

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ERIC HAYES and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Walnut Creek, CA

*Docket No. 01-1031; Submitted on the Record;
Issued December 4, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established an emotional condition causally related to compensable work factors.

On September 22, 1998 appellant filed a claim alleging that he sustained an emotional condition causally related to his federal employment. In an accompanying statement, appellant indicated that he was a special agent for the employing establishment and in December 1997 he was told that he was under investigation. Appellant stated that he was not told of the reason for the investigation until February 1998 and that the investigation was racially biased.

In a decision dated August 5, 1999, the Office of Workers' Compensation Programs denied the claim, finding that appellant had not substantiated compensable work factors as contributing to an emotional condition. By decision dated December 12, 2000, the Office denied modification of the prior decision.

The Board finds that appellant has not established that he sustained an emotional condition causally related to compensable work factors.

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.¹ 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

¹ Pamela R. Rice, 38 ECAB 838 (1987).

² See Donna Faye Cardwell, 41 ECAB 730 (1990).

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. 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 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

Appellant has alleged that he sustained an emotional condition as a result of a reaction to an investigation conducted by the employing establishment. It is well established that investigations are an administrative function of the employing establishment, rather than a regular or specially assigned duty of the employee.⁴ The Board has held that an administrative or personnel matter may be a factor of employment only where the evidence discloses error or abuse by the employing establishment.⁵

In this case, appellant has alleged that there was error and abuse in conducting the investigation and he also alleged that he was subject to racial discrimination. The evidence he submitted, however, confirms only that appellant was subject to an investigation, that he received a notice of proposed adverse action from the employing establishment on October 16, 1998, that a request for administrative leave was denied and that he was relieved of enforcement duties. The record contains no findings of error or abuse, racial discrimination, or other probative evidence that could substantiate a compensable work factor with respect to the investigation or related administrative action.⁶ Appellant's allegations and the documents submitted in this case do not establish error or abuse in this case. The Board accordingly finds that appellant has not substantiated a compensable work factor in this case. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.⁷

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Jimmy B. Copeland*, 43 ECAB 339 (1991).

⁵ See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁶ See, e.g., *Patricia A. English*, 49 ECAB 532 (1998) (where the evidence contained corroborating witness statements and other detailed evidence that was sufficient to establish administrative abuse in an investigation of appellant by the employing establishment).

⁷ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

The decision of the Office of Workers' Compensation Programs dated December 12, 2000 is affirmed.

Dated, Washington, DC
December 4, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member