U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM R. PHILLIPS and DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Atlanta, Ga.

Docket No. 95-1308; Submitted on the Record;
Issued June 9, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he sustained an emotional condition while in the performance of duty.

On July 6, 1993 appellant, then a 38-year-old engineering technician, filed an occupational disease claim (Form CA-2) alleging that in October 1992 he first became aware that his emotional condition was due to being "pressured" by his first line supervisor since he had become a union representative. Appellant stated that his supervisor told him that "he didn't give a damn about the union and that was not part of my job." Appellant contended that his supervisor "picked" on him every chance he got and expected more from him and tried to make it "harder" on him. Appellant also stated that he had meetings with the sector manager who said that he and his supervisor were not trying to work things out. On the reverse of the form, Charles E. Riggs, appellant's supervisor, noted that appellant stopped work on July 20, 1993[1] and that he disagreed with appellant's statement regarding the relationship between his emotional condition and employment. Mr. Riggs stated that his counseling and emphasis had been directed towards appellant's performance of his duties as described in his position description and performance standards. Appellant's claim was accompanied by a claim for compensation on account of traumatic injury or occupational disease (Form CA-7), an application for federal employment (Form SF-171) and notification of personnel action (Form SF-50). Appellant's claim was also accompanied by an August 24, 1993 note from Dr. Kenneth A. Ennis, a Board-certified psychiatrist, which revealed that appellant was under his care for major depression, that appellant was in part-time hospitalization and that appellant was unable to work. A July 21, 1993 medical report from Dr. Allen O. Battle, a clinical psychologist, indicated that appellant was under severe stress related to his job and recommended that appellant should be relieved of his responsibilities until further notice.

[1] The Board notes that appellant returned to work on October 7, 1993.

By letter dated September 22, 1993, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish his claim. The Office requested appellant to submit factual and medical evidence supportive of his claim.

The employing establishment submitted appellant's undated narrative, which provided that, in October 1992, he "began having problems sleeping and constant worry about [his] job," and that he "had several confrontations with [his] immediate supervisor." Appellant further stated that "[i]n January of 1993 [he] told [his] supervisor that [he] felt he was a big part of [his] problems." Appellant stated that his supervisor replied "that they were my problems and I had to take care of them." Appellant also stated that "[his supervisor] continued to push me and cause me trouble at every opportunity." Additionally, appellant stated:

> "I went to my sector manager about these problems on several occasions and was informed that I had other viable solutions. I requested a transfer to another supervisor several times. The section manager told me that he didn't feel that we were trying to work it out. Things continued to deteriorate between my supervisor and me. I started losing sleep, not sleeping at all, became nervous and anxious and stayed very tired and ill-tempered.
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> "In mid April my supervisor and I had a vicious confrontation. At this time I saw Dr. Allen Battle. He was so kind as to see me.
>
> "On or around July 20th my supervisor came into the P.C.S. room and found me napping. He, as well as the sector manager, was aware of an existing problem of sleep apnea. He used this opportunity to start a confrontation. He brought up things that he was going to make me do that were not part of his authority. I informed him of this and he got very angry and hostile. At that time I was provoked and started losing control. I called the sector manager at home and he spoke with my supervisor. After hanging up the phone he started on me again. At this time I got very hostile. I lost control of my nervous system. I was shaking, my stomach was aching and my head was aching. I called the sector manager back and he told me that he would take care of it when he returned to work. I told him I was sick and that I was going on sick leave. I called the Systems Maintenance Monitoring and Control Center. I told them that I was very sick and needed a relief called in. They agreed to do that…."

Appellant then stated that he did not sleep at all that night and conveyed his desire to commit suicide to Dr. Battle because he was very angry at his supervisor and that Dr. Battle referred him to Dr. Richard G. Newhouse for evaluation and medical treatment. Appellant noted that he was subsequently hospitalized and later treated on an outpatient basis.

