United States Department of Labor
Employees' Compensation Appeals Board

MICHAEL A. BOTELHO, Appellant	)	
and	)	**Docket No. 05-1590**
	)	**Issued: November 18, 2005**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, HONOLULU INTERNATIONAL AIRPORT, Honolulu, HI, Employer	)	

Appearances:
Michael A. Botelho, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On July 25, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated January 11, 2005, denying his emotional condition claim and a May 27, 2005 decision, denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the January 11 and May 27, 2005 decisions.

ISSUES

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty causally related to factors of his employment; and (2) whether the Office properly denied his request for reconsideration under 5 U.S.C. § 8128.

FACTUAL HISTORY

On October 17, 2004 appellant, then a 42-year-old baggage screener supervisor, filed an occupational disease claim alleging that he sustained a work-related stress condition after he was told during a telephone call that he had been demoted. Appellant felt humiliated and embarrassed. When he reported for work on October 17, 2004 he discovered that his name was on the list of baggage screeners, not on the list of supervisors. Appellant received a telephone call from a manager who told him that he had been demoted and to "jump right into the rotation." He alleged that coworkers were laughing at him because they knew of his demotion before he did. He spoke to a manager who indicated that a letter had been sent to appellant about his demotion. He also alleged that management harassed him about providing medical reports and yelled at him for "little things." Appellant submitted medical evidence in support of his claim.

By decision dated December 23, 2004, reissued on January 11, 2005, the Office denied appellant's claim on the grounds that his emotional condition was not causally related to a compensable factor of employment.

Appellant requested reconsideration. He alleged that his claims examiner had denied his claim because he had complained to her supervisor. He submitted a copy of a letter he wrote to the Office district director expressing his disagreement with the denial of his claim.

By decision dated May 27, 2005, the Office denied appellant's request for reconsideration.[1]

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act[2] provides for the payment of compensation benefits for injuries sustained in the performance of duty. To establish a claim of an emotional condition sustained in the performance of duty, an employee must submit the following: (1) factual evidence identifying compensable 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.[3]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,[4] the Board explained that there are distinctions in the type of employment situations giving rise to a

[1] Appellant submitted additional evidence with his appeal to the Board. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board has no jurisdiction to consider this evidence for the first time on appeal.

[2] 5 U.S.C. §§ 8101-8193.

[3] *George C. Clark*, 56 ECAB ___ (Docket No. 04-1573, issued November 30, 2004).

[4] 28 ECAB 125 (1976).

compensable emotional condition under the Act. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the coverage under the Act.[5] When an employee experiences emotional distress in carrying out his employment duties and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.[6] 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.[7] Generally, actions of the employing establishment in administrative matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act.[8] However, 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.[9]

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.[10] 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.[11]

ANALYSIS -- ISSUE 1

Appellant alleged that his emotional condition was caused by the incident on October 17, 2004 when he was told during a telephone call that he had been demoted. He indicated that his coworkers knew of his demotion before he was told. Appellant also alleged that management harassed him about providing medical reports and yelled at him for 'little things" concerning his job performance. These allegations regarding a demotion, being asked to provide medical documentation for an illness and receiving criticism regarding his job performance involve administrative or personnel actions that are not compensable under the Act absent evidence of

[5] *George C. Clark, supra* note 3.

[6] *Lillian Cutler, supra* note 4.

[7] *Id*.

[8] *Michael L. Malone,* 46 ECAB 957 (1995).

[9] *Charles D. Edwards,* 55 ECAB ___ (Docket No. 02-1956, issued January 15, 2004).

[10] *Dennis J. Balogh,* 52 ECAB 232 (2001).

[11] *Id.*

error or abuse. The Board has held that mere disagreement or dislike of a supervisory or management action will not be compensable without a showing through supporting evidence that the incidents or actions complained of were unreasonable.[12] Regarding the demotion, appellant spoke to a supervisor who indicated that a letter had been sent to him about his demotion. Apparently, appellant did not receive the letter and was not aware of the demotion until he reported for work on October 17, 2004. However, there is insufficient evidence that the employing establishment erred or acted abusively or unreasonably in handling his demotion. Appellant has provided insufficient evidence that management erred or acted abusively in handling the requests for medical reports. The allegation that he was yelled at over "little things" is vague as appellant did not provide specific information identifying the parties involved or addressing the time, place or manner of such conversations. Therefore, these allegations are not deemed compensable factors of employment.[13]

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act[14] vests the Office with discretionary authority to determine whether it will review an award for or against compensation. The Act states:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application. The Secretary, in accordance with the facts found on review may --
>
> (1) end, decrease, or increase the compensation awarded; or
>
> (2) award compensation previously refused or discontinued."

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent evidence not previously considered by the Office.[15] When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.[16]

[12] *Janice I. Moore*, 53 ECAB 777 (2002).

[13] Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence. *See Barbara J. Latham*, 53 ECAB 316 (2002); *Garry M. Carlo*, 47 ECAB 299 (1996).

[14] 5 U.S.C. § 8128(a).

[15] 20 C.F.R. § 10.606(b)(2).

[16] 20 C.F.R. § 10.608(b).

ANALYSIS -- ISSUE 2

In support of his request for reconsideration, appellant contended that his emotional condition claim had been denied because he had complained to a supervisor about his claims examiner. He also submitted a letter to the Office district director expressing his disagreement with the denial of his claim. However, his claim for an emotional condition was denied because he failed to establish that his condition arose from a compensable factor of employment. The evidence he submitted with his request for reconsideration does not address this issue. Therefore, it does not constitute relevant and pertinent evidence not previously considered by the Office.

CONCLUSION

The Board finds that appellant failed to establish that his emotional condition was causally related to a compensable factor of employment. The Board further finds that the Office properly denied his request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 27 and January 11, 2005 are affirmed.

Issued: November 18, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board