

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEVE CHAKIRIS and DEPARTMENT OF DEFENSE,
La Mirada, CA

*Docket No. 00-631; Submitted on the Record;
Issued May 8, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant established that he sustained an emotional condition in the performance of duty.

On May 7, 1997 appellant, then a 55-year-old auditor, filed a notice of occupational disease alleging that he suffered a psychiatric condition as a result of harassment and disparate treatment at the employing establishment. He indicated on his CA-2 claim form that he first became aware that his emotional condition was due to his federal employment in February 1996. Appellant stopped work on January 17, 1997.

In a decision dated August 5, 1997, the Office of Workers' Compensation Programs denied compensation on the grounds that appellant failed to establish fact of injury. Appellant requested reconsideration and submitted additional evidence. In a June 28, 1999 decision, the Office modified the August 5, 1997 decision to reflect that appellant failed to establish a compensable factor of employment since the alleged actions were administrative and thus not in the performance of duty.

The Board finds that appellant failed to establish the he sustained an emotional condition in the performance of duty.

In order to establish that an employee sustained an emotional condition in the performance of duty, the employee must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the emotional condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.¹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the

¹ *Sandra Davis*, 50 ECAB 450 (1999); *Bonnie Goodman*, 50 ECAB 139 (1998); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

employee's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.²

Workers' compensation law is not applicable 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. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.³ On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.⁴

Appellant alleges that he sustained an emotional condition due to harassment by his supervisors. As a general rule, appellant's reaction to administrative decisions undertaken by his supervisors would fall outside the scope of coverage under Act;⁵ however, an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment.⁶ In determining whether the employing establishment erred or acted abusively, the Board determines whether the employing establishment acted reasonably. There is nothing in this record to indicate that appellant's supervisors acted unreasonably or in an improper manner as alleged by appellant. Although appellant filed several Equal Employment Opportunity (EEO) grievances, this, by itself, does not establish that workplace harassment or unfair treatment occurred. The Board has frequently explained that, absent error or abuse in the administration of a personnel matter, coverage will not be afforded.

Appellant maintains that he was harassed by Christopher Kent, an acting first-line supervisor, from December 19, 1995 to January 10, 1996. Mr. Kent was acting for Tom Skudlarski who was on leave. Appellant alleges that Mr. Kent was verbally abusive, that he instructed appellant to falsify time sheets, that he failed to explain audit assignments, locations of accounting records and the nature of the audit projects appellant was expected to perform. Mr. Kent has acknowledged that he had problems with appellant because appellant would not turn in his biweekly time sheets as directed. He acknowledged to speaking to appellant in an angry manner when he became frustrated with appellant's refusal to follow procedures.

² *Victor J. Woodhams*, 41 ECA 345 (1989).

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *See Michael L. Malone*, 46 ECAB 957 (1995).

⁶ *See Mary A. Sisneros*, 46 ECAB 155 (1994).

A claim based on verbal altercations or a difficult relationship with a supervisor must be supported by the record.⁷ The Board has recognized the compensability of verbal abuse under certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.⁸ Appellant did not provide any factual support in the form of a reliable witness statement to show that Mr. Kent was verbally abusive. The evidence is insufficient to support his allegation that Mr. Kent acted like a drill sergeant and grunted out orders to appellant stating for him to just “Shut up and do it!” Mr. Kent denied that he ever acted with prejudice or hostility towards appellant.

Appellant contends that when Mr. Skudlarski returned from leave he was angry to find appellant assigned to his group and treated appellant with hostility. Appellant alleged that he complained to Karen Taylor, the second-line supervisor to no avail and that she refused to provide him with a working computer when he complained that his was not functional. The Board, however, finds no factual support from which to conclude that the employing establishment failed to have appellant’s computer fixed in a timely fashion or that he was given an older computer in order to harass or discriminate against him.

Appellant alleged that he was humiliated at a staff meeting held on January 2, 1996 when Ms. Taylor expressed outrage that appellant was assigned to work in her division. Ms. Taylor was quoted as saying “I [a]m going to get even with that man (Mr. Miller), that sent this guy [appellant] here.” Appellant was not in attendance at the meeting but was told of this quote by a fellow employee. Ms. Taylor, however, denied that the alleged meeting took place. The employing establishment submitted time cards of all the employees for the date of January 2, 1996 to show that they did not attend a staff meeting, as it is customary for employees to specify time spent at meetings on their time sheet. Appellant submitted a statement from Talaat Soliman, a fellow employee, who indicated that Ms. Taylor made derogatory comments about appellant’s qualifications and made the statement quoted above. Mr. Soliman could not remember who was in attendance at the meeting and his time sheet also did not reflect his attendance at a meeting on January 2, 1996. Appellant’s time sheet is the only one that reports his attendance at a meeting on January 2, 1996. The Board finds insufficient factual support from which to conclude that Ms. Taylor made the alleged statement regarding appellant’s assignment to her division.