The employing establishment submitted a September 29, 1993 memorandum from Percell Duckett, an employing establishment supervisor, in response to appellant's statement. Mr. Duckett stated that appellant "previously approached issues in a confrontational manner," citing appellant's reaction to not being selected for three job positions and his confrontations with its regional office. Mr. Duckett agreed that after appellant became a union representative, the confrontations, which addressed how much time appellant should spend on union activities

and appellant's failure to obtain approval from his supervisor prior to leaving his assigned work area and/or tasks to conduct union activities, intensified between them. Mr. Duckett stated these discussions with appellant led to a confrontation because appellant was hostile and created a disturbance. Mr. Duckett stated that during a June 29, 1993 meeting with appellant and his supervisors, he was surprised by appellant's disclosure that he spent 20 to 30 hours on union activities because only a small fraction of this time was appropriately requested and granted by appellant's supervisor. In addition, Mr. Duckett stated that he was not aware of appellant's condition of apnea because it was not covered in appellant's physician's diagnosis and that contrary to Dr. Battle's statement that the employing establishment wished to discharge appellant, at no time did anyone discuss the discharge of appellant. Mr. Duckett also stated that appellant was informed by management that it could not grant his request for a transfer to another supervisor because his skills were critical to the facility and his immediate supervisor was the only supervisor in that facility.

Dr. Battle's September 15, 1993 attending physician's report (Form CA-20) revealed a history that about mid-March 1993, appellant had a severe confrontation with his immediate supervisor and that ever since that time appellant's supervisor had made trouble for appellant. Dr. Battle diagnosed bipolar disorder "NOS" and indicated that appellant's condition was caused by an employment activity by placing a checkmark in the box marked "yes." Dr. Battle explained that appellant had been making an exemplary adjustment prior to this series of traumatic incidents. Dr. Battle's undated statement indicated that when appellant visited him on April 16, 1993, appellant stated that he had been under a lot of pressure at work and that he was depressed. Dr. Battle stated that he made a note to himself that appellant had been depressed for approximately one month. Dr. Battle further stated that appellant had a confrontation with his immediate supervisor and that ever since then, appellant's supervisor had been making life difficult for him. Dr. Battle then stated that he saw appellant on July 21st after appellant had telephoned him the previous night at home about a serious and extremely upsetting confrontation that he had with his supervisor regarding his handling of union business. Dr. Battle noted that appellant informed him that the employing establishment wished to discharge him because he was medically incapacitated. Dr. Battle stated that it was clear to him that appellant was dangerously suicidal. Dr. Battle diagnosed bipolar disorder --"NOS" and post-traumatic stress disorder and concluded that appellant's conditions were caused by his employment. Dr. Battle's July 21, 1993 report and Dr. Ennis' August 24, 1993 medical note were also submitted.

The Office conducted a telephone conference on January 21, 1994 with Mr. Riggs, Mr. Donald L. Barker, Mr. Riggs' supervisor, and Mr. Duckett. The telephone conference involved the discussion of the amount of official time that appellant spent handling union matters, the rejection of appellant for three positions, the amount of time that Mr. Riggs spent talking to appellant about leaving his work area to attend to union business without prior approval, the nature of the January and April 1993 confrontations, the June 29, 1993 meeting between appellant, Mr. Duckett and Mr. Riggs, the July 20, 1993 incident, other confrontations between appellant and Mr. Riggs, appellant's performance appraisal rating for the period 1990 through 1992, appellant's current employment status, and appellant's hospitalization for his emotional condition. Appellant refused to participate in the telephone conference. In a February 1, 1994 letter addressed the positions that appellant sought in early 1991 and in the spring of 1991. Mr. Barker submitted his October 25, 1993 notes indicating that he requested

that appellant clarify the grievances that he had filed and that appellant refused to comply with his request. Mr. Barker also submitted his October 13, 1993 notes revealing a discussion with appellant regarding the existence of asbestos in a particular work area and appellant's aggressive and angry response. Additionally, Mr. Barker submitted his July 6, 1993 memorandum to appellant regarding a meeting he had with appellant and Mr. Duckett about the union's requests and concerns, appellant's medical condition and appellant's request for representation when having a formal meeting with his supervisor. Mr. Barker further submitted a July 2, 1993 memorandum to appellant denying his request for a transfer to another unit or to change his immediate supervisor, his June 29, 1993 notes revealing a meeting with appellant and Mr. Riggs concerning appellant's union activities and his work duties, appellant's request that the union be given official time to file grievances and unfair labor practice charges, and appellant's June 28, 1993 memorandum requesting a transfer to another unit or a change in his immediate supervisor. Mr. Barker also submitted appellant's May 14, 1993 request to have meetings that the union had right to attend be held based on his schedule, Mr. Barker further submitted Mr. Duckett's May 18, 1993 memorandum denying appellant's request, his notes regarding a telephone conversation with appellant regarding the filing of three unfair labor practice charges by appellant, and with Nancy Hoffman, an employment establishment employee, concerning appellant's authority as a union representative and the communication between appellant and Mr. Riggs. Lastly, Mr. Barker submitted appellant's June 3, 1991 letter requesting information about the employing establishment's affirmative action plan for career advancement for disabled veterans and a transfer to another position.

