that occurred years before the work incidents and conditions claimed in the present case.

²⁰ Appellant claimed that Ms. McClincy-Woods acted in a "nasty and aggressive" manner on that date, but he did not further describe the nature of her actions or provide supporting evidence.

²¹ 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, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the January 11, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 10, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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