An EEO investigation was undertaken at appellant’s request because Mr. Skudlarski had allegedly addressed him as “Senor” and would thank him by saying “Gracias.” Appellant felt this was a racial slur because Mr. Skudlarski did not use the Spanish terms until after he found out that appellant was of Greek descent. Mr. Skudlarski did not stop calling appellant “Senor” until appellant became angry and told him that he was offended by the use of the term. The Board notes that the final EEO decision with respect to this incident found that appellant was not discriminated against. The Board notes that Mr. Skudlarski on occasion used Spanish terms while talking to other employees. The evidence is not sufficient to establish harassment or discrimination by Mr. Skudlarski.⁹

⁷ *Bonnie Goodman, supra* note 1.

⁸ *Frank B Gwozdz, 50 ECAB 434 (1999).*

⁹ *See Daniel B. Arroyo, 48 ECAB 204 (1996)* (claimant’s supervisor used profanity in the workplace but there was no evidence that this was directed at claimant in an attempt to harass him).

Appellant objected to being asked by Mr. Skudlarski why he needed to take personal or sick leave on specific occasions. He noted that Mr. Skudlarski decided to proceed with a peer review exercise. An employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act absent evidence of error or abuse. The evidence does not support error with regard to the handling of appellant's leave requests.¹⁰

The Board does not find error or abuse by the employing establishment concerning the alleged odor incident. The employing establishment had the responsibility to investigate a complaint made by a coworker that appellant smelled badly. When appellant asked his supervisor what was being said about the way he smelled, Mr. Skudlarski allegedly stated that the employees complained he smelled like "shit." Although the Board has recognized the compensability of verbal altercations or abuse in certain circumstances,¹¹ this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.¹² The incident described by appellant appears to be an isolated incident in which two coworkers had made a complaint to Mr. Skudlarski and he used inappropriate language in describing the nature of the problem. While Mr. Skudlarski was arguably insensitive, the Board does not find that this incident rose to the level of verbal abuse or otherwise falls within the coverage of the Act.¹³ Similarly, Ms. Taylor's one time use of the word "bitching" is not in and of itself evidence of error or abuse.¹⁴

The record indicates that the Office has accepted an occupational disease claim for a lumbar strain sustained by appellant in the performance of duty as a result of lifting boxes filled with paperwork and invoices during February 1996. Appellant has a preexisting degenerative back condition. The Office had denied that appellant had a consequential emotional condition due to his work-related back injury. In this case, appellant contends that the assignment of task which included lifting boxes was a form of harassment and that Mr. Skudlarski ignored the medical restrictions imposed by appellant's treating physician. Mr. Skudlarski stated that all auditors were required to lift boxes as a part of their regularly assigned duties and that the boxes weighed only between 5 to 10 pounds. He stated that when he learned that appellant had sustained a lifting injury he directed appellant to ask for assistance when he needs to lift a box in the future but that appellant never discussed the issue with him again.

¹⁰ See *Sandra Davis*, 50 ECAB 450 (1999).

¹¹ See, e.g., *Abe E. Scott*, 45 ECAB 164 (1993) (a supervisor's use of the epithet "ape" was a compensable employment factor).

¹² *Harriet J. Landry*, 47 ECAB 543 (1996).

¹³ *Daniel B. Arroyo*, *supra* note 9 (evidence that the employee's supervisor had used profanity in the workplace; held not to constitute a compensable factor of employment); *Mary A. Sisneros*, *supra* note 6 (evidence that a coworker referred to the employee as a "bitch"; held no error or abuse by management in the investigation of name calling); *David W. Shirey*, 42 ECAB 783 (1991) (evidence the employee was called a "sucker" by another employee held not to constitute a compensable factor).

¹⁴ Appellant apparently saw Ms. Taylor on several occasions to complain about Mr. Skudlarski. At one such meeting he told Ms. Taylor he had also had problems with a previous supervisor in San Diego. She became frustrated with appellant's attitude and told him to "quit your bitching and you will be fine."

