

called him into his office in order to investigate why appellant felt threatened. He told Mr. White he would deal with the Portland office and returned to his mail table. Approximately 10 minutes later, Mr. White ordered appellant to his office and he refused to go, that 10 minutes later Mr. White returned with Robert D. Garwacki and ordered appellant to go to the office to find out why he was feeling threatened. He told Mr. White that he would not go because he felt threatened by him. Appellant alleged that Mr. White then stated that he was going to start disciplinary action and left, whereupon appellant felt hot and clammy and requested that an ambulance be called.

A September 24, 2003 hospital emergency department note from Dr. Christian Anderson noted appellant's complaints of chest pain and that his boss had harassed him, yelled at him and told him to do things he did not want to do. Appellant's blood pressure was 154/101 and an electrocardiogram showed a normal sinus rhythm.

By letter dated October 23, 2003, the Office advised appellant that the evidence was not sufficient to establish his claim and that he needed to provide evidence of error or abuse by his supervisor in carrying out his administrative actions. Appellant submitted copies of emails he wrote to postal officials in Portland. On September 17, 2003 he stated that dock mail handlers were bragging that they were disobeying Mr. White's direct orders and taking extended breaks and lunches. On September 18, 2003 he stated that the use of his name had cost him dearly and that he needed to be provided a safe work environment (a reply to this email stated that appellant's plant manager was notified that appellant felt threatened). On September 19, 2003 he stopped telling supervisors of safety violations because they used his name when addressing the violations and that Mr. White had turned on him like a wild animal when he told him about safety issues. On September 23, 2003 he alleged that on August 28, 2003 he was yelled and screamed at and given a choice to punch out and go home or go to the office and, after going to the office, he was threatened by Mr. White, who stated that he was going to give appellant a letter of warning. In a statement dated September 2003, appellant alleged that on August 28, 2003 he told Mr. White of safety violations by a jitney driver, that Mr. White asked him when he clocked in and told him he could no longer clock in before 6:50 a.m. Mr. White also ordered him to the office and denied his request for a union steward and that he would get an official discussion or a letter of warning. Appellant stated that his request for advanced sick leave for July 25, 28 and 29, 2003 was denied. In an October 28, 2003 statement, Mr. Garwacki stated that on September 24, 2003 Mr. White asked him to be a witness to providing appellant with an instruction, that Mr. White informed appellant he was giving him an order to accompany him to the office for an investigation into appellant's allegations of a hostile work environment. Mr. Garwacki stated that appellant became upset and angry and accused Mr. White of being the reason the hostile work environment existed and that appellant twice refused to go to the office, whereupon he and Mr. White left the area.

By decision dated April 14, 2004, the Office found that appellant had not established that his supervisor threatened him on September 24, 2003, that he was harassed or that he was singled out regarding his clock-in time, denial of leave or denial of union time.

Appellant requested a hearing, which was held on September 27, 2004. Appellant testified that on August 18, 2003 he filed a claim for an occupational injury to his elbow, that he was given limited duty and that Mr. White kept coming after him telling him what he needed to

do. He testified that on August 28, 2003 when he reported a safety violation, Mr. White yelled and screamed at him and threatened a letter of warning when appellant would not go to the office with him. His testimony on the September 24, 2003 incident was that, while in the presence of Mr. Garwacki, Mr. White stated that he was going to write him up. Appellant submitted an August 28, 2003 statement that he was denied union time to meet with a steward on that date.

In an undated statement received by the Office on October 14, 2004, Mr. White stated that on September 24, 2003 he had appellant come into the office where he informed him that, due to the emails appellant sent to the Portland office, he needed to be more explicit regarding specific incidents of a hostile and unsafe work environment, losing pay for doctors' appointments and feeling threatened at work. Mr. White stated that appellant refused to talk to him and that he reiterated that it was an official instruction and direct order. Appellant again refused and walked out of the office. Mr. White then went to appellant's work table and instructed him to return to the office and told him he could have a steward with him. Appellant refused his direct order to return to the office. Mr. White enlisted Mr. Garwacki, the manager of maintenance, as a witness and with Mr. Garwacki present, he instructed appellant to return to the office for an official discussion with another supervisor and a steward and appellant again refused, stating that it was Mr. White who made him feel threatened every time he came into the facility.

By decision dated December 23, 2004, an Office hearing representative found that there was no substantiation that Mr. White verbally abused appellant at any time, that there was no evidence that Mr. White's investigation of a complaint against him violated an agency standard or rule, that there was no evidence that the supervisor erred in ordering appellant to submit to an interview and that appellant therefore failed to establish the September 24, 2003 incident occurred in the performance of duty.

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 work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act. 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.¹ 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.²

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Michael Thomas Plante*, 44 ECAB 510 (1993).

ANALYSIS

The Board finds that the September 24, 2003 incident involving appellant and his supervisor, Mr. White, did not occur in the performance of duty. The Board has held that investigations are an administrative function of the employing establishment that do not involve an employee's regular or specially assigned employment duties. They thus are not considered compensable factors of employment, unless error or abuse is shown.³

Appellant sent emails about a hostile work environment at the employing establishment to higher level postal officials in Portland, who apparently referred the matter to Mr. White for an investigation. The Board finds that appellant has not shown error or abuse in either Mr. White being involved in the investigation or in the way Mr. White attempted to conduct it. It was not unreasonable for Mr. White to order appellant to the office to address specific incidents that allegedly constituted a hostile work environment.⁴

In a statement dated September 2003 and at a September 27, 2004 hearing, appellant cited other specific incidents: denial of advanced sick leave, denial of union representation on August 28, 2003, excessive monitoring of his work activities while on limited duty for an elbow condition in August 2003, disparate treatment on clocking in and verbal abuse by his supervisor on August 28, 2003. He did not indicate what, if any, medical condition these incidents were alleged to have caused. He did not allege, and there is no evidence, that these incidents contributed in any way to his elevated blood pressure on September 24, 2003.

CONCLUSION

The Board finds that appellant has not established an injury in the performance of duty.

³ *Jimmy B. Copeland*, 43 ECAB 339 (1991).

⁴ In determining whether the employing establishment erred or acted abusively, the Board examines whether the employing establishment acted reasonably. *Richard J. Dube*, 42 ECAB 916 (1991).

ORDER

IT IS HEREBY ORDERED THAT the December 23, 2004 decision of an Office of Workers' Compensation Programs' hearing representative and an April 14, 2004 decision of the Office are affirmed.

Issued: August 11, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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