



realized that it was employment related. Appellant stopped work on May 12, 2008 and did not return.

In a June 24, 2008 letter, the Office informed appellant that the evidence of record was insufficient to support his claim as the only evidence received was his claim form. It requested that he submit additional factual and medical evidence.

Appellant provided narrative statements addressing several incidents to which he attributed his emotional condition. He worked as supervisor of the recreation department and addressed several changes made to the work schedule of his department that affected himself and his employees. In March 2008, Assistant Warden Russell and Ivonne Benet-Rivera, supervisor of education, made changes to the schedule in which appellant would work one night a week and one Sunday a month. Otherwise, the remainder of his shift went from starting at 6:30 a.m. to 7:30 a.m. Appellant noted that he accepted this change and made arrangements for his minor children to be attended. The change also affected the slot-three schedule and two subordinate employees, Philip Ryan and Kim McMillan. Mr. Ryan had seniority under the bidding process and Ms. McMillan subsequently complained to the supervisor of education about the change to her shift. Ms. McMillan was subsequently sent for training in time and attendance and Mr. Ryan was removed from such duties. Appellant advised that this change in duties were made by Ms. Benet-Rivera without prior notification. He alleged that she made decisions for his department without his input and had approved two awards for Ms. McMillan without his knowledge.

Appellant alleged that Ms. Benet-Rivera made inquiries with inmates about recreational department staff on April 14, 2008. On April 21, 2008 Ms. Benet-Rivera questioned shift swaps between two of his staff that appellant had approved and, at an April 28, 2008 staff meeting, she stated that only she could approve shift swaps.

On May 7, 2008 appellant discussed the recreation department schedule with Mr. Russell and Ms. Benet-Rivera. Of three possible schedules, appellant alleged that it was decided he would remain on his present schedule but return to starting at 6:30 a.m. On May 8, 2008, however, he was advised in writing of changes that would have him starting either at 11:30 a.m. or 12:30 p.m. and working until 7:00 p.m. or 9:00 p.m. Appellant contended that such schedule was not compatible with attending to his minor children. He noted that Mr. Russell and Warden Carol A. Sabol were not responsive to his concerns. Appellant stated that Warden Sabol told him that he needed to better supervise his staff and the change to his work schedule would assist him. As noted, he stopped work as of May 12, 2008 and did not return.

Appellant also described being questioned by Warden Sabol in March 2008 as to a crochet program that had previously been offered.<sup>1</sup> He advised her that it had not been offered for over five years and she asked that the program be restarted based on an inquiry raised by an inmate. Appellant subsequently submitted March special purpose orders (SPO) to the commissary to obtain hobby craft supplies, but was informed that they would have to be approved by the Captain. He met with the Captain on April 9, 2008 and inquired as to the status

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<sup>1</sup> Appellant also alleged that Warden Sabol confronted him that month, advising that he should be at work 15 minutes earlier than his scheduled start time.

of the orders but did not receive an adequate response. Appellant noted that the orders were not approved until May 2, 2008 and contended the delay in processing them was intentional.

Appellant submitted general descriptions of incidents with inmates from 1993 to 1998 and provided information from an injury log dated December 19, 1999 to April 8, 2008.

In a May 20, 2008 report, William Douglas Gammon, Ph.D., an attending clinical psychologist, diagnosed significant depression and concluded that appellant was totally disabled from work.

On July 22, 2008 Ms. Benet-Rivera responded to the allegations. She advised that she was appellant's supervisor and in charge of the education and recreation departments. Three years prior, upon the death of his wife, appellant had been given consideration for his schedule and situation. At that time, there was no programming by either department; however, Warden Sabol placed an emphasis on education and recreational program. Ms. Benet-Rivera had approached appellant on several occasions with the task of beginning a new crotchet; however, he was opposed to the task. She and Mr. Russell worked with appellant to come up with a work schedule that provided more coverage in the evenings and weekends. Moreover, Ms. Benet-Rivera spoke to appellant about having more staff trained in changing duties and assigned Ms. McMillan for training in time and attendance. She also requested nominations from appellant for staff award but he did not provide any. Ms. Benet-Rivera placed Ms. McMillan in for an award for excellent work covering for appellant when he was absent.

Warden Sabol advised Ms. Benet-Rivera that she wanted appellant to work late nights and weekends when the recreation area was most frequented by inmates. She noted that he could not provide proper supervision to staff only working Monday through Friday from 6:00 a.m. to 2:00 p.m. Ms. Benet-Rivera spoke about this with appellant and the schedule presented to him covered that of a former employee and was a temporary schedule for the remainder of the quarter. She routinely talked to inmates to get feedback and that the change in wardens and focus on increasing programs in the education and recreation area made appellant uncomfortable.

In a July 25, 2008 report, Dr. Gammon diagnosed depression which began following his wife's death in 2005

By decision dated December 18, 2008, the Office denied appellant's claim on the grounds that he failed to establish any compensable work factors. It found that his allegations involved administrative actions and that he failed to establish any error or abuse on the part of the employing establishment.

On January 13, 2009 appellant requested an oral hearing which was held before an Office hearing representative on May 14, 2009. His attorney contend that appellant's condition was a reaction to his work around inmates and having to deal with the problems associated with working in a prison, which was heightened following the death of his wife and becoming a single parent.

In reports dated January 22 and April 2, 2009, Dr. Gammon diagnosed severe major depression and advised that appellant was totally disabled from work in the correctional environment. He attributed appellant's condition to work factors such as exposure to possible disease, daily danger, fear of death and injury and working in an enclosed environment. Dr. Gammon also listed as stressors the death of his wife and subsequent responsibility as a single parent.

By decision dated August 5, 2009, the Office hearing representative affirmed the denial of appellant's emotional condition claim as no compensable factor of employment had been established.

