

FACTUAL HISTORY

On April 29, 2003 appellant, then a 50-year-old clerk, filed a traumatic injury claim alleging that on April 24, 2003 he sustained an emotional and head injury condition causally related to his federal employment. He alleged that Ron Heller, a supervisor, had verbally and physically assaulted him and that this incident caused him to hyperventilate and have a panic attack in which he fell and hit his head on the floor. Appellant stopped work on April 24, 2003 and has not returned.

In a June 18, 2003 statement, appellant stated that at approximately 3:00 p.m. on April 24, 2003 he submitted his request for union time with his immediate supervisor, Manny Pinon, and at 4:15 p.m., Mr. Heller wanted to see him about the request. He indicated that Mr. Heller started shouting and pointing at the list when he reached the name of David Hernandez, an employee, and was told that, although he could see David, it was not going to take all night. Appellant stated that he wondered what Mr. Heller was doing monitoring his union time as it was assigned by his immediate supervisor. Appellant stated that he clocked over to union time at 4:30 p.m. and worked with Mr. Hernandez on union matters. At approximately 6:00 p.m., he went to the bathroom and, as he was walking out of the door, saw Mr. Heller walking towards him. Appellant stated that Mr. Heller was in his face screaming "I want the both of you back to your machines right now, you have had enough time." He stated that Mr. Heller was screaming, waving his hands and pointing his fingers at him. Appellant indicated that every time he tried to move away, Mr. Heller got closer. He stated that he told Mr. Heller that he did not have his break yet and that Mr. Heller waved his arms and screamed that he had forfeited his break. When appellant told Mr. Heller that he was going to the men's room, Mr. Heller "lunged at me, he took at least one hop (step) towards me and swung at me and connected with my left hand before I had a chance to get all the way out of the way." He stated that he was so upset due to the fact that he had been assaulted, both physically and verbally, that he told Chief Steward Collen Maguire what happened and was told to go into the union area. When appellant walked into the union area, he saw Mr. Hernandez, Sandra Halma and Danny Goodman and told them that Mr. Heller had just hit him and he wanted something done about it. He noted that someone said to call 911 and that he could feel himself being emotionally upset and starting to panic while on the telephone. Appellant described sitting in a chair and then sliding out of the chair onto the floor and banging his head. He stated that he felt like he was out of it, but he could see and hear things around him.

Appellant submitted several witness statements and medical documentation. In a May 2, 2003 report, Dr. Douglas Bailes, an attending family practitioner, advised that appellant was totally incapacitated brought about by a traumatic physical injury from Mr. Heller. The reaction to the incident sent appellant into a panic attack which caused him to fall to the floor, go into convulsions and bang his head up and down on the cement floor. Due to the injury to his head, Dr. Bailes advised that appellant was suffering from headaches, nausea and dizziness as well as severe anxiety and emotional stress.

Appellant also submitted witness statements from Ms. Halma, Mr. Goodman, Mr. Hernandez and Donna L. Tulus. In an April 24, 2003 statement, Ms. Halma, a union steward, stated that both she and appellant were in the union area working with other employees on union matters, and approximately at 6:00 p.m., Mr. Heller came to the union area looking for

Mr. Hernandez and appellant stepped outside the union area to speak to him. When Ms. Halma heard Mr. Heller raise his voice, she stepped outside to see what was going on and heard Mr. Heller screaming at appellant, "I want him back now, now ... he's been back there for two hours." She stated that Mr. Heller was waving his hand in appellant's face with one or two fingers sticking out and, when he saw her, he abruptly turned and walked away from the union area. Ms. Halma stated that appellant walked along side Mr. Heller and that Mr. Heller continued shouting at appellant and waving his hand in appellant's face. She returned to the union area and minutes later appellant also returned to the union area trembling and shaking, and stating, "he hit me, he hit me on my hand." When asked who hit him, appellant said "Ron Heller." Ms. Halma stated that appellant called the police and, when he got off the telephone, he collapsed on the floor and hit his head on the floor and had multiple seizures.

