

**United States Department of Labor
Employees' Compensation Appeals Board**

FRANK REVAK, JR., Appellant

and

**DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Washington, PA, Employer**

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**Docket No. 05-1009
Issued: October 24, 2005**

Appearances:
Frank Revak, Jr., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 28, 2005 appellant filed a timely appeal of a February 23, 2005 decision of the Office of Workers' Compensation Programs, denying modification of prior decisions with respect to his claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established an emotional condition causally related to compensable work factors.

FACTUAL HISTORY

On September 18, 2002 appellant, then a 44-year-old tax compliance officer, filed an occupational disease claim (Form CA-2), alleging that he sustained depression and anxiety as a result of a hostile workplace. The reverse of the claim form indicated that appellant stopped working on November 29, 2001.

Appellant submitted a narrative statement alleging that he experienced problems at work since 1999. He became unhappy in early 1999 because he had to drive 72 miles to Pittsburgh for training, the training sessions were poorly conducted and he complained about the sessions at a meeting. According to appellant, the attitude of management changed and he was subject to harassment and retaliation.

With respect to specific incidents, appellant noted an April 20, 1999 incident in which he stated that he was chastised for socializing. On May 18, 1999, after he arrived late, he was informed that he did not properly submit a request for credit time. He filed a complaint concerning the May 18, 1999 incident, contending the procedure of requiring a written request for credit time was no longer in effect. Appellant stated that on May 20, 1999 he received a negative memorandum regarding the April 20, 1999 incident and a procedural matter regarding the writing of a badge number on all correspondence. He subsequently filed a grievance on the memorandum and a settlement was reached. Appellant asserted that he was upset over a decision to make him a member of the Pittsburgh area audit group. He also alleged that his job became more difficult as he had no on site clerical support.

Appellant submitted a September 12, 2002 statement from a union steward, J. Goehring, who noted that a complaint was given to appellant's supervisor on May 20, 1999 for harassment and intimidation. He indicated that the supervisor had spoken to labor relations but as far as he knew the complaint was not forwarded to "TIGTA." In an undated statement, Gus Gregorakis, a coworker, described an unfriendly atmosphere between appellant and supervisor Mary Jane Waymire since appellant filed a complaint. In a September 18, 2002 letter, a Mr. Torri stated that he had overheard a conversation between supervisors Ms. Waymire and Thomas Britt and that upper management was upset at appellant's comments at the meeting.

By decision dated April 4, 2003, the Office denied appellant's claim for compensation, finding that he did not substantiate a compensable work factor. Appellant requested a hearing, which was held on November 26, 2003. In a decision dated March 18, 2004, the hearing representative affirmed the April 4, 2003 decision. The hearing representative found that appellant did not establish a compensable work factor with respect to his claim.

Appellant requested reconsideration in a letter received by the Office on December 6, 2004. He submitted a statement dated June 21, 2004, from Fred B. Ramsden, a coworker. He stated that, while appellant was detailed to Pittsburgh in 1999, he had to drive a long distance through several snow storms. In a July 23, 2004 statement, Gregory Martinelli, a coworker, reported that on April 20, 1999 he was talking with appellant and supervisor Ms. Waymire yelled at them for talking.

By decision dated February 23, 2005, the Office denied modification of the March 18, 2005 decision.

LEGAL PRECEDENT

To establish a claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged

to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.¹

The Board has held that 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 employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to his regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees Compensation Act. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of his work or his fear and anxiety regarding appellant's ability to carry out his work duties.²

By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.³

The Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors, which may be considered by a physician when providing an opinion on causal relationship and which are not deemed factors of employment and may not be considered.⁴ As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim; the claim must be supported by probative evidence.⁵

ANALYSIS

Appellant's primary allegations are of harassment and retaliation for making critical comments at a meeting in early 1999. There is, however, no probative evidence of harassment or retaliation in this case. A witness statement reported an unfriendly atmosphere between appellant and a supervisor, but this type of generalized, nonspecific statement is of little probative value in establishing a compensable work factor.⁶ The record does not contain a

¹ *Leslie C. Moore*, 52 ECAB 132 (2000).

² *Ronald J. Jablanski*, 56 ECAB ____ (Docket No. 05-482, issued July 13, 2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

³ *Id.*

⁴ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁵ *See Charles E. McAndrews*, 55 ECAB ____ (Docket No. 04-1257, issued September 10, 2004).

⁶ *See Linda J. Edwards-Delgado*, 55 ECAB ____ (Docket No. 03-823, issued March 25, 2004).

finding of harassment or retaliation by any administrative agency or other detailed evidence of such probative value to establish a compensable work factor.⁷

Appellant has referred to specific incidents, such as being yelled at on April 20, 1999 and receiving negative memorandums on May 20, 1999. It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.⁸ The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.⁹ With respect to the April 20, 1999 incident, the Board notes that not every statement uttered in the workplace will give rise to a compensable factor. A witness stated that a supervisor yelled at them for talking, but the raising of a voice by a supervisor does not, of itself, establish verbal abuse.¹⁰ With respect to the issuance of memorandums on May 20, 1999, no evidence was presented to establish error or abuse. Appellant stated that he filed a grievance and reached a settlement regarding the May 20, 1999 memorandums. The settlement is not of record and no evidence was presented as to an admission or error or other evidence sufficient to establish administrative error or abuse.

Appellant referred to a complaint he gave to a supervisor on May 20, 1999. To the extent that appellant claims that the complaint was handled erroneously or not properly forwarded, the record contains no probative evidence as to the complaint itself, the proper procedure or other detailed allegations that could support a claim of administrative error.¹¹ It is also noted that appellant appeared to be upset at a decision to send him to Pittsburgh in early 1999, which involved a long commute, but again no evidence of administrative error was presented. There is a brief reference to difficulty encountered in the job due to a lack of clerical support; however, no details were provided and no evidence supporting an allegation of overwork¹² or other factor related to the performance of assigned duties was presented.

The Board accordingly finds that the evidence of record is insufficient to establish a compensable work factor. Since no compensable work factor was substantiated, the medical evidence will not be addressed.¹³

⁷ See, e.g., *Donney T. Drennon-Gala*, 56 ECAB ____ (Docket No. 04-2190, issued April 26, 2005) (Board noted that while findings of an administrative agency are not dispositive, they may be given weight and in this case the findings of retaliation by an Equal Employment Opportunity Commission administrative judge were sufficient to establish a compensable work factor).

⁸ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

⁹ See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

¹⁰ *Joe M. Hagewood*, 56 ECAB ____ (Docket No. 04-1290, issued April 26, 2005).

¹¹ See *Mary J. Summers*, 55 ECAB ____ (Docket No. 04-704, issued September 29, 2004) (appellant did not support a claim that her paperwork was improperly forwarded with probative evidence).

¹² An allegation of overwork must be supported by probative evidence. *Peter D. Butt, Jr.*, 56 ECAB ____ (Docket No. 04-1255, issued October 13, 2004).

¹³ *Margaret S. Krzycki*, *supra* note 4.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish an injury causally related to compensable work factors.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 23, 2005 is affirmed.

Issued: October 24, 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