### **LEGAL PRECEDENT**

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.<sup>2</sup> 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.<sup>3</sup> 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>4</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>5</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>6</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>7</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>8</sup>

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

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<sup>2</sup> *L.D.*, 58 ECAB 344 (2007).

<sup>3</sup> *A.K.*, 58 ECAB 119 (2006).

<sup>4</sup> 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> *J.F.*, 59 ECAB 331 (2008); *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>6</sup> See *K.W.*, 59 ECAB 271 (2007); *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>7</sup> See *M.D.*, 59 ECAB 211 (2007); *William H. Fortner*, 49 ECAB 324 (1998).

<sup>8</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

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>9</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.<sup>10</sup> 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. In a December 18, 2008 decision, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors, which was affirmed by an Office hearing representative in an August 5, 2009 decision. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered or compensable employment factors under the terms of the Act.

The Board notes that the majority of appellant's allegations concern his interaction with his supervisor, Ms. Benet-Rivera, and his schedule change. Appellant alleged that Ms. Benet-Rivera interfered with the supervision of his staff, that she nominated one of his staff for two awards without informing him, changed the person in charge of time and attendance, required that shift swaps be approved by her, spoke to inmates about the recreation program and proposed changes to his work schedule with which he did not agree. These allegations pertain to administrative actions that do not generally fall within coverage of the Act.<sup>12</sup> Although the handling of the work assignments, making schedules and monitoring activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>13</sup> The Board has held, however, 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 management.<sup>14</sup> In determining whether the employer erred or acted abusively, the Board has examined whether management acted reasonably.

The evidence of record is not sufficient to establish error or abused by appellant's managers in these matters. Appellant did not submit evidence to document his allegations of error or abuse by Ms. Benet-Rivera or the warden or assistant warden in tasking him with the responsibility for certain programs at the prison. There is insufficient evidence to establish that

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<sup>9</sup> *D.L.*, 58 ECAB 217 (2006).

<sup>10</sup> *K.W.*, *supra* note 6.

<sup>11</sup> *Robert Breeden*, 57 ECAB 622 (2006).

<sup>12</sup> *J.F.*, *supra* note 5; *Doretha M. Belnavis*, 57 ECAB 311 (2006).

<sup>13</sup> *L.C.*, 58 ECAB 493 (2007); *Lori A. Facey*, 55 ECAB 217 (2004).

<sup>14</sup> *M.D.*, *supra* note 7; *Robert G. Burns*, 57 ECAB 657 (2006).

Warden Sabol erred or was abusive towards appellant when making inquiry as to his arrival at work or in her discussion with him following the proposed written work schedule of May 8, 2008. Ms. Benet-Rivera noted that appellant had been accommodated in his work schedule for several years following the death of his wife, but that his need to provide additional coverage was discussed for certain nights and weekends. Appellant noted that he accepted the change to his work schedule in March 2008, but objected to the May 8, 2008 proposed written work schedule as it would not allow him to provide for his children. He noted that it was to be a permanent change of schedule while Ms. Benet-Rivera noted that it was made to cover for a recent employee who had departed and would be for the remainder of the quarter. Appellant did not ever work the proposed new schedule as he stopped work on May 12, 2008. It is well-established that an employee's frustration over not being permitted to work a particular shift or to hold a particular position is not compensable under the Act.<sup>15</sup> The evidence of record does not establish a compensable employment factor as to these administrative matters. The evidence establishes that as an up-line supervisor, Ms. Benet-Rivera had the authority to make awards, assign individual employees for training and to revise work schedules for the education and recreation departments to staff those times most frequented by inmates.

Appellant alleged generally that his emotional condition was a result of the stress involved in the care, custody and control of inmates. He asserted that he was exposed to danger and potential violence, had to respond to emergencies and risked sustaining injury or contracting disease. Appellant indicated that he was exposed to emotionally draining and dangerous situations such as resolving inmate disputes, inmate fights, dealing with inmates and recreation issues and performing cardiopulmonary resuscitation (CPR) on a nonbreathing inmate. The Office hearing representative denied this aspect of his case, finding that he did not provide sufficient detail or information as to time, place, date, parties involved or other information concerning instances where he was in danger. She advised appellant to provide further information as to any specific incidents, including any official records or reports of such. The Board similarly finds that the evidence of record is not sufficient to establish a compensable factor under *Cutler*. The only material provided consisted of a list of injuries reported by inmates in an injury log, which appellant referenced as the source. This list is not adequate to establish the factual specifics of appellant's allegations under *Culter*. Appellant has not established the factual aspects of his claim in this regard. For the foregoing reasons, he has not established any compensable employment factors under the Act.<sup>16</sup>

On appeal, it is contended that the factual aspects of appellant's claim were established. Counsel cited to *Cutler* and *Sharon R. Bowman*.<sup>17</sup> The Board notes that in *Bowman*, it was found that the employee did not submit sufficient evidence to establish a compensable factor due to disciplinary warnings and suspensions received; allegations that her coworkers spoke about her ex-husband; or had engaged in a pattern of harassment. The Board similarly finds in this case

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<sup>15</sup> *Katherine A. Berg*, 54 ECAB 262 (2002).

<sup>16</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. See *L.K.*, 60 ECAB \_\_\_\_ (Docket No. 08-849, issued June 23, 2009); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>17</sup> 45 ECAB 187 (1993).

that the evidence submitted by appellant is not sufficient to establish his allegations of administrative error or abuse or of a compensable factor under *Cutler*. As appellant failed to submit sufficient factual evidence to establish a compensable work factor, it is not necessary to review the medical evidence of record.<sup>18</sup>

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 5, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 22, 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

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<sup>18</sup> *Id.*