In a February 1, 1994 response to the Office's memorandum of conference, Mr. Duckett stated that he was unable to locate his notes regarding a January 1993 confrontation between appellant and Mr. Riggs and clarified the incident where appellant confronted an employee about making negative comments about Mr. Riggs. Mr. Duckett explained that appellant alleged that Mr. Riggs had made a derogatory comment about appellant or the union based on the statement of an employee of the employing establishment, but that appellant subsequently discovered from that employee that he did not hear Mr. Riggs say anything about appellant. Mr. Duckett submitted a July 2, 1993 memorandum denying appellant's request for a transfer due to appellant's special skills that were critical to the unit and the difficulty in finding personnel with these skills. Mr. Duckett also submitted a May 18, 1993 memorandum denying appellant's request to schedule all meetings which the union had a right to of representation due to appellant's work schedule, which involved rotating shifts. Further, Mr. Duckett submitted the minutes of a March 17, 1993 meeting with appellant, Mr. Riggs and Bob Strang, a union representative, exploring ways to improve the relationship between appellant, as a union representative and Mr. Riggs, as the unit supervisor. Mr. Duckett stated that appellant accused Mr. Riggs of undermining his function as a union representative based on statements made by other employees to appellant. Mr. Duckett further stated that he suggested that appellant validate these accusations by having the employee confront Mr. Riggs in the presence of appellant. Mr. Duckett then stated that appellant disapproved of this suggestion because it would discourage employees from coming to him with their concerns. Mr. Duckett also suggested that appellant meet with Bobby Mullins, an employing establishment employee, to discuss his rights as a union representative.

By letter dated February 7, 1994, Mr. Riggs responded to the Office's memorandum by submitting a statement indicating that appellant had a confrontation with Bill Bailey, a former employee of the employing establishment, regarding Mr. Bailey's selection of someone other than appellant for a particular job and Mr. Bailey's refusal to show appellant the score given by Mr. Riggs to the applicant selected for the position. Mr. Riggs stated that in March 1993, appellant accused him of favoritism regarding an incident where Mr. Koonce, an employee of the employing establishment, mistakenly told appellant that Mr. Riggs wanted him to repair the front door. Mr. Riggs clarified appellant's physical position when he found appellant sleeping on July 20, 1993. Mr. Riggs also submitted his June 10, 1993 notes revealing a discussion with appellant about wearing shorts to a unit meeting. Mr. Riggs stated that he explained the employing establishment's policy on not wearing shorts when on official duty and that he considered appellant to be on official duty. Mr. Riggs further stated that appellant was asked at least twice whether he had a problem with this policy and that appellant failed to respond. Mr. Riggs also stated that he discussed appellant's lack of performance in the area of "PM" accomplishment and corrective maintenance. Mr. Riggs then stated that appellant agreed that his performance had "slacked off" and that appellant explained that this was due to his union activities. Mr. Riggs noted that appellant told him that he had talked with Mr. Duckett about reducing his work load, but that no one told him to reduce appellant's work load and that such a reduction would cause problems with the technician who would have to assume appellant's work load. Mr. Riggs further noted that he suggested that appellant talk with Mr. Duckett about his request. Mr. Riggs also noted that following this discussion, appellant refused to show a trainee how to change the busses. Further, Mr. Riggs submitted his July 20, 1993 notes describing the incident on that date where he found appellant sleeping. Additionally, Mr. Riggs submitted Dr. Battle's October 6, 1993 letter revealing that appellant was capable of returning to work as of October 7, 1993 and that if appellant was supervised by the same supervisor, then there was a great probability that further problems would arise.

On February 24, 1994, the Office prepared a statement of accepted facts. The Office found that the following constituted employment-related factors: appellant's duties as an engineering technician; the January 6, 1993 incident where appellant failed to obtain rereadings of temperatures of a cylinder as requested by his supervisor because he was handling union business; and appellant's refusal to check out the power system with a trainee after a June 10, 1993 meeting between himself and his supervisor regarding his performance.