In an April 25, 2003 statement, Mr. Goodman, an employee, indicated that he was in the union area going over his case with Ms. Halma. At 6:15 or 6:20 p.m., appellant walked into the union area with a red face and his body shaking and said "he hit me" three times. He indicated that appellant telephoned 911 and dropped the telephone as he was shaking. Mr. Goodman stated that appellant was standing and his leg started to buckle and his arm went limp. Mr. Goodman pulled a chair out for appellant, but his body went rigid in the chair and he started to slide down the chair, hit his head and started convulsing on the floor.

Mr. Hernandez stated that he met with appellant, his union steward, on April 24, 2003. He stated that, between the hours of 5:30 to 6:00 p.m., appellant left the union cubicle to go to the bathroom and he heard Mr. Heller raise his voice to appellant and say that we had been on union business for two hours. Mr. Hernandez stated that he was uncomfortable with the situation and voiced his frustration to Ms. Halma, who was in the room with Mr. Goodman. He noted that Ms. Halma stated that she would diffuse the situation, left and came back saying that they had walked off. About two minutes later, appellant rushed into the union area saying "he hit me, he hit me, he violated my body." Mr. Hernandez then described what happened after appellant got off the telephone with the police.

In an April 24, 2003 letter, Ms. Tulus, an employee, stated that she was leaving the union cubicle at 6:05 p.m. and appellant and Mr. Heller were walking close together towards the entrance to the double doors leading to the nixie and registry areas. She stated she heard Mr. Heller very loudly say, "two hours, two hours" and that he had his right hand raised between them with one or two fingers extended. Ms. Tulus further indicated that at 6:15 p.m. she returned to the union cubicle and appellant was on the telephone with the police. He laid the telephone down, looked unsteady on his feet, and his speech was a bit slurred. When someone put a chair behind him, he sat briefly before his body became stiff and he slid to the floor and his head hit the floor. Ms. Tulus indicated that the medical unit was called.

In an April 24, 2003 statement, Mr. Heller advised that he saw appellant at 6:15 p.m. in front of the registry room and that they discussed why appellant did not call him at 4:30 p.m. He indicated that he told appellant that his union time would be over at 6:16 p.m. and he should return to his machine. Mr. Heller indicated that he stated that appellant should have already taken care of his break and, as appellant was walking away, he told appellant to be back at his machine at 6:30 p.m. In a May 16, 2003 statement, Mr. Pinon, appellant's immediate supervisor, corroborated Mr. Heller's statement that appellant had been granted union time under the

condition that he would call Mr. Heller with the amount of time needed to conduct union business by 4:30 p.m., but that appellant had failed to contact Mr. Heller. At approximately 6:16 p.m., Mr. Heller was on his way to retrieve pay checks and found appellant near the entrance to the Registry area and instructed him to return to work within 15 minutes.

An investigation into the alleged assault was conducted on April 24, 2003. In an April 28, 2003 statement, R.M. Vargus, Jr., the postal inspector, stated that Mr. Heller was interviewed and denied the assault. The postal inspector also stated that appellant refused to be interviewed but did say that Mr. Heller did not take a punch or swing at him. He further indicated that Ms. Tulus was interviewed. At approximately 6:10 p.m. on April 24, 2003, she saw appellant and Mr. Heller by the entrance to the Nixie section standing shoulder to shoulder, with appellant on the right side of Mr. Heller, who had his right hand up. She heard Mr. Heller say "Two hours, two hours" in a loud voice.

On June 19, 2003 the Office accepted the conditions of head contusion and headache and paid appropriate compensation. The record reflects that it subsequently accepted the condition of neck strain.

By decision dated June 19, 2003, the Office denied appellant's emotional condition claim on the grounds that he did not establish a compensable factor of employment.¹

In a letter dated July 15, 2003, appellant requested a hearing on the Office's denial of his emotional condition claim, which was held on March 3, 2004. Evidence submitted included duplicative copies of witness statements and comments submitted subsequent to the hearing by the employing establishment and on appellant's behalf.

