

On July 9, 2002 the employing establishment issued appellant a letter of warning for failure to properly perform his managerial duties. Appellant's facility was scheduled to go online June 29, 2002 with a new computer-based application (delivery operations information system (DOIS)). However, the June 29, 2002 launch did not proceed as planned. The employing establishment counseled appellant for failing to provide the DOIS coordinator with sufficient advance notice of any issues that would interfere with the scheduled implementation.¹

The employing establishment also issued a July 23, 2002 letter of warning in lieu of a 7-day suspension. Appellant was charged with being absent without official leave (AWOL) on July 2, 2002. The employing establishment also charged him with failure to comply with rules and regulations governing absences.

On July 25, 2002 appellant received another letter of warning, which was in lieu of a 14-day suspension. He was again charged with failure to properly perform his managerial duties. The July 25, 2002 letter of warning indicated that appellant had not corrected various deficiencies outlined in a March 2002 Fair Labor Standards Act (FLSA) audit. When a follow-up FLSA audit was conducted on June 7, 2002, the same deficiencies were noted despite appellant's prior assurance that the identified problems would be corrected.

Appellant invoked his right to mediation with respect to the July 2002 letters of warning. The parties met July 29, 2002, but were unable to reach an agreement on the various issues.

In an August 2, 2002 statement, appellant explained that his receipt of several disciplinary letters over a short period of time resulted in a hostile work environment. He further stated that he suffered from several personal illnesses and the hostile work environment created by the Bronx postmaster, Tony Rosario, caused him more stress, which interfered with the successful completion of his job duties. Appellant also stated that his due process right had been infringed upon, thus causing more stress.

Mr. Rosario provided an August 12, 2002 statement in which he indicated that appellant failed to comply with various requirements of his job, and consequently, was reprimanded by his superiors. He further indicated that when he became aware of certain work deficiencies it was his responsibility to advise the area managers to take appropriate action to correct the deficiencies. However, the means by which the area managers addressed the situation was solely their responsibility. Mr. Rosario also stated that the actions taken by appellant's superiors were warranted because appellant either failed to get the job done or failed to hold his staff accountable for their performance.

Appellant provided a supplemental statement on October 5, 2002. He noted that he had numerous discussions with his manager, David Robinson, regarding the need for assistance due to staff shortages. Because of position vacancies and other supervisors being loaned out, appellant reportedly had to take on additional responsibilities. He indicated that no plan was developed to maintain stability at his facility and his expressed concerns went unanswered. Appellant also stated that he became aware of a possible serious medical condition in June 2002

¹ The employing establishment issued a similar letter of warning on July 3, 2002. However, this letter was rescinded July 8, 2002.

and he informed his supervisors of this prior to the issuance of any disciplinary actions. He further indicated that he was written up for missing a DOIS meeting despite having informed his manager that he received a notice for jury duty that week. Appellant also noted that he had been approved for leave that same week because of scheduled medical testing.

Appellant also commented about certain job duties. He indicated that he was expected to stand in the lobby and greet customers for two hours a day while at the same time he was expected to perform certain street duties, which was an all-day process. Appellant said it was impossible to perform all of his duties because one could not be in two places at the same time. According to appellant, these types of orders were typical for station managers in the Bronx, which according to appellant, was a constant source of stress for all managers. Appellant also noted that a recent FLSA audit of Bronx stations showed a 95 percent failure rate, which was indicative that upper management was not doing enough to assist the station managers.

With respect to the several disciplinary actions he received in July 2002, appellant alleged that they were punitive rather than corrective because they did not include a plan to ameliorate the problematic conditions. He also alleged that Mr. Rosario ordered the disciplinary actions. Lastly, appellant claimed that he was deprived of his right to mediation.

In an October 15, 2002 response, Mr. Rosario indicated that the problems appellant noted about staffing were the same problems that existed when appellant served as acting manager at the same facility. When appellant applied for the permanent position, he reportedly assured the hiring committee and Mr. Rosario that he was ready to take on the tasks. Additionally, appellant neglected to mention that staffing was adjusted as a result of a route inspection. Mr. Rosario indicated that appellant's problem was not adequate staffing, but getting his people to come to work.

Mr. Rosario also noted that, when appellant advised him of a possible serious medical condition, he offered appellant any assistance available, including time off and appointing someone else to assume appellant's duties. Appellant refused, stating that he wanted to keep working because he needed to keep his mind occupied. With respect to being required to perform multiple duties at the same time, Mr. Rosario responded that as a manager one is required to perform numerous tasks at a time and expected to be successful at all of them. He also noted that while many managers prefer to perform certain tasks personally, some of the duties appellant mentioned could be accomplished by delegating the responsibility to his staff. Mr. Rosario also stated that appellant incorrectly stated that 95 percent of the stations failed the FLSA audit. He also indicated that appellant was not disciplined for failing the audit, but for failing to correct the problems after the initial audit results had been brought to his attention. As to the alleged punitive nature of the successive disciplinary actions, Mr. Rosario indicated that the timing of the disciplinary actions coincided with the timing of the events warranting discipline. He noted that appellant was responsible for allowing these incidents to occur all within a short time period and it was the employing establishment's responsibility to address the infractions in a timely manner. Mr. Rosario also indicated that appellant had not been denied mediation, but merely had exhausted his remedies without receiving 100 percent satisfaction.