The Office found that the following constituted non-employment-related factors: appellant's duties as a union representative; the spring 1991 incident where appellant made accusatory telephone calls to the employing establishment's personnel office when he did not receive certification to qualify for a particular position; appellant's reaction to not being selected for a particular job in March 1991; appellant's expression of dissatisfaction when a particular position was not advertised for his job series in early 1991; appellant's reaction to not being selected for a particular position in 1992; the March 5, 1993 incident where appellant went to Mr. Barker's office and left a note informing him that he was planning to file three unfair labor practice complaints because his supervisor had asked for a volunteer to fill in for him while he was absent, his supervisor inappropriately asked bargaining unit employees about the proposed schedule change, and a third issue which appellant could not remember; the March 17, 1993 incident where appellant and management sought to improve the latter's relationship with the

employees and appellant's coworker accused him of usurping management's authority; the May 18, 1993 letter from the sector manager to appellant stating that he was unable to grant appellant's request to schedule all meetings in which union members had the right to representation based on his availability to be present at the meeting; the June 10, 1993 meeting where Mr. Riggs counseled appellant on wearing shorts to a unit meeting and a decline in his performance; appellant's June 28, 1993 written request for a transfer to another unit or a different immediate supervisor due to the conflicts between himself and his supervisor since he had become a union representative; the July 2, 1993 incident where the sector manager issued a memorandum to appellant denying his request for a transfer; the July 6, 1993 meeting between appellant and Mr. Duckett regarding union business; and the July 20, 1993 incident where appellant was caught sleeping by his supervisor and refused to perform a task. The Office found that appellant's allegation that he spent 20 to 30 hours on union business per week was not substantiated by the record.

By decision dated February 25, 1994, the Office found the medical evidence of record insufficient to establish that appellant's emotional condition was caused by employment-related factors.

In a May 24, 1994 letter, appellant, through his representative, requested reconsideration of the Office's decision. Appellant alleged that his union activities constituted employment-related factors. Specifically, appellant alleged that his emotional condition was caused by meetings he had with management concerning his authority as a union representative, unfair labor practices, unilateral changes in working conditions without bargaining and his attendance at meetings where employees required union representation.

By decision dated November 30, 1994, the Office denied modification of the February 25, 1994 decision.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment. To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his 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 the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act.

[2] *Wanda G. Bailey*, 45 ECAB 835 (1994); *Kathleen D. Walker*, 42 ECAB 603, 608-09 (1991).

Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[3]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors 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.[4] Therefore, the initial question presented in the instant case is whether appellant has alleged compensable factors of employment that are substantiated by the record.[5]

Appellant's primary allegation is that harassment by Mr. Riggs, his supervisor, since he became a union representative caused his emotional condition. The Board has held that actions of an employee's supervisor which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.[6] Mere perceptions alone of harassment and discrimination are not compensable under the Act.[7] To discharge his burden of proof, a claimant must establish a factual basis for his claim by supporting his allegations of harassment with probative and reliable evidence.[8] Appellant failed to provide any such probative and reliable evidence in this case.

In a September 29, 1993 response to appellant's allegations, Mr. Duckett, an employing establishment supervisor, agreed that since appellant had become a union representative, confrontations with appellant had intensified,[9] but stated that conversations with appellant became confrontational because appellant became hostile and created a disturbance. Appellant has failed to submit sufficient evidence that he was harassed by his supervisor after he became a union representative. Rather, appellant has merely presented his perception that his supervisor was harassing him and has not established that harassment did, in fact, occur. Consequently, his allegations of harassment are not established by the record and they are not, therefore, found to be compensable factors of employment.

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[3] *Marie Boylan*, 45 ECAB 338 (1994); *Lillian Cutler*, 28 ECAB 125 (1976).

[4] *See Margaret S. Kryzcki*, 43 ECAB 496, 502 (1992); *Lillian Cutler*, *supra* note 3.

[5] Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence; *see Margaret S. Kryzcki*, *supra* note 4.

[6] *Donna Faye Cardwell*, 41 ECAB 730, 741 (1990); *Pamela R. Rice*, 38 ECAB 838, 843 (1987).

[7] *Wanda G. Bailey*, *supra* note 2; *William P. George*, 43 ECAB 1159 (1992); *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990).

[8] *Ruthie M. Evans*, *supra* note 7.

[9] The Board notes that the record reveals that appellant is no longer a union representative.

Several of appellant's allegations and the non-employment-related factors found by the Office fall into the category of administrative or personnel actions. The Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee.[10] The Board has held, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.[11] Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated.