With respect to the accepted conditions of headache and head contusion, the record reflects that Dr. Bailes, referred appellant to Dr. Dale R. Schultz, a Board-certified neurologist. In a June 26, 2003 medical report, Dr. Schultz noted that appellant was evaluated on June 12, 2003 and suggested that the work incident had aggravated his migraine condition. He noted that appellant still had headaches as he had stopped taking the prescribed medication because of the side effects. Dr. Schultz opined that appellant was capable of performing light duty and that the major reason he has not returned to work was largely psychiatric and emotional and had nothing to do with complaints of headache. In an August 14, 2003 report, Dr. Schultz stated that appellant's cervical magnetic resonance imaging (MRI) scan showed some evidence of preexisting cervical degenerative discogenic spondylosis from C4-5 to C6-7 and opined that this condition was aggravated by the accident. On September 24, 2003 Dr. Schultz approved a limited-duty position the employing establishment offered appellant and opined that he could return to work as of September 25, 2003.

In an October 10, 2003 report, Dr. J. Michael Powers, a Board-certified neurologist and Office referral physician, noted the history of injury, reviewed the medical record and performed

¹ The Office accepted as factual that Mr. Heller had informed appellant that his union time would be over at 6:30 p.m. and that appellant should return back to his machine. The Office accepted that Mr. Heller had questioned appellant regarding the anticipated 4:30 p.m. telephone call that should have occurred earlier in the day regarding the amount of union time needed with an employee.

a physical examination. He opined that there was no evidence that appellant had a seizure or experienced any loss of consciousness on April 24, 2003. Dr. Powers further noted that, since the April 24, 2003 incident, appellant had complaints of persistent headache that had spread in bizarre fashion to pain going into his right arm, trunk and leg. Dr. Powers stated that neurologic examination was entirely normal other than for some functional features, such as evidence of significant functional overlay manifest by his pattern of symptoms, inconsistent motor effort and reported reduced vision and hearing on the right side. Dr. Powers noted that the x-rays and MRI scan of the cervical spine described mild degenerative changes. He opined that, as appellant had no symptoms or physical findings suggestive of a radiculopathy, there was no indication for further treatment in this regard. He stated that appellant did not exhibit any primary neurological diagnosis and opined that his ongoing symptoms appeared to have a psychiatric basis and that appellant's muscle tension headaches were a reflection of his psychiatric state and had no organic basis. From a neurological perspective, Dr. Powers opined that appellant was permanent and stationary in relation to the events of April 24, 2003 and could return to work without neurologic restrictions. Dr. Powers noted that any determination of ongoing impairment or limitation of work due to the April 24, 2003 events should be made by a psychiatrist.

In an October 24, 2003 report, Dr. Schultz noted that appellant had discogenic disease in his neck but it was not clear that the condition resulted from the April 24, 2003 work injury. He opined that appellant had significant psychiatric problems and it was hard to separate appellant's complaints from his psychiatric situation. In a November 5, 2003 report, Dr. Schultz stated, with a check mark, that he agreed with Dr. Power's October 10, 2003 report.

In a November 24, 2003 report, Dr. Bailes advised that he agreed with Dr. Power's October 10, 2003 report that appellant could be released to full unrestricted work for his accepted conditions. He opined, however, that appellant remained totally disabled from work due to his stress-induced psychosomatic dysfunction which resulted in headaches, dizziness and weakness. In a March 1, 2004 report, Dr. Bailes attributed appellant's incapacity to daily headaches. He additionally noted that appellant was under treatment for emotional stress and anxiety disorder.

By decision dated June 4, 2004, an Office hearing representative affirmed the June 19, 2003 decision denying an emotional condition arising in the performance of duty.

In a June 23, 2004 letter, the Office proposed terminating appellant's compensation benefits finding that the weight of the medical evidence was with Dr. Powers, who found that appellant no longer had residuals from the April 24, 2003 work injury.