Appellant submitted August 1 and 8, 2002 treatment notes from Beth Israel Medical Center that included a diagnosis of anxiety. He was excused from work beginning

August 1, 2002.² Appellant was also treated by Geraldine Greene, a social worker and psychotherapist. In an August 12, 2002 report, Ms. Greene noted that appellant was recently seen for anxiety and depression, due to job-related stress and a diagnosis of leukemia following a routine blood donation. Dr. Robert D. Roy, a psychiatrist, examined appellant on September 13, 2002 and diagnosed unspecified episodic mood disorder. In a subsequent report dated September 24, 2002, Dr. Roy indicated that appellant's symptoms of anxiety and depression appeared to be related to acute and chronic stresses of his job. He later released appellant to return to his regular duties without restriction effective November 4, 2002.

In a decision dated May 7, 2003, the Office denied appellant's emotional condition claim. He requested an oral hearing, which was held on January 22, 2004. By decision dated April 14, 2004, the Office hearing representative affirmed the prior denial on the basis that appellant failed to establish a compensable employment factor as the cause of his claimed emotional condition.

On April 5, 2005 appellant requested reconsideration. He resubmitted a copy of his October 5, 2002 supplemental statement. Appellant also submitted an August 9, 2004 psychiatric evaluation from Dr. Roy, who diagnosed post-traumatic stress disorder and mood disorder. Additionally, appellant submitted a February 15, 2005 statement from John Vincenzi, the Bronx chapter president of the National Association of Postal Supervisors. Mr. Vincenzi indicated that appellant's supervisor, Mr. Robinson, stated in his presence that he was fearful of losing his job if he did not issue appellant the three disciplinary letters requested by Mr. Rosario. Mr. Robinson also reportedly stated that he was fearful of losing his job if he considered reducing the disciplinary actions.

In a decision dated July 18, 2005, the Office denied modification of the prior decision.

LEGAL PRECEDENT

To establish that he sustained an emotional condition causally related to factors of his federal employment, a claimant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.³

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from factors such

² The signature of the individual who signed both notes is illegible.

³ See *Kathleen D. Walker*, 42 ECAB 603 (1991). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.⁴ Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.⁵

ANALYSIS

Appellant alleged that his emotional condition was the result of harassment from the Bronx postmaster, which was carried out by area managers in the form of a series of July 2002 disciplinary actions. The record establishes that appellant received letters of warning on July 9, 23 and 25, 2002 for various employment infractions that included being AWOL on July 2, 2002 and failure to properly perform his managerial duties. Appellant claimed that the three disciplinary actions were arbitrary and punitive. He also testified that the employing establishment eventually dropped the "bogus" charges.

Disciplinary actions are an administrative function of the employer.⁶ As a general rule, an employee's reaction to administrative or personnel matters falls outside the scope of the Federal Employees' Compensation Act.⁷ However, to the extent 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.⁸

Appellant has not established error or abuse on the part of the employing establishment in issuing any of the three July 2002 disciplinary actions. Although he testified that the charges were eventually dropped by the employing establishment, appellant provide no such proof. The record indicates that appellant invoked his right to mediation, but as of July 29, 2002 no resolution had been reached. The filing of a grievance or an equal employment opportunity complaint is not sufficient by itself to establish error or abuse.⁹

The record includes an October 16, 2002 unsigned letter on employing establishment stationery that proposed to rescind the July 9, 2002 letter of warning and modify the July 23 and 25, 2002 letters of warning. The proposed "disciplinary settlement" also recommended that the two remaining letters of warning be expunged from appellant's record effective December 31, 2002. It is not clear from the record whether these proposed actions were implemented. Absent an admission of fault, a settlement agreement that results in the modification or rescission of a disciplinary action does not establish error or abuse on the part of the employing establishment.¹⁰ Consequently, appellant has failed to establish error or abuse

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁶ *Janice I. Moore*, 53 ECAB 777, 781 (2002); *Bobbie D. Daly*, 53 ECAB 691, 696 (2002).

⁷ *Andrew J. Sheppard*, 53 ECAB 170, 173 (2001).

⁸ *Id.*

⁹ *Michael A. Salvato*, 53 ECAB 666, 668 (2002).

¹⁰ *Id.*; *Kim Nguyen*, 53 ECAB 127, 128 (2001).

such that the July 2002 letters of warning would warrant inclusion as compensable employment factors under the Act.

Appellant's general dissatisfaction with his postmaster and area managers is also not compensable. Complaints about the manner in which a supervisor performs his duties or the manner in which a supervisor exercises his discretion fall, as a rule, outside the scope of coverage provided by the Act.¹¹ This principle recognizes that a supervisor or manager in general must be allowed to perform his duties and employees will, at times, dislike the actions taken, but mere disagreement or dislike of a supervisory or managerial action will not be actionable, absent evidence of error or abuse.¹² As appellant failed to establish a compensable employment factor, the Office properly denied his claim.

CONCLUSION

The Board finds that appellant failed to establish that he sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the July 18, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 24, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

¹¹ *Marguerite J. Toland*, 52 ECAB 294, 299 (2001).

¹² *Id.*