



sustained new anxiety and stress, and aggravation of a preexisting post-traumatic stress disorder due to the incident.<sup>1</sup>

A separate case record was initiated for this claimed new incident, and development was undertaken, (Office Case No. 20235420) but the current record was combined into the prior emotional condition record resulting in one (Office Case No. 010361661).

In support of his August 28, 2003 claim, appellant submitted an August 1, 2003 Form CA-20 attending physician's report from Dr. Sidley which diagnosed new onset of post-traumatic stress syndrome on June 29, 2003. Dr. Sidley noted that the condition found was due to appellant being harassed for requesting family leave. No connection with the emotional condition connected with the 1998 needle stick injury was identified.

In support of appellant's claim, he also submitted an August 19, 2003 report from Dr. Sarah Quinn, a clinical psychologist, who noted that appellant had been seen at their clinic on August 1, 2003 suffering from acute anxiety and stress disorder due to work problems occurring on July 29, 2003. Dr. Quinn noted that Dr. Sidley determined that appellant was having anxiety attacks related to his current work environment and needed time away from his work. On August 13, 2003 Dr. Sidley again determined that appellant was still suffering from an acute anxiety disorder and could not return to work until a suitable work schedule could be arranged and agreed upon.

Appellant also submitted a September 1, 2003 incident report against his supervisor, and emphasized that her finding him absent without leave (AWOL) was improper as he had witnesses to account for his presence during the time alleged. However, no statements from such witnesses were provided. He also alleged that his supervisor's demand of a conference about being AWOL, about insubordination and failure to follow instructions was extremely stressful and abusive and was not warranted.

On September 4, 2003 the Office sought further information from the employing establishment. In response the employing establishment provided the supervisor's controverting statement in which she noted that appellant was missing for 20 minutes on July 29, 2003, that he showed her no respect, that he would not comply with her directives, and that he would not talk to her when addressed about where he was.

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<sup>1</sup> On November 24, 1998 appellant, then a 35-year-old ward secretary, filed a claim for an emotional condition, causally related to a traumatic contaminated needle stick on that date. By decision dated February 16, 1999, the Office rejected appellant's claim finding that he had not met the requirements for establishing that he sustained an injury as alleged. On February 27, 1999 appellant requested an oral hearing before an Officer hearing representative. He argued that the issue was not whether the needle stick was with a dirty needle but whether his emotional condition arose from being told that the needle that stuck him might have been contaminated, with no way to prove or disprove it. In a June 9, 1999 decision, the Office hearing representative set aside the prior February 16, 1999 decision, and remanded the case for the awarding the appropriate benefits, as it found that appellant had established that he was stuck with a needle at work and he was later told that it might have been contaminated, which caused him to experience an anxiety reaction, and that therefore he had established that the acknowledged event caused him to experience an emotional injury. On July 22, 1999 appellant's claim was accepted by the Office for a stress reaction and appropriate compensation benefits were awarded.

On September 10, 2003 appellant received a letter of reprimand for leaving the job without permission, disrespectful conduct, and failure to follow instructions. On September 15, 2003 appellant claimed that he wanted to appeal the letter of reprimand, as he felt that it was inappropriate, and he alleged that his supervisor should be reprimanded.

By letters dated September 15, 2003, appellant claimed that he was suffering from a new onset of severe anxiety attacks due to unfair treatment from his current supervisor, and that on July 29, 2003 he had an attack severe enough to require him to be hospitalized, due to his supervisor's misconduct. He also alleged that the supervisor who denied his family leave request was harassing him. In a second statement that date, appellant claimed that he wanted to appeal the letter of reprimand as he claimed that the charges were wrong, and it was upsetting him which added to his injury.

On November 26, 2003 appellant submitted an attending physician's report which diagnosed anxiety reaction -- post-traumatic stress disorder, and checked "yes" to the form question on causal relationship noting that the incident "happened at work because of other employee's action."

On December 5, 2003 the Office rejected appellant's claim on the basis that he had not submitted evidence of being subjected to harassment or inappropriate behavior at work on July 29, 2003. The Office also noted that appellant had been denied family leave and had been issued a letter for being AWOL. The Office found that there was no evidence submitted that established error or abuse by management in these actions, or any evidence that the actions taken were inappropriate or erroneous. The Office found that no compensable factors of employment had been substantiated, such that the medical evidence need not be addressed.

Appellant request a review of the December 5, 2003 decision based on the written record.