In a letter dated July 15, 2004, appellant objected to the Office's proposed termination of his benefits and asserted that he was still being treated for his accepted condition. Appellant submitted a July 2, 2004 report from Dr. Bailes, who opined that appellant remained off work due to persistent severe headaches, neck and back pain along with psychiatric treatment for his anxiety and pain disorder brought about from his injury.

By decision dated July 29, 2004, the Office finalized the proposed termination effective August 7, 2004.

LEGAL PRECEDENT -- ISSUE 1

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. 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.² 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.³

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 employment factors.⁴ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁵

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 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.⁶ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. 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.⁷

ANALYSIS -- ISSUE 1

Appellant alleged that he sustained an emotional condition as a result of the events occurring on April 24, 2003 concerning a supervisor, Mr. Heller. By decisions dated June 19, 2003 and June 4, 2004, the Office denied his emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, therefore, initially

² 5 U.S.C. §§ 8101-8193.

³ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁵ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁶ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁷ *Id.*

review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

The Office accepted as factual that Mr. Heller had informed appellant that his union time would be over at 6:30 p.m. and that appellant should return to his machine. The Office further accepted that Mr. Heller had questioned appellant regarding an anticipated 4:30 p.m. telephone call which should have occurred regarding the amount of union time needed for union business. The Board finds that appellant's allegations that the employing establishment erroneously monitored his union activity and directed him to return to work relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.⁸ Although the assignment of work duties, the determination of work schedules and the monitoring of activities at work are generally related to employment, they are administrative functions of the employer and not duties of the employee.⁹ An administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁰ Appellant, however, did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters. The record reflects that appellant conducted union business from 4:30 p.m. and was directed by Mr. Heller to return to work at 6:30 p.m. The employing establishment has provided statements from appellant's supervisors indicating that appellant failed to make a telephone call to Mr. Heller, as requested, to determine the amount of union time needed to conduct union business. Appellant has not established a compensable employment factor with respect to administrative matters as the evidence does not establish error or abuse as to the determination of work schedules and the limiting of his union time to two hours.¹¹

Appellant asserted that he was verbally and physically threatened and assaulted by Mr. Heller. The Board has recognized the compensability of physical threats or verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.¹² The postal inspector stated that Mr. Heller was interviewed and denied the assault. Moreover, the postal inspector indicated that appellant said that Mr. Heller did not take a punch or swing at him. The Board finds there is insufficient evidence in the record to support appellant's allegation that he was physically threatened or assaulted by Mr. Heller. The Board notes that the Office hearing representative found that the evidence of record was sufficient to establish that Mr. Heller had raised his voice at appellant

⁸ See *Janet I. Jones*, 47 ECAB 345, 347 (1996).

⁹ *Id.*

¹⁰ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹¹ With regard to union activities in general, 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. However, the Board has found that the involvement of union activities does not preclude the possibility that compensable factors of employment have been alleged. See *Shelly D. Duncan*, 54 ECAB ___ (Docket No. 02-1260, issued January 22, 2003). In this case, no compensable factors have been alleged.

¹² *Harriet J. Laundry*, 47 ECAB 543, 547 (1996); see *Leroy Thomas, III*, 46 ECAB 946, 954 (1995).

and made gestures with his hands when speaking to appellant. The Office hearing representative found that appellant had then asked about his break and was told that he should have already taken care of it. Under the circumstances of this case, the Board finds that Mr. Heller's raising his voice with appellant and his response to appellant's request for a rest break did not constitute verbal abuse.¹³ The Board notes that while appellant may not have liked being told to return to his work area or Mr. Heller's response to his request for a break, this amounts to appellant's dissatisfaction with perceived poor management and constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.¹⁴

For the foregoing reasons, the Board finds that appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.¹⁵

LEGAL PRECEDENT -- ISSUE 2

Once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.¹⁶ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.¹⁷ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹⁸

ANALYSIS -- ISSUE 2

In this case, the Office accepted that appellant sustained conditions of headache, head contusion and neck sprain as a result of the April 24, 2003 work incident. Therefore, it bears the burden of proof to justify the termination of compensation benefits for those conditions. The Office has no such burden of proof with respect to conditions that are not accepted, including cervical degenerative discogenic spondylosis at C4-5 to C6-7 and appellant's psychiatric conditions.