The incidents and allegations made by appellant and the nonemployment-related factors found by the Office that fall into this category of administrative or personnel actions include appellant's requests for a transfer to a different supervisor[12] and the July 20, 1993 incident where Mr. Riggs counseled appellant about sleeping at work.[13] Regarding appellant's requests for a transfer to a different supervisor, Mr. Duckett stated in a July 2, 1993 memorandum and September 29, 1993 letter that appellant that he could not be transferred to another supervisor due to his special skills and the importance of these skills to the employing establishment, and that his immediate supervisor was the only supervisor in that facility. Concerning the July 20, 1993 incident, Mr. Duckett stated that contrary to appellant's allegation that he was aware of appellant's apnea condition, he was not aware of this condition inasmuch as it was not covered in appellant's physician's diagnosis. Mr. Duckett further stated that there was no agreement between himself and appellant allowing appellant to take a nap while at work. The Board finds that appellant has presented no evidence of administrative supervisory error or abuse in the performance of these actions and therefore they are not compensable under the Act.

Additional factors found by the Office which fall into the category of administrative or personnel actions include the June 10, 1993 meeting between appellant and Mr. Riggs where Mr. Riggs counseled appellant about wearing shorts to a unit meeting[14] the decline in his performance,[15] and the employing establishment's denial of appellant's request to attend union meetings where representation was required by employees.[16] In his notes concerning the June 10, 1993 meeting with appellant, Mr. Riggs stated that he explained the employing establishment's policy on wearing shorts while on official duty and that he considered appellant to be on official duty. Mr. Riggs further stated that appellant refused to answer whether he had a

[10] *Thomas D. McEuen*, 41 ECAB 389 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[11] *See Richard J. Dube*, 42 ECAB 916 (1991).

[12] *Goldie K. Behymer*, 45 ECAB 508, 511 (1994); *Thomas D. McEuen*, *supra* note 10.

[13] *Barbara E. Hamm*, 45 ECAB 843 (1994); *Joe E. Hendricks*, 43 ECAB 850 (1992).

[14] *Id.*

[15] *Thomas D. McEuen*, *supra* note 10.

[16] *Wanda G. Bailey*, *supra* note 2.

problem with the policy when asked at least twice. Mr. Riggs also stated that appellant agreed with him that his performance had declined and stated that this decline was due to his union activities. Mr. Riggs stated that he was unable to reduce appellant's work load because it would cause problems for the technician who would have to assume appellant's work load. Mr. Riggs, however, suggested that appellant discuss this matter with Mr. Duckett. In his May 18, 1993 memorandum, Mr. Duckett denied appellant's request regarding the scheduling of meetings where the union had a right to representation due to the nature of appellant's work schedule, which involved rotating shifts. The Board finds that appellant has presented no evidence of administrative supervisory error or abuse in the performance of these actions and therefore they are not compensable under the Act.

Regarding appellant's allegation of the denial of his application for employment positions on several occasions and his disagreement with the classification of certain positions by the employing establishment, the Board has previously held that denials by an employing establishment of a request for a different job or promotion are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform his regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.[17] Thus, appellant has not alleged a compensable factor of employment under the Act.

Appellant has alleged that in mid-April he had a confrontation with his supervisor. Appellant did not provide any specific details about what his supervisor said to him during this confrontation. In a telephone conference with the Office on January 21, 1994, Mr. Barker, a Mr. Riggs' supervisor, stated that he could not find any documentation of a confrontation in April 1993, rather, he believed that the confrontation took place in March 1993. The Board finds that appellant has failed to submit any reliable, probative or substantial evidence in support of his allegation. In order to establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.[18]

Further, appellant has contended that his union activities constitute employment-related factors. Specifically, appellant has alleged that meetings he had with management concerning his authority as a union representative, unfair labor practices and unilateral changes in working conditions without bargaining. The Office found that appellant's meeting on March 17, 1993 with Mr. Duckett, Mr. Riggs and Mr. Strang, a union representative, regarding ways to improve the relationship between appellant, as a union representative and Mr. Riggs, as the unit supervisor, constituted a noncompensable employment factor. The Board has adhered to the principle that union activities are personal in nature and are not considered to be within the course of employment.[19] The involvement of union activities, however, does not preclude the possibility of a compensable factor of employment. The Board has recognized an exception to the general rule in that employees performing representational functions which entitle them to official time are in the performance of duty and are entitled to all benefits of the Act if injured

[17] *Michael Thomas Plante*, 44 ECAB 510 (1993).

[18] *Anthony A. Zarcone*, 44 ECAB 751 (1993).