When the employing establishment requires an employee to work beyond his or her medical restrictions, this may rise to the level of a compensable factor of employment. Under the circumstances presented in this case, however, appellant has not established that he was forced to lift boxes after the employing establishment became aware of his lumbar strain and his medical restrictions.¹⁵ Mr. Skudlarski's comments indicated that the agency attempted to accommodate appellant's work restrictions but appellant apparently chose to continue to lift boxes against the advice of his treating physician.¹⁶ Because appellant on his own accord chose to lift boxes beyond his work restrictions, this may not be deemed a form of harassment.¹⁷ Appellant's disappointment at not having the Office accept his workers' compensation claim for a consequential emotional condition due to his accepted back injury is likewise not compensable.¹⁸

Appellant further contends that he came under stress when Ms. Taylor asked other employees to document their interactions with appellant and when she directed Mr. Skudlarsk to keep an eye on appellant's use of the telephone for personal business. The Office properly found that Ms. Taylor asked employees to document their interactions with appellant because he had complained that when he asked other employees for help they refused to assist him. Ms. Taylor also indicated that she had personally observed appellant on the telephone during business hours placing buy and sell orders with a stockbroker. She stated that appellant was told that he could not do personal business on government time but appeared to ignore her warning. Both of these incidents concern management dealing with personnel matters and are not compensable factors of employment.¹⁹ Ms. Taylor did not act abusively in addressing appellant's complaints against other employees. She also acted reasonably in addressing appellant's use of the telephone at work for personal business. A supervisor or manager in general must be allowed to perform their duties. While employees will at time dislike the actions taken, mere disagreement or dislike of supervisory or management action will not be actionable, absent evidence of error or abuse.²⁰

Appellant contends that he received an unfair performance evaluation with respect to an audit assignment known as "Publication and Books" which had initially been found acceptable

¹⁵ See *Robert W. Johns*, 51 ECAB ____ Docket No. 98-74 (October 15, 1999) (claimant alleged an employment factor because he worked an average of a few minutes each day beyond the eight-hour day prescribed by his light-duty job. The Board noted that the employing establishment did not force appellant to work more than eight hours per day).

¹⁶ *Id.*

¹⁷ Appellant also alleged that he was assigned to "type out" an audit report as a form of punishment. He alleged that Mr. Skudlarski knew that he had a left-hand anomaly that made it uncomfortable for appellant to use a typewriter. The Board, however, finds no error or abuse with respect to the typing assignment since appellant acknowledged that he never submitted any medical documentation to the employing establishment in order to place them on notice of his medical restrictions or otherwise obtain some type of accommodation for his left-hand condition.

¹⁸ See generally *Thomas J. Costello*, 43 ECAB 951 (1992).

¹⁹ See *Ronald C. Hand*, 49 ECAB 113 (1997); *Elizabeth Pinero*, 46 ECAB (1994) (claimant's allegations regarding the requirement of asking permission to use telephones in the work areas were unrelated to her regular or specially assigned duties).

²⁰ *Christophe Jolicoeur*, 49 ECAB 553 (1998).

but was later sent back to appellant for revisions to correct the audit. Performance appraisals are an administrative function of the employer and not a duty of the employee.²¹ Thus, Mr. Skudlarski's decision to issue revisions to the audit in conjunction with a performance review does not constitute a compensable factor of employment in the absence of evidence of abuse or error. This is no evidence of abuse or error with regard to Mr. Skudlarski's administrative action.

Appellant was put on absence without leave (AWOL) on two occasions at work, on March 14, 1996 when he called in sick and spoke to a secretary as opposed to his supervisor and on April 18, 1996 when he refused to provide a medical slip when so requested. The AWOL charges were later removed by the employing establishment in conjunction with an EEO complaint filed by appellant. The employing establishment acknowledges that the AWOL charge for March 14, 1996 was withdrawn to obviate an EEO investigation. This is not an admission of error since the record demonstrates that other employees had been apprised of the requirement that they call and speak to a supervisor when requesting sick leave. The April 18, 1996 AWOL charge was not withdrawn. The Board finds no error or abuse with respect to the AWOL charges.²² The mere fact that an employing establishment lessens a disciplinary action taken towards the employee does not establish that the establishment acted in an abusive manner.²³

Appellant also alleged that, when he attempted to discuss the AWOL issue, Mr. Skudlarski became irate, threatened to charge appellant with insubordination and threatened to physically throw appellant out of his office. Mr. Skudlarski acknowledged that he got into a heated argument, gave appellant three warnings that it was time to leave the office, but only after appellant refused to leave did he inform appellant that he would throw him out if necessary. Ms. Taylor has stated that she overheard the discussion, that appellant was yelling at the top of his voice at Mr. Skudlarski and she confirmed that appellant refused to leave the office. The evidence establishes that Mr. Skudlarski raised his voice only after repeatedly telling appellant to leave his office during a verbal exchange with appellant. Appellant initiated the yelling match with his supervisor and refused several directives to leave his supervisor's office. The Board does not find a compensable factor of employment under the circumstances of this case as error or abuse by Mr. Skudlarski is not established.²⁴

Appellant contends that Mr. Skudlarski harassed him by monitoring every aspect of his auditing assignments following a performance review. He indicated that he found it difficult to meet deadlines because Mr. Skudlarski insisted that he double check every aspect of his work. Although the monitoring of activities at work is generally related to the employment, it is an

²¹ See *William P. George*, 43 ECAB 1159 (1992); *George A. Ross*, 43 ECAB 346 (1991).

