

On October 14, 2008 the Office informed appellant that the evidence submitted was insufficient to establish his claim. It advised him to describe in detail the employment-related conditions or incidents which he believed contributed to his claimed condition and submit a detailed narrative medical report from a psychiatrist that explained how factors of his federal employment duties contributed to the condition diagnosed. The Office also asked appellant to provide any evidence he possessed supporting his allegations, or which demonstrated that his employer erred or acted abusively.

In a statement dated September 25, 2008, appellant alleged that he had experienced stress as a result of increased demands by the employing establishment. In his original September 2005 assignment as an accounting technician in the Comptroller Office, not only was he responsible for monitoring his own accounts, but he was also required to assist others outside his command, including Defense Accounting and Financial Service (DFAS) personnel. Appellant stated his belief that he performed more but received less in compensation than his coworkers.

In October 2006 the staff in appellant's section was reportedly reduced from seven to two. Although his section had a smaller staff, it had a larger workload than the other teams. Appellant worked five days a week, with no breaks other than for lunch. He had a problem meeting daily, weekly and monthly deadlines, as he was never given ample time for completion of assigned tasks. Appellant was not provided an adequate response when he asked why allotted completion time was reduced. Although he always met his goals well ahead of the set time frame, often managers would still complain. These complaints led to frustration, anger, sleep disturbances, anxiety and depression.

On May 30, 2006 appellant suffered a stroke at his desk and missed six weeks of work while recovering. After returning to work on August 15, 2006, personnel were reorganized into three teams (Fuel, TAD and Core). Appellant was allegedly given a smaller staff and an increased workload, effectively doubling his duties, while other areas had a reduced workload. New hires were assigned to teams with workloads that were smaller than appellant's. Additionally, appellant's workload allegedly increased when coworker, Scott Graham, left the Core team on August 30, 2008 and his workload was divided between appellant and coworker, John Miller. He contended that management had failed to redistribute the overall workloads, despite his complaints.

Appellant alleged that he was treated differently than other employees. Managers always demanded tasks of him; whereas, when dealing with others, they were more pleasant. Appellant hoped this treatment was not "a color thing with the supervisors."

Appellant's request for leave in July 2008 was allegedly denied. Another coworker was granted leave the following week. Although appellant's physician restricted him from working for six weeks, he was not granted permission to leave work until 11:00 a.m. on September 24, 2008 and was required to travel back to the doctor for additional information.

Appellant submitted an unsigned hospital report dated June 8, 2008 reflecting that he was admitted on June 2, 2008 after experiencing a stroke at work. He was discharged with a diagnosis of left vertebral artery dissection.

Appellant submitted reports from Dr. Steven J. Davis, a Board-certified psychiatrist. On September 23, 2008 Dr. Davis requested six weeks of annual leave on behalf of appellant “to enable time for recovery from life stressors.” On November 3, 2008 he stated that appellant sustained a cerebrovascular accident in 2006, which caused a lessening of his ability to function at work and required an extension of his disability status. On December 15, 2008 Dr. Davis diagnosed cognitive disorder, depression and anxiety disorder and opined that, due to added stressors, including his recent divorce, he was permanently disabled from work.

On January 5, 2009 the employing establishment responded to appellant’s allegations.¹ Patricia A. Bishop, Fleet Acting Supervisor, stated that, although appellant’s current duties were essentially the same as those in his original position description, he was not responsible for any FASTDATA related reconciliation and was not responsible for auditing Naval Air Station/ashore related financial transactions. No accommodations were made to reduce stress for appellant because the establishment was not aware that he was under any stress until he called in sick on September 8, 2008.

The employer denied that appellant was burdened with additional duties due to Mr. Graham’s resignation. On September 10, 2008 it approved appellant’s plan to redistribute the workload to reduce activities for which he was responsible. On September 16, 2008 appellant submitted an e-mail stating that he was having second thoughts about letting anyone else from another team handle the extra work. He felt that he could do it himself for a short period of time until the vacancy was filled. Appellant asked that the 22 activities be moved back to him for a month. Ms. Bishop agreed to “let him try” for the remainder of the month, at which time the situation would be reevaluated.

