



By letter dated April 26, 2006, the Office requested additional factual and medical information. Appellant submitted medical reports and a May 7, 2007 statement. He asserted that he previously described the work events to which he attributed his condition. Appellant related that his February 9, 2006 meeting with Bettie Isiaka, a manager, was the culmination of the incidents that caused his chest pains.

By decision dated June 8, 2006, the Office denied appellant's claim on the grounds that he did not establish an emotional condition in the performance of duty. The Office noted that he had provided no details regarding the meeting with his manager.

Appellant submitted a redacted copy of a February 9, 2006 statement to Ms. Isiaka, which the Office received on June 9, 2006. He alleged that Steve Aronberg, a supervisor, applied different work standards to minorities. Mr. Aronberg required more extensive data from appellant in investigations than nonminority employees. He also did not assign another investigator time-consuming sexual harassment cases. Appellant questioned Ms. Isiaka's assertion in a staff meeting that there was no discrimination in the workplace. He described instances where Mr. Aronberg allowed nonminority employees to perform less work. Appellant had to work additional hours for Mr. Aronberg to approve his cases.

In a February 15, 2006 e-mail message, Ms. Isiaka noted that on February 9, 2006 she and appellant discussed his need to be more productive. He expressed his intention to speak to the inspector general's office and the media if Mr. Aronberg did not "get off [his] back." In an April 11, 2006 e-mail message, appellant requested information on the status of his grievance. He alleged that Mr. Aronberg discriminated against him by placing him on a performance improvement plan (PIP).

On August 1, 2006 appellant requested reconsideration. He described the employment factors to which he attributed his condition in a statement received by the Office on December 11, 2006. When appellant returned from vacation on January 10, 2006, his supervisor had reviewed his caseload and provided specific time frames for case closure. In a meeting in early February, he expressed his concerns about the time frames for case closure. Ms. Isiaka responded that she desired swifter case closures, which caused appellant stress and anxiety. Appellant met with Ms. Isiaka on February 9, 2006 to discuss his work. He described the meeting as "spirited." Appellant sought medical treatment at the emergency room the next day after experiencing severe chest pains while working at home. He also related that his first-line supervisor harassed and discriminated against him by applying different work standards towards him.

By decision dated July 19, 2007, the Office denied modification of its June 8, 2006 decision. The Office found that appellant had not established any compensable employment factors.

### **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 duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>1</sup> 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.<sup>2</sup>

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 the Act.<sup>3</sup> 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.<sup>4</sup> In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.<sup>5</sup>

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.<sup>6</sup> A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and Equal Employment Opportunity complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.<sup>7</sup> The issue is whether the claimant has submitted sufficient evidence under the Act to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>8</sup> The primary reason for requiring factual evidence from the claimant is support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.<sup>9</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>2</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>3</sup> See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>4</sup> See *William H. Fortner*, 49 ECAB 324 (1998).

<sup>5</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>6</sup> See *Michael Ewanichak*, 48 ECAB 364 (1997).

<sup>7</sup> See *Charles D. Edwards*, 55 ECAB 258 (2004); *Parley A. Clement*, 48 ECAB 302 (1997).

<sup>8</sup> See *James E. Norris*, 52 ECAB 93 (2000).

<sup>9</sup> *Beverly R. Jones*, 55 ECAB 411 (2004).

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, 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.<sup>10</sup> If a claimant does implicate a factor of employment, the Office 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, the Office must base its decision on an analysis of the medical evidence.<sup>11</sup>

### ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. The Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant has not alleged that he developed an emotional condition due to the performance of his regular or specially assigned duties or out of a specific requirement imposed by his employment. He attributed his emotional condition instead to discrimination by a supervisor and to meetings with his managers concerning his workload and work assignments.

Appellant related that Mr. Aronberg, his supervisor, applied a different standard to him because he was a minority. If disputes and incidents alleged as constitutes harassment and discrimination by supervisors and coworkers are established as occurring and arising from the employee's performance of his regular duties, these could constitute employment factors.<sup>12</sup> The evidence, however, must establish that the incidents of harassment and discrimination occurred as alleged.<sup>13</sup> Appellant maintained that Mr. Aronberg assigned him more work and work that took longer to complete than he assigned to nonminority employees. He also asserted that he had to work extra hours for Mr. Aronberg to approve his cases. Appellant did not, however, submit any evidence to support his allegations or provide any evidence, such as witness statements, corroborating that Mr. Aronberg discriminated against him. His allegations alone are insufficient to establish a factual basis for his claim. Appellant has the burden to establish a factual basis for his allegations with probative and reliable evidence.<sup>14</sup>

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<sup>10</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>11</sup> *Id.*

<sup>12</sup> *Janice I. Moore*, 53 ECAB 777 (2002).

<sup>13</sup> *Id.*

<sup>14</sup> *See Pamela D. Casey*, 57 ECAB \_\_\_\_ (Docket No. 05-1768, issued December 13, 2005).

Appellant additionally alleged that Mr. Aronberg discriminated against him by placing him on a PIP. An employee's emotional reaction to being placed on a PIP is not covered under the Act absent evidence of error or abuse.<sup>15</sup> Appellant did not submit any evidence to establish error or abuse by Mr. Aronberg in placing him on a PIP. This is not established as a compensable employment factor.

Appellant experienced chest pains while working at home the day after he met with a manager, Ms. Isiaka, to discuss his work assignments. A supervisor had reviewed appellant's workload while he was on vacation and provided time frames for case closures. At the meeting appellant expressed concern about the time frames for closing his cases. The Board, however, has characterized discussions about job performance as an administrative or personnel matter of the employing establishment, which is covered only when there is evidence of error or abuse.<sup>16</sup> Additionally, the assignment of work duties is an administrative function of the employer and not a duty of the employee, and thus is only compensable where the evidence discloses error or abuse on the part of the employing establishment.<sup>17</sup> Appellant has not submitted any evidence of error or abuse by the employing establishment in the assignment of work or the meeting with Ms. Isiaka about his work assignments and the time frames for case closures. Thus, he has not established a compensable employment factor.

As appellant failed to establish any compensable factors of employment, the Office properly denied his claim

On appeal, appellant alleges that he submitted sufficient medical evidence to establish his claim. As he has not established any compensable employment factors, however, the Board need not consider the medical evidence.<sup>18</sup>

### **CONCLUSION**

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

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<sup>15</sup> *Sherry L. McFall*, 51 ECAB 436 (2000).

<sup>16</sup> *See David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

<sup>17</sup> *Lori A. Facey*, 55 ECAB 217 (2004).

<sup>18</sup> *See Hasty P. Foreman*, 54 ECAB 427 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 19, 2007 is affirmed.

Issued: March 6, 2008  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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