

“anthrax scare” and to a prior incident on February 4, 2000.¹ The claim form indicated that appellant stopped working on January 24, 2002. The medical evidence indicated that her attending psychiatrist, Dr. Kenneth Jones, had released appellant to return to work in a November 16, 2001 report, “if she is not required to directly handle mail.” In a report dated December 10, 2001, he reported that she should not have direct contact with mail for an additional 30 days.

In a narrative statement, appellant indicated that she sustained stress from “the fact that postal employees were being exposed to anthrax,” that she did not know “whether mail could have gone through the offices that had confirmed cases of anthrax” and that she was still recovering from post-traumatic stress disorder. In a February 28, 2002 letter, the employing establishment indicated that her work site did not have any incidents related to anthrax exposure. According to the employing establishment, appellant had been asked to type an evacuation plan but she stated that she could not do it because the subject matter upset her. The employing establishment also stated that appellant, because of the subject matter of a video on workplace violence. In addition, the employing establishment stated that, although she contended that she could not be around mail, appellant “was actually in physical contact with mail, with no apparent panic.”

By decision dated May 2, 2002, the Office denied appellant’s claim on the grounds that no compensable factors were established. She requested a hearing before an Office hearing representative, which was held on April 27, 2004.

At the hearing, appellant testified that she was asked to type an evacuation plan regarding responses to threats or emergency situations. She stated that she was upset by the content of the plan. With respect to workplace violence videos, appellant indicated that the videos were shown to supervisors in the room that she was in and she could hear the videos and the content was upsetting. She also stated that on January 8, 2002 she was asked to go through certified mail. Appellant indicated that she put on gloves and went through and handled the certified mail.

By decision dated June 24, 2004, the hearing representative affirmed the May 2, 2002 Office decision. The hearing representative found that no compensable factors had been established.

LEGAL PRECEDENT

To establish a claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.²

¹ The record indicates that appellant had a prior claim for an incident on February 4, 2000 involving the handling of a ticking package; the claim was accepted for post-traumatic stress disorder.

² *Leslie C. Moore*, 52 ECAB 132 (2000).

The Board has held that 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 employment but nevertheless does not come within the concept or coverage of workers compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to her regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act. The same result is reached when the emotional disability resulted from appellant's emotional reaction to the nature of her work or her fear and anxiety regarding her ability to carry out her work duties.³

By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.⁴

The Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors, which may be considered by a physician when providing an opinion on causal relationship and which are not deemed factors of employment and may not be considered.⁵ As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim; the claim must be supported by probative evidence.⁶

ANALYSIS

The initial allegation in this case, was that a fear of anthrax exposure caused an emotional reaction. Appellant did not report a specific incident; her allegation was that there had been incidents of anthrax exposure in other areas and this had caused a general fear of possible anthrax exposure. A generalized fear of possible hazards at work because of incidents elsewhere does not constitute a compensable work factor.⁷ Even if there was an allegation based on a specific incident of alleged anthrax exposure at the work site, there must be probative evidence

³ *Ronald J. Jablanski*, 56 ECAB ____ (Docket No. 05-482, issued July 13, 2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁴ *Id.*

⁵ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁶ *See Charles E. McAndrews*, 55 ECAB ____ (Docket No. 04-1257, issued September 10, 2004).

⁷ *See John Polito*, 50 ECAB 347, 350 (1999) (the claimant alleged a general fear of terrorist bombings, asbestos contamination and packages leaking bodily fluids; the Board found such vague and generalized claims did not establish a compensable work factor).

sufficient to establish a compensable work factor.⁸ Appellant's fear of anthrax exposure was self-generated and is not compensable in this case.

With respect to the allegation regarding an emergency evacuation plan, appellant did not establish a compensable work factor. She alleged that she was asked to type the plan, but it is not clear whether she actually was required to complete the task. Appellant asserted that she was upset at the content, without providing any information regarding the actual content. The issuance of an emergency plan is an administrative matter and a compensable work factor may arise only if the evidence establishes error or abuse by the employing establishment.⁹

No evidence of error or abuse was presented in this case with regard to an emergency plan. Similarly, there is no evidence of error or abuse regarding a video on workplace violence. A May 28, 2004 letter from a union representative stated that appellant had requested the videos be shown in another area and her request was denied. To the extent that she alleging administrative error or abuse in showing the videos or denying her request to show them in a different location, no probative evidence of error or abuse was submitted.

The remaining allegation, however, with respect to the direct handling of mail, requires further development. Appellant alleged that commencing January 8, 2002 she was required to handle certified mail in contravention of her existing medical restrictions. The hearing representative briefly stated that there was no independent evidence establishing the allegation and it was not accepted as factual. The Board notes that the record did indicate that Dr. Jones was restricting appellant to no direct handling of mail. Moreover, the employing establishment indicated that she was in physical contact with mail in its February 28, 2002 letter. The employing establishment did not refute the allegation and the Office did not specifically develop the record with respect to this allegation. On return of the case record the Office should develop the record and make an appropriate finding as to whether appellant was required to directly handle mail and if so, whether this constituted a compensable work factor based on administrative error. If a compensable work factor is established, the Office should consider the medical evidence. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that appellant has not established a compensable work factor with respect to fear of anthrax exposure, an emergency plan or workplace violence videos. The case is remanded for further development with respect to the handling of certified mail.

⁸ See *Marlon Vera*, 54 ECAB ____ (Docket No. 03-907, issued September 29, 2003); *Judy C. Rogers*, 54 ECAB (Docket No. 03-565, issued July 9, 2003) (appellant's alleged exposure to unknown powdery substance; evidence showed it was not anthrax and fears were found to be self-generated).

⁹ It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee. See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 24, 2004 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: October 5, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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