With respect to the accepted conditions, the weight of the medical opinion evidence rests with the opinion of Dr. Powers, a referral neurologist. He reported that there was no evidence that appellant had a seizure or experienced any loss of consciousness on April 24, 2003. Dr. Powers opined that the muscle tension headaches were a reflection of appellant's psychiatric state as it had no organic basis. He explained that the neurological examination was entirely

¹³ See *Denis M. Dupor*, 51 ECAB 482 (2000).

¹⁴ See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

¹⁵ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. See *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

¹⁶ *Mary A. Lowe*, 52 ECAB 223 (2001).

¹⁷ *Id.*

¹⁸ *Manuel Gill*, 52 ECAB 282 (2001).

normal other than for some functional features and that appellant had no symptoms or physical findings suggestive of a radiculopathy. Dr. Powers further explained that no further treatment was required as appellant did not exhibit any primary neurological diagnosis. Thus, Dr. Powers concluded that from a neurological perspective, appellant was permanent and stationary in relation to the events of April 24, 2003 and that he could return to work without any neurological restrictions. Although Dr. Powers further opined that appellant should be seen by a psychiatrist, the Office had not accepted that an emotional condition resulted out of the April 24, 2003 events.

In assessing medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹⁹

Dr. Powers' opinion is based on a proper factual and medical history and is sufficiently rationalized to support that residuals of the accepted headache, head contusion and neck sprain conditions had ceased. Moreover, appellant's attending neurologist, Dr. Schultz, agreed with Dr. Powers' opinion that appellant's headaches were causally related to his psychosomatic dysfunction, which was not related to his accepted condition. There is no reasoned medical opinion to the contrary. Dr. Bailes, appellant's family physician, opined that appellant was totally disabled from his headaches and emotional conditions, but he offered no medical rationale to support his opinion that appellant continued to suffer residuals from the accepted condition.²⁰ The Board finds that the weight of the medical opinion evidence supports that residuals of the accepted conditions have ceased.

The Board additionally notes that the Office has not accepted that appellant's cervical degenerative discogenic spondylosis at C4-5 to C6-7 was causally related to the employment incident of April 24, 2003. Appellant bears the burden of proof to establish causal relationship with respect to that medical condition. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. 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 claimant's diagnosed condition and the implicated employment factors identified by the claimant.²¹ The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused or aggravated by employment conditions is sufficient to establish causal relation.²²

¹⁹ *Maurissa Mack*, 50 ECAB 498 (1999).

²⁰ *Jimmie H. Duckett*, 52 ECAB 332, 336 (2001).

²¹ *Solomon Polen*, 51 ECAB 341 (2000).

²² *Ernest St. Pierre*, 51 ECAB 623 (2000).

Dr. Schultz, an attending neurologist, reported that appellant's cervical MRI scan showed some evidence of preexisting cervical degenerative discogenic spondylosis from C4-5 to C6-7 and opined that this condition was aggravated by the accident. However, in a subsequent report Dr. Schultz advised that it was not clear that the degenerative discogenic spondylosis was aggravated by the April 24, 2003 work injury, noting that it was hard to separate appellant's complaints from his psychiatric situation. The Board has held that opinions based on an incomplete history or which are speculative or equivocal in character have little probative value.²³ As Dr. Schultz did not provide any explanation as to how appellant's degenerative condition was aggravated by the work injury and was equivocal as to the cause, his opinion is equivocal in nature. As there is no other medical evidence, appellant has not met his burden of proof to establish that he sustained an aggravation of his preexisting degenerative discogenic spondylosis condition causally related to the April 24, 2003 work injury.

CONCLUSION

Appellant has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty. The Office met its burden of proof in terminating appellant's compensation as the evidence was insufficient to show any remaining residuals.

ORDER

IT IS HEREBY ORDERED THAT the July 29 and June 4, 2004 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Issued: May 19, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

²³ *Valeh Mokhtarians*, 51 ECAB 190 (1999).