By decision dated May 21, 2004, which addressed his July 29, 2003 claim for stress, which occurred from stressors over time, the hearing representative found that there was no evidence submitted that established error or abuse by management in these actions, or any evidence that any of the actions taken were inappropriate or erroneous. The hearing representative found that no compensable factors of employment had been substantiated, such that the medical evidence need not be addressed.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>2</sup>

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<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

To establish appellant's claim for an emotional condition in the performance of duty, he must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized 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.<sup>3</sup> Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, 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 appellant.<sup>4</sup>

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 concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Act. Generally speaking, when an employee experiences an emotional reaction to his regular or specially assigned employment duties or to a requirement imposed by his employment or has fear or anxiety regarding his ability to carry out assigned duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.<sup>5</sup> Conversely, if the employee's emotional reaction stems from employment matters which are not related to his regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment, and does not come within the coverage of the Act.<sup>6</sup>

Noncompensable factors of employment include administrative and personnel actions, which are matters not considered to be "in the performance of duty."<sup>7</sup> Although the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee. However, to the extent that the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable factor.<sup>8</sup> Further, reactions to disciplinary matters such as letters of warning and

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<sup>3</sup> See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>4</sup> *Id.*

<sup>5</sup> *Donna Faye Cardwell*, *supra* note 3, see also *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>6</sup> *Id.*

<sup>7</sup> See *Joseph DeDonato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

<sup>8</sup> See *James P. Guinan*, 51 ECAB 604 (2000).

inquiries regarding conduct pertain to actions taken in an administrative capacity and are not compensable unless it is established that the employing establishment acted in an erroneous or abusive manner.<sup>9</sup>

However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.<sup>10</sup>

Verbal altercations, name calling or difficult relationships with supervisors in the workplace may be compensable if there is objective factual evidence supporting such allegations of mistreatment in relationships at work or of conduct or language which is otherwise unusual or not encountered as a norm of the employment.<sup>11</sup>

When working conditions are alleged as factors in causing 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.<sup>12</sup> When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Mere perceptions and feelings of harassment alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.<sup>13</sup> When the matter asserted is a compensable factor of employment, and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.<sup>14</sup> If the evidence fails to establish that any compensable factor of employment is implicated in the development of the claimant's emotional condition, then the medical evidence of record need not be considered.

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<sup>9</sup> *Sherry L. McFall*, 51 ECAB 435 (2000).

<sup>10</sup> *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>11</sup> *See Paul Trotman-Hall*, 45 ECAB 229 (1993).

<sup>12</sup> *See Barbara Bush*, 38 ECAB 710 (1987).

<sup>13</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>14</sup> *See Gregory J. Meisenberg*, 44 ECAB 527 (1993).

## ANALYSIS

The issue in this case is whether appellant has provided evidence sufficient to establish that on July 29, 2003 he sustained a new emotional illness or an aggravation of his 1998 preexisting post-traumatic stress disorder, causally related to compensable factors of his federal employment.

Appellant did not allege that he developed an emotional condition arising out of his regular or specially assigned duties, or out of specific requirements imposed by his employment. He alleged, for the most part, that his condition was caused by supervisory harassment in the form of being given instructions and being yelled at, being given an AWOL notice, and having his family leave request denied.

Certain actions of appellant's supervisor which he characterized as harassment and verbal abuse may constitute factors of employment giving rise to coverage under the Act, but in order for harassment to give rise to a compensable disability under the Act, there must be some evidence that such harassment did in fact occur, and that it was indeed unnecessary and harmful in nature. Mere perceptions of harassment alone are not compensable under the Act.<sup>15</sup> An employee's charges that he was harassed are not determinative of whether or not harassment occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his allegations with probative and reliable evidence.<sup>16</sup> Words and actions that appellant implicated as being harassment include his perception of being unnecessarily yelled at and ordered around by his supervisor, being given an AWOL letter by his supervisor, and having his family leave request denied.

Appellant has the burden of establishing a factual basis for his allegations, however, the allegations in question are not supported by specific, reliable, probative and substantial evidence and have been refuted by statements from appellant's employer.

Appellant submitted no corroborating evidence from witnesses or coworkers documenting that these incidents of his supervisor yelling at appellant occurred as and when alleged. There also was no evidence that the supervisor wrongfully denied appellant's request for family leave, or that she improperly gave him an AWOL letter. The supervisor denied all allegations against her. On that basis the employing establishment controverted appellant's claim.

If some supporting evidence from coworkers that the supervisor had inappropriately yelled at appellant had been presented, or evidence that the AWOL letter was undeserved, or that the family leave was wrongfully denied had been included, appellant might have established his alleged harassment claim, but no such evidence was presented and no factual basis for the claim has been established.

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<sup>15</sup> *Sylvester Blaze*, 42 ECAB 654 (1991).

<sup>16</sup> *See Anthony A. Zarcone*, 44 ECAB 751 (1993).

In the present case, the Office properly found that none of the implicated factors appellant alleged were compensable factors of employment. Therefore, the Board finds that these allegations cannot be considered to be compensable factors of employment since appellant has not established a factual basis for them. As appellant has failed to submit any reliable and probative evidence corroborating and substantiating that any of the alleged verbal incidents he perceived as occurring actually happened to him, or that the AWOL was wrongfully issued, or that the request for family leave was wrongfully denied, the Board finds that appellant has failed to establish that any emotional condition he may have was causally related to compensable factors of his federal employment.

**CONCLUSION**

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained an emotional illness in the performance of duty, causally related to compensable factors of his employment.<sup>17</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 21, 2004 and December 5, 2003 are hereby affirmed.

Issued: June 13, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

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<sup>17</sup> As appellant has not established a compensable factor of employment, the medical evidence need not be addressed. *Margaret S. Krzycki*, 43 ECAB 496 (1992).