[19] *Jimmy E. Norred*, 36 ECAB 726 (1985).

while in the performance of those functions.[20] The underlying rationale for this exception is that an activity undertaken by an employee in the capacity of a union official may simultaneously serve the interest of the employer.[21] The Office's procedural manual recognizes this exception, finding that employees performing "representational functions which entitle them to official time are in the performance of duty and entitled to all benefits of the Act if injured in the performance of those functions."[22] The procedure manual indicates that "representational functions" include "authorized activities undertaken by employees on behalf of other employees pursuant to such employees' right to representation under statute, regulation, executive order, or terms of a collective bargaining agreement."[23]

Therefore, the a determination as to whether appellant's allegations constitute compensable factors of employment depends on whether appellant was performing "representational functions" which entitled him to official time. The Board finds that appellant has failed to submit sufficient evidence establishing that he was performing "representational functions" during most of the time pertaining to his allegations. In this regard, appellant specifically declined to participate in the Office's January 21, 1994 telephone conference. Appellant has failed to submit sufficient evidence pertaining to those instances when he was granted official time to perform representational functions. Although the record indicates appellant may have spent 20 to 30 hours a week on union matters, Mr. Duckett noted that appellant had sought supervisory approval for only a small fraction of such time. The evidence of record does not support appellant's contention that he was acting in two representational function while on official time.[24]

The Office properly found that appellant's duties as an engineering technician, the January 6, 1993 incident where appellant's supervisor requested him to perform tests on an engine generator which he failed to perform because he was taking care of union business, the incident involving a discussion between appellant and his supervisor regarding the changing of busses with a trainee after their June 10, 1993 meeting concerning appellant's work performance constitute compensable employment factors which arose in the performance of appellant's employment duties. All of these events are established as having occurred by evidence present in the case record, and by their nature, they arise out of and in the course of appellant's assigned duties, thus, as properly found by the Office, are compensable factors of his employment. However, appellant's burden of proof is not discharged by the fact that he has established employment factors which may give rise to a compensable disability under the Act. To establish his occupational disease claim for an emotional condition, appellant must also submit

[20] *Larry D. Passalacqua*, 32 ECAB 1859 (1981).

[21] *See* A. Larson, *The Law of Workers' Compensation* 27.33(c)(1990).

[22] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.15 (August 1992).

[23] *Id.*

[24] The Board will modify the statement of accepted facts to allow the March 17, 1993 meeting between the union and management held to explore ways of improving the relationship between appellant and his supervisors as arising in the performance of duty as it was held to benefit both the employee and the agency. *Id.*

rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.[25]

The medical evidence of record in this case fails to establish that appellant's emotional condition was caused by the accepted compensable employment factors. The August 24, 1993 note of Dr. Ennis, a Board-certified psychiatrist, revealed that appellant was under his care for major depression and that appellant was unable to work. The October 6, 1993 letter of Dr. Battle indicated that appellant was capable of returning to work as of October 7, 1993 and that there was a great probability that further problems would arise if appellant was supervised by the same supervisor. The Board finds this medical note and report insufficient to establish appellant's burden because they did not identify specific employment factors and they did not address a causal relationship between appellant's emotional condition and compensable employment factors.

In a July 21, 1993 medical report, Dr. Battle stated generally that severe job stress contributed to appellant's emotional condition. In an undated statement, Dr. Battle diagnosed bipolar disorder-"NOS" and post-traumatic stress disorder. Dr. Battle concluded that these conditions were caused by appellant's employment. These reports are insufficient to establish appellant's burden because Dr. Battle did not identify any specific employment factors that caused appellant's emotional condition.

Dr. Battle's September 15, 1993 Form CA-20 noted that appellant had a severe confrontation with his immediate supervisor about mid-March 1993 and that ever since that time appellant's supervisor had made trouble for appellant. Dr. Battle diagnosed bipolar disorder and indicated that appellant's condition was employment-related by placing a checkmark in the box marked "yes." Dr. Battle explained that appellant had been making an exemplary adjustment prior to this series of traumatic incidents. The Board has previously held that the opinion of a physician that a condition is causally related to an employment injury because the employee was asymptomatic before the employment injury is insufficient, without supporting medical rationale, to establish causal relationship.[26] Further, Dr. Battle did not provide any medical rationale as to how appellant's employment-related injury caused his emotional condition.

[25] *William P. George*, 43 ECAB 1159, 1168 (1992).

[26] *Thomas D. Petrylak*, 39 ECAB 276 (1987).

The November 30 and February 25, 1994 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
June 9, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member