Ms. Bishop stated that appellant was not assigned an additional workload when he returned to work on August 25, 2006 after a minor stroke. On September 10, 2008 Mr. Graham’s workload was split between appellant and the entire Travel team. Appellant’s workload did not change, because he was already overseeing these accounts. Further, his claim that he was not given ample time to complete assigned tasks was unfounded. Financial month-end reporting deadlines are established by the DFAS as the result of due dates which are mandated by Congress for the Department of the Navy’s official financial reports.

The employer denied that appellant performed extra duties, such as assisting others in different divisions, in addition to his regular assigned duties. A March 2007 reorganization provided for the creation of three teams (responsible for Fuel, Travel and Core functions). Appellant was the “lead” for the Core team. As a result of a review, which was conducted several months after the teams were established to ensure there were sufficient personnel on each team to perform the required duties, one technician was shifted from the Core team to the Fuel team. Appellant’s workload did not increase; rather, it became more specialized as a result of the reorganization. A new employee, hired to backfill a lost position, was added to another team to properly address the workload.

¹ The employing establishment submitted a copy of appellant’s position description dated May 21, 2005, modified September 21, 2008.

The supervisor denied that appellant had difficulty meeting deadlines or that managers complained about his performance. Appellant always completed assignments well within the required due dates and had always been given favorable appraisals for his contributions. In January 2008, as a result of the first NSPS appraisal, he received a substantial payout.

Ms. Bishop indicated that, although there were no scheduled breaks other than the half-hour lunch break, employees were allowed to get up from their desks at anytime during the day to stretch their legs, go to the vending machines, or to the Credit Union etc.

The employing establishment denied that it improperly delayed appellant's request for medical leave on September 24, 2008. The doctor's letter was not received until September 24, 2008. As there were no beginning and ending dates on the letter to indicate when the doctor wanted his leave to begin, Ms. Bishop requested clarification. Additionally, appellant's request for leave beginning July 4, 2008 was denied because the requested period was during both the monthly and quarterly close out deadlines. Leave was granted to another employee for the following week because the closeout deadlines were over and there was no workload conflict.

In a decision dated January 13, 2009, the Office denied appellant's claim on the grounds that he had failed to establish the fact of injury. Appellant failed to identify dates, circumstances or other details to allow the Office to assess his allegations. Further, he did not provide any witness statements, or written documents to support his allegations.

On January 26, 2009 appellant requested an oral hearing. He reiterated his claim that he was overworked and was not assigned a lighter workload upon his return to work following his stroke. Appellant indicated that his physician advised him to stop working on September 8, 2008 due to stress.

At the May 11, 2009 oral hearing, appellant testified that his condition was a direct result of his job assignment. On numerous occasions, he unsuccessfully sought a redistribution of his workload. Appellant stated that his supervisor failed to properly explain the deadlines for submission of budget operating reports. Management was never satisfied and did not give him proper feedback. In 2006, appellant was performing the job of two people. When he returned to work after his stroke, he was assigned additional duties. Appellant performed his job so well that he was given an award and a raise. Management shifted the workload from other sections to his section. Appellant asked for the work to be redistributed because his "plate [was] already full."

By decision dated August 13, 2009, the Office hearing representative affirmed the January 12, 2009 decision, finding that appellant had not established that an injury occurred at work in the manner alleged, and that the medical evidence did not contain a diagnosis that was causally related to his employment.

LEGAL PRECEDENT

To establish a claim that an emotional condition arose in the performance of duty, a claimant 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 the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.²

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 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 his ability to carry out his work duties.³ 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 to hold a particular position.⁴ An employee's emotional reaction to an administrative or personnel matter is generally not covered by workers' compensation. The Board has held, however, that error or abuse by the employing establishment in an administrative or personnel matter may afford coverage.⁵

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. 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.⁶

The Board has held that allegations, alone, by a claimant are generally insufficient to establish a factual basis for an emotional condition claim but must be substantiated by the evidence.⁷ Mere perceptions and feelings of harassment or discrimination will not support an

² *D.L.*, 58 ECAB 667 (2006).