²² Appellant provided no factual support for his contention that he was charge annual and sick leave for times when he actually reported to work.

²³ *Joe E. Hendricks*, 43 ECAB 850 (1992).

²⁴ *Carolyn S. Philpott*, 51 ECAB ___ Docket No. 98-760 (1999).

administrative function of the employer, and not a duty of the employee.²⁵ There is insufficient evidence of error or abuse by Mr. Skudlarski in monitoring appellant's work.²⁶

Emotional reactions to situation in which an employee is trying to meet his or her position requirements are compensable.²⁷ In this case, however, appellant has provided no factual support to show that he missed any deadlines or to otherwise show that he was overworked. The Board notes that appellant made only a very general allegation that overwork cause his stress.²⁸ He has not provided sufficient evidence to document the alleged overwork and consequently, this allegation is not sufficiently established by the evidence of record.

He also alleges that he was stressed because he worked 6 to 80 hours per week, including overtime at home, to satisfy the increasing demands of his supervisor. Appellant contends that he worked overtime and took work home in order to keep up with his assignments. The employing establishment has denied that appellant ever received authorization to perform overtime work at home. This again is a generalized statement of overwork and is not sufficiently supported by factual evidence, particularly when the employing establishment denies authorization of appellant's overtime work.²⁹ The Board specifically notes that appellant did not provide copies of timesheets to prove he worked the overtime alleged.

Appellant alleges that Ms. Taylor and Mr. Skudlarski implemented a process identified as a "Request for Records (RFR)" whereby even the most trivial request for documentation from a contractor was formally written out and then the response time was recorded. Appellant felt that this new procedure was implemented in order to prevent him from meeting audit deadlines. The record, however, indicates that all employees were directed to follow the procedure and that appellant completed his assignments without reprimand. Thus, appellant's disagreement with a policy decision of the employing establishment concerns an administrative function of the employer and is not compensable.³⁰

Appellant alleged that Mr. Skudlarski told him to look the other way with respect to an audit where the contractor was in violation of a contract regarding the depreciation of equipment and "questioned costs." Appellant contends that a "Memo[ramum] for the Record" was issued as opposed to a formal audit report and he found this to be demeaning to his skills, experience, and credentials as an auditor. The Office inquired of appellant if his duties on the audit were

²⁵ *John Polito*, 50 ECAB 347 (1999).

²⁶ There is no evidence that appellant was singled out to received "performance notes" on a DCAA Form 1417-1 as discussed on page 46 of the Office's June 28, 1999 decision. Ms. Taylor verified that the use of a DCAA Form 1417-1 was acceptable procedure and within the discretion of appellant's supervisor. Appellant's emotional reaction to her performance evaluation and work assignments were self-generated and not a duty of the employee. See *John Polito*, *supra* note 25.

²⁷ *Samuel Senkow*, 50 ECAB 370 (1999).

²⁸ *Bonnie Goodman*, *supra* note 1.

²⁹ See *id.*

³⁰ See *Joe E. Hendricks*, 43 ECAB 850 (1992).

difficult but he replied that the main duty assignments he received were to do low intelligence, clerical type of work.³¹

He considered that his grasp of accounting and auditing procedures far exceeded the type of work assignments he received and that his job came to feel demeaning. The Board notes that there is no evidentiary support to suggest an illegal audit was conducted, which could have put appellant under stress at work in the performance of regularly assigned duties. This leaves appellant's reaction to his work assignments which is not compensable as it is an administrative function of the employer. Emotional reactions arising out of the fact that appellant considers his job to be demeaning are self-generated.³²

Appellant described that he had been directed by Mr. Skudlarski not to ask three specific contractor individuals for information concerning requested evidence; rather, appellant was told to help himself by searching contractor owned property or to write up a written request for Mr. Skudlarski to search a "rich data bank" he had located in his personal office. Appellant alleges that he requests for a data back search went unanswered and that this was an attempt by Mr. Skudlarski to have appellant exceed the budgeted time for an audit and to undermine appellant's performance rating. There is a lengthy discussion in the Office decision indicating that appellant did not authorize the release of pertinent EEO files and copies of his performance evaluations to the Office for verification of his personal statements and to ascertain whether appellant actually received poor ratings from Mr. Skudlarski with respect to the incidents alleged. Accordingly, the Board finds no factual evidence of record to support that there was a conspiracy to undermine appellant's work performance.

