



(BSSA), which he felt was a demeaning position, a denial of a transfer request and a performance review that included a “negative attitude” assessment. Appellant alleged that these actions were taken in retaliation for an incident in August 2003 when he had met with supervisor Elissa Brown and related to her information regarding the actions of another supervisor. He also indicated that he had filed an Equal Employment Opportunity (EEO) complaint of age discrimination when his request for transfer was denied. According to appellant, while the EEO investigation was underway Ms. Brown approached him during a break in training class and stated, “[appellant], my favorite person,” which appellant interpreted as a threat. Appellant indicated that the EEO complaint was pending, but he was disappointed with the EEO investigator’s report. With respect to his medical condition, appellant indicated that in August 2004 he was diagnosed with atrial fibrillation and congestive heart failure; he underwent surgery to implant a cardioverter defibrillator.

By decision dated November 17, 2004, the Office denied appellant’s claim for compensation. The Office determined that appellant had not alleged and established compensable work factors with regard to his claim.

Appellant requested a hearing before an Office hearing representative, which was held on July 14, 2005. The evidence regarding the assignment to BSSA included an October 9, 2003 letter advising appellant that he was being reassigned as there was a growing need for experienced and capable agents to handle “loose ends” at the BSSA. A November 3, 2003 memorandum stated that the assigned position was important and necessary, and the employing establishment regretted that appellant felt it was a less than worthy position. The record contains an EEO investigative report dated June 25, 2004, with respect to an allegation of age discrimination based on appellant’s having been “assigned more Public Safety Unit mail out cases than other employees” and receiving admonishments concerning the manner in which he processed cases. The record contains a “mail out case assignment” from February 2004.

In a letter dated November 5, 2004, the Office of Special Counsel (OSC) noted that appellant alleged he was reassigned on October 14, 2003 and his performance rating was lowered because of whistle-blowing activities that included making a report to Ms. Brown in August 2003 while acting as a union representative. The OSC advised that there was no basis for further inquiry in the matter as there was “no information, such as statements of animus or other comments, by the official that would establish a connection between your reassignment and your claimed protected activity.”

In an August 15, 2005 statement, Ms. Brown indicated that in December 2003 appellant was offered an immediate transfer to the Narcotics Investigation Group but appellant turned down the transfer because of a knee condition. Ms. Brown stated that appellant began placing parameters on being transferred and it was management’s duty to determine the needs of the office.

By decision dated December 9, 2005, the hearing representative affirmed the November 17, 2004 Office decision.

## LEGAL PRECEDENT

Appellant has the burden of proof to establish his claim for compensation.<sup>1</sup> To establish a claim that he sustained a condition in the performance of duty, appellant must submit factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition, as well as rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his diagnosed condition.<sup>2</sup>

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 her fear and anxiety regarding her ability to carry out his work duties.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup>

## ANALYSIS

Appellant has stated that he is not claiming an emotional condition from his federal employment, but rather that his heart condition was caused or aggravated by stress in his federal

---

<sup>1</sup> See *Penelope C. Owens*, 54 ECAB 684 (2003).

<sup>2</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>3</sup> *Ronald J. Jablanski*, 56 ECAB \_\_\_\_ (Docket No. 05-482, issued July 13, 2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>4</sup> *Id.*

<sup>5</sup> *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>6</sup> See *Charles E. McAndrews*, 55 ECAB \_\_\_\_ (Docket No. 04-1257, issued September 10, 2004.)

employment. Whether the claim is a physical injury, an emotional condition, or a combination of both, the employment factors alleged to have contributed to the injury must be compensable work factors and must be substantiated by the record.<sup>7</sup> Appellant has discussed administrative actions of the employing establishment, including a reassignment, a denial of transfer and a performance evaluation. 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.<sup>8</sup> 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.<sup>9</sup> Appellant alleges that in this case the administrative actions were taken in retaliation for his union activities, specifically regarding the information he provided to Ms. Brown in August 2003 concerning another supervisor. There is, however, no probative evidence of record to substantiate the allegation. Appellant did file a complaint with the OSC of reprisal for whistle-blowing activity, but the OSC did not make a finding of error, nor is there any evidence of error in an administrative matter. Although appellant alleged that the reassignment to BSSA in October 2003 was to a position that was demeaning, the employing establishment indicated they needed an experienced agent in that position and the job was important.

Appellant also filed EEO complaints of age discrimination in this case. He stated that he filed a complaint based on the denial of a transfer, and the evidence indicated that he complained he was given more mail out cases than other employees. The filing of an EEO complaint does not establish discrimination; there must be probative evidence to support the allegations.<sup>10</sup> There is no evidence as to the denial of a transfer request in the record. The EEO report on the complaint of excessive mail out cases does not make any findings of discrimination. The assignment list of record shows appellant received more than some employees, but less than others. There is no probative evidence of record sufficient to establish a compensable work factor regarding an allegation of age discrimination. To the extent that appellant expressed frustration with the EEO process, this does not relate to his job duties and does not constitute a compensable work factor.<sup>11</sup>

In addition to allegations of retaliation and discrimination, appellant reported that Ms. Brown made a sarcastic comment at a training class. While the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to a compensable work factor.<sup>12</sup> The allegation did not establish that appellant was subject to verbal abuse, nor is there any evidence that it was intended as a threat.

---

<sup>7</sup> See *George A. Ross*, 43 ECAB 346 (1991).

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

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

<sup>10</sup> *Michael A. Deas*, 53 ECAB 208 (2001).

<sup>11</sup> See *Peggy Ann Lightfoot*, 48 ECAB 490 (1997).

<sup>12</sup> *Judy L. Kahn*, 53 ECAB 321, 326 (2002).

Accordingly, the Board finds that appellant did not allege and substantiate a compensable work factor in this case. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.<sup>13</sup>

**CONCLUSION**

Appellant did not allege and substantiate compensable work factors with respect to his claim, and therefore he did not meet his burden of proof in this case.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 9, 2005 is affirmed.

Issued: June 9, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

---

<sup>13</sup> See *Margaret S. Krzycki*, *supra* note 5.