³ *Ronald J. Jablanski*, 56 ECAB 616 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁴ *Id.*

⁵ *Margreat Lublin*, 44 ECAB 945 (1993). See generally *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁶ *D.L.*, *supra* note 2; *T.G.*, 58 ECAB 189 (2006); *C.S.*, 58 ECAB 137 (2006); *A.K.*, 58 ECAB 119 (2006).

⁷ *Charles E. McAndrews*, 55 ECAB 711 (2004); see also *Arthur F. Hougens*, 42 ECAB 455 (1991) and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence established such allegations).

award of compensation. The claimant must establish such allegations with probative and reliable evidence.⁸

With regard to claims under the Act, the Board has held that the determination of an employee's rights or remedies under other statutory authority does not establish entitlement to benefits under the Act. Under the Act, to establish disability, an employee's injury must be shown to be causally related to an accepted injury or accepted factors of his or her federal employment. For this reason, the determinations of other administrative agencies or courts, while instructive, are not determinative with regard to disability arising under the Act. Findings made by the MSPB or EEO Commission may constitute substantial evidence relative to a claim to be considered by the Office and the Board.⁹

ANALYSIS

The Office denied appellant's claim that he sustained an emotional condition as a result of conditions of his employment. The Board finds that he has established a compensable factor of employment to which he attributed his conditions of anxiety and stress. The medical evidence, however, is insufficient to establish that appellant sustained a diagnosed condition that was causally related to the accepted employment factor. Therefore, he failed to meet his burden of proof.

Appellant alleged that his workload increased when he assumed half of Mr. Graham's duties upon his departure from the Core team on August 30, 2008. His supervisor denied that appellant was burdened with additional duties due to Mr. Graham's resignation, stating that his workload did not change because he was already overseeing those accounts. The supervisor acknowledged, however, that he had approved a plan on September 10, 2008 to redistribute the workload to reduce activities for which appellant was responsible. He agreed that appellant could continue to perform an additional 22 activities for the remainder of the month, at which time the situation would be reevaluated. The supervisor's acknowledgement that appellant was performing an additional 22 activities following Mr. Graham's departure, and his willingness to redistribute the workload, supports appellant's claim that his workload increased due to the vacant position. Given that these duties related to his regular and specially assigned work, the Board finds that he has established a compensable employment factor under *Cutler*.¹⁰

Appellant also alleged that he performed more but received less in compensation than his coworkers, that he had a smaller staff but a larger workload than the other teams, that he was required to assist employees outside of his command, that he had a problem meeting deadlines and was not given time to complete tasks and that he worked without breaks. He has failed, however, to provide sufficient factual evidence to establish a basis for his claim with regard to

⁸ *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (it was found that the employee failed to establish the incidents or actions characterized as harassment).

⁹ See *Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁰ *Lilian Cutler*, *supra* note 3.

these allegations. Appellant submitted no corroborating evidence, such as witness statements or documents. The employing establishment denied the allegations. Ms. Bishop stated that appellant had no problem meeting deadlines or performing his duties and, in fact, received performance awards. She explained that the employing establishment had undergone a reorganization in an attempt to properly distribute the workload among the employees. Ms. Bishop indicated that, while there were no formal breaks other than lunch, employees were free to take impromptu breaks as desired. The Board finds that there is insufficient evidence to establish appellant's allegations regarding the above-mentioned allegations as factual. Therefore, they are not deemed compensable factors of employment.

Appellant alleged that his request for leave in July 2008 was denied, while a coworker's request was granted the following week, and that his request for medical leave was delayed unreasonably in September 2008. He alleged that management failed to properly redistribute the workload and made no attempt to accommodate his stress upon his return to work following his stroke in August 2006. These allegations relate to administrative or personnel matters unrelated to his regular or specially assigned work duties and do not fall within the coverage of the Act.¹¹ Although the handling of disciplinary actions and leave requests, the assignment of work duties and the monitoring of work activities are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹² However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹³