Imposition of a written form of communications to document conversations and Mr. Skudlarski's insistence that a witness be present for interactions with appellant is not deemed to be an abusive of supervisory authority. Mr. Skudlarski was justified to try and avoid any future altercations with appellant given the yelling incident previously discussed.

Appellant attributes his emotional condition in part to how his EEO complaints were handled by the counselors assigned to investigate allegations of harassment. This is not a compensable factor of employment. The filing of EEO complaints and other personnel and administrative grievances does not arise out of appellant's employment.³³

Appellant contends that he was being punished when he schedule was changed and he could not longer take Fridays off for medical appointments. He also felt harassed when he was required to fill out paper work associated with sick leave if had to take for being hospitalized during the period of June 14 to 23, 1996. Contrary to appellant's allegations, there is no factual

³¹ Appellant also alleges that Mr. Skudlarski was later replaced by Barbara Jalbert who would not allow appellant to complete the audit and eventually denied that the project ever existed. There is no factual support for appellant's allegation of misconduct by Ms. Jalbert.

³² *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995) (claimant's frustration over being removed from his most interesting duties related to an administrative matter regarding the type of work he was assigned).

³³ Appellant also contends that he was under stress with respect to a notice of final review in his EEO complaint. Grievances and EEO complaints, by themselves, do not establish that work place harassment or unfair treatment occurred. See *Parely A. Clement*, 48 ECAB 302 (1997). Frustration from the rejection or dismissal of an EEO complaint is also not a basis for compensation. *Peggy Ann Lightfoot*, 48 ECAB 490 (1997).

evidence of harassment. It is an administrative function of the employer to set work schedules and to require certain procedures for the request of leave from work.³⁴

Appellant challenges a “minimally successful performance rating he received for the period of July 29, 1996 through June 30, 1996 and contends that he should have been placed on a ninety day Performance Improvement Plan (PIP) as of the performance notes issued in March 1996. He contends that the PIP procedure was not followed in his case because the agency wanted to make him eligible for the upcoming reduction-in-force (RIF). The employing establishment, however, issued a statement indicating that appellant was not placed on a 90-day PIP because his work was not “unacceptable” at the time of the March 1996 performance notes. In the absence of a showing of error or abuse by the employing establishment in handling this performance rating issue, the Board find that appellant failed to establish a compensable factor of employment. Performance appraisals are an administrative function of the employer and not a duty of the employee.

The record indicates that appellant, as part of a team effort, was made a member of a committee who held meetings for social chores having to do with collecting money for coffee and organizing luncheons. The meetings were known as TQM meetings. Appellant argues that he did not volunteer to be a part of the committee and that he was unable to attend the meetings for health reasons. He states that Mr. Skudlarski threatened to have his failure to attend the meetings reflect on a critical element of his performance evaluation. The Office, however, properly noted that since appellant failed to authorize the Office to review his performance evaluations and the complete EEO file, it was impossible to ascertain whether appellant was punished for not attending the meetings and whether Mr. Skudlarski was justified in advising appellant that he was required to attend the TQM meetings.

There is no factual support for the following: (1) appellant’s contention that Ms. Taylor kept hidden a personal check that was dropped by appellant; (2) that Mr. Skudlarski demanded that appellant produce documents pertaining to his wife’s employment; (3) that appellant was assigned work he could not perform; (4) that appellant’s audit findings were ignored; (5) that appellant’s fully successful performance rating was delayed in an attempt to deny him placement under the DOD priority placement program; or (6) that appellant was part of a RIF order issued to discriminate against him.

Finally, although appellant contends that he became depressed when he had no actual wages in 1997-1998 as a certified public accountant, this is an emotional reaction to finding himself unemployed pursuant to the RIF action and has nothing to do with his regular or specially assigned work duties.³⁵

Because appellant did not establish any compensable employment factors, it is unnecessary for the Board to consider the medical evidence of record.³⁶

³⁴ Appellant also did not show error with respect to the procedure for preparing time sheets.

³⁵ The RIF decision was an administrative function of the employing establishment. The Board has held that the actual termination of employment is not covered under the Act. *Martha L. Watson*, 46 ECAB 407 (1995).

³⁶ *John Polito*, *supra* note 25.

The decision of the Office of Workers' Compensation Programs dated July 28, 1999 is hereby affirmed.

Dated, Washington, DC
May 8, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member