In this case, appellant has not submitted any evidence to establish that his supervisors or managers committed error or abuse with respect to these matters. Ms. Bishop stated that no accommodations to reduce stress was made because the employer was not made aware that appellant was under any stress until he called in sick on September 8, 2008. She explained that the employing establishment was reorganized to promote efficiency and reviews were conducted after teams were established to ensure there were sufficient personnel on each team to perform the required duties. Appellant's workload did not increase; rather, it became more specialized as a result of the reorganization. His request for leave beginning July 4, 2008 was denied because the requested period was during both the monthly and quarterly closeout deadlines. Leave was granted to another employee for the following week because the closeout deadlines were over and there was no workload conflict. The employing establishment denied that it improperly delayed appellant's request for medical leave on September 24, 2008, as the doctor's letter was not received until September 24, 2008 and clarification was required to determine the dates of disability. The Board finds that the employing establishment's actions were reasonable under the circumstances of the case and appellant has not provided evidence to the contrary. Appellant's

¹¹ See *Lori A. Facey*, 55 ECAB 217 (2004). See also *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹² *Id.*

¹³ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

dissatisfaction with perceived poor management is not compensable under the Act.¹⁴ Consequently, he has not established a compensable factor of employment with regard to these administrative matters.

Appellant alleged that he was treated differently than other employees. He stated that managers always demanded tasks of him; whereas, when dealing with others, they were more pleasant. Appellant hoped this treatment was not “a color thing with the supervisors.” His allegations alone are insufficient to establish a factual basis for his claim.¹⁵ Appellant submitted no evidence to establish his general allegations of discrimination. General allegations that he was treated unfairly by management are insufficient to establish that harassment or discrimination did, in fact, occur. Under the circumstances of this case, appellant’s emotional reaction must be considered self-generated, in that it resulted from his perceptions regarding his supervisors’ actions.¹⁶ Thus, the Board finds that appellant has not established a compensable employment factor under the Act with respect to these above-described allegations.

Appellant has established a compensable factor of employment, namely that he had an increased workload in August 2008 when he assumed certain duties of Mr. Graham. Therefore, the Board must review the medical evidence.¹⁷

The medical evidence of record consists of reports from appellant’s treating physician, Dr. Davis, and an unsigned hospital report dated June 8, 2006. On September 23, 2008 Dr. Davis requested six weeks of annual leave on behalf of appellant “to enable time for recovery from life stressors.” On November 3, 2008 he stated that appellant sustained a cerebrovascular accident in 2006, which caused a lessening of his ability to function at work and required an extension of his disability status. On December 15, 2008 Dr. Davis diagnosed cognitive disorder, depression and anxiety disorder and opined that, due to added stressors, including his recent divorce, he was permanently disabled from work. His reports provide a history of treatment for appellant’s emotional condition; but do not with medical rationale how appellant’s anxiety and depression were caused or contributed to by the accepted employment factor.¹⁸ Dr. Davis did not provide any opinion as to the cause of appellant’s diagnosed condition.¹⁹ Therefore, his reports are of limited probative value. As the June 8, 2006 hospital report does not contain an opinion as to the cause of appellant’s condition, it, too, is of diminished probative value. The Board finds that the medical evidence of record is insufficient to meet appellant’s burden of proof and does not establish that he sustained an emotional condition as a result of the accepted employment factor.

¹⁴ *Id.*

¹⁵ See *Charles E. McAndrews*, *supra* note 7.

¹⁶ See *David S. Lee*, 56 ECAB 602 (2005).

¹⁷ *Tina B. Francis*, 56 ECAB 180 (2004); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁸ Medical reports not containing rationale on causal relation are of diminished probative value. *Jimmie H. Duckett*, 52 ECAB 332, 336 (2001).

¹⁹ *Michael E. Smith*, 50 ECAB 313 (1999) (medical evidence which does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship).

CONCLUSION

The Board finds that appellant has established a compensable employment factor with respect to an increased workload due to his assumption of additional duties upon his coworker's departure from the Core team on August 30, 2008. The medical evidence, however, is insufficient to establish that he sustained an emotional condition due to this factor.

ORDER

IT IS HEREBY ORDERED THAT the August 13, 2009 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: August 25, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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