

Appellant alleged that, on June 18, 2004, Ms. Dimock threatened with changing his nonscheduled days from Saturday and Sunday to Sunday and Wednesday. He stated that he stopped work because of job-related stress and returned to work on August 2, 2004, when Ms. Dimock and Dan McNamara, the area manager, admitted to wrongdoing. During an August 12, 2004 mediation meeting, he kept his nonscheduled days off as being Saturday and Sunday. Appellant stated that he stopped work again on October 26, 2004 due to Ms. Dimock's retaliation against him from August 2 to October 26, 2004, which arose from his challenging her on his nonscheduled days off. He alleged that, for the prior three months, Ms. Dimock constantly undermined him, talked about him to other employees and was rude to him. Appellant submitted disability slips and medical reports from Dr. Alba de Simone, Ph.D., a clinical psychologist, which diagnosed depression and anxiety disorder from work-related stress.

In a November 15, 2004 letter, Ms. Dimock stated that she did not threaten appellant on June 18, 2004. She referenced letters dated June 22 and July 9, 2004, which she wrote addressing the history of appellant's two jobs and the respective nonscheduled days and hours. The letters noted that the reason for the June 18, 2004 meeting was to discuss why appellant was working a different schedule than that listed in his position description, which was effective September 8, 2001 and which listed nonscheduled days of Sunday and Wednesday. Appellant responded by producing a 2001 letter for a former position which he held from June 2 to September 7, 2001. She did not know why appellant vacated his former position and noted that such position was reverted, while vacant, on August 19, 2002. Ms. Dimock stated that, on November 2, 2002, another employee had assumed a position with similar hours and nonscheduled days as appellant's former position. Appellant was advised that, effective Saturday, June 26, 2004, he must maintain the nonscheduled days of his current position description. Ms. Dimock noted that appellant had requested and received sick leave from June 24, 2004 until he returned on August 2, 2004. During appellant's absence, she was unable to find any information to support the Human Resources Systems Job Identification for appellant's current schedule, so Mr. McNamara and she agreed to restore appellant's current nonscheduled days off. Appellant returned to work on August 2, 2004 in advance of the redress meeting of August 12, 2004 as the nonscheduled day issue had been resolved. She stated that other issues of concern were addressed at the redress meeting of August 12, 2004. Ms. Dimock generally denied the allegations of retaliation or retribution and advised that she had no words with appellant that would lead to his stress claim.

In a December 7, 2004 letter, the Office advised appellant of the type of factual and medical evidence needed to establish his claim and provided 30 days in which to acquire such information.

Appellant submitted numerous statements including a copy of an Equal Employment Opportunity Commission statement. He alleged that, when Ms. Dimock called him into her office on June 18, 2004, he informed her that he held a bid job as a supervisor with nonscheduled days of Saturday and Sunday. Appellant provided a copy of his bid letter signed by the area manager, but she did not believe him. He stated that she became very hostile and told him he had to work the late end on Saturdays and close the building. Appellant contended that he never bid a job with nonscheduled days of Saturday and Wednesday and alleged that someone vacated his job without permission. He also alleged that Ms. Dimock charged him with being absent without leave (AWOL) on June 25, 2004, even though he had submitted medical documentation

indicating that he would be out from June 24 to July 25, 2004. Appellant noted that he finally got his eight hours pay back during the mediation meeting on August 12, 2004. On June 29, 2004 he was issued a letter of warning for an incident that occurred on April 10, 2004, which was during his scheduled day off, and was not reported by the supervisor on duty. On August 4, 2004 Ms. Dimock denied his request for training after the area manager had arranged for it, and said in a very threatening manner that she could then hold him accountable "for the safe." Appellant alleged that he was charged 80 hours of sick leave instead of 40 hours and that Ms. Dimock had failed to remove his sick leave when he returned to work on August 2, 2004. He reiterated his allegations of harassment and retaliation. Appellant stated that he had been doing two supervisor jobs for the prior three months and that Ms. Dimock had singled him out by adding the duties from another individual who had the same job and who had been absent for five months.

Appellant submitted additional medical evidence from Dr. DeSimone and Dr. William Lester, a Board-certified internist, who diagnosed anxiety. In a December 14, 2004 report, Dr. Lester noted that appellant related his anxiety to a dispute with his supervisor and to increased duties at work. He further noted that appellant felt that the supervisor's actions were "retaliation."

In a December 21, 2004 letter, Ms. Dimock again stated her disagreement with appellant's allegations. She noted that, when she arrived at the employing establishment on March 24, 2004, one of her first tasks was to review all of the supervisor's duties and schedules. Ms. Dimock noticed that two of the supervisors had the same nonscheduled days of Saturday and Sunday and that appellant's job description listed nonscheduled days of Sunday and Wednesday. She asked appellant to come to her office on June 18, 2004 to discuss his position description and the reason why he was working a different schedule. Ms. Dimock stated that the conversation was entirely professional and that she did not threaten, speak loudly, or become agitated. During the mediation meeting on August 12, 2004, appellant asked management to circumvent the proper channels on two issues: He wanted reimbursement of his sick leave and payment of administrative leave from June 24 to August 2, 2004. She advised that appellant was informed of the proper procedures for making leave requests but he choose not to follow those procedures. Appellant received a letter of warning for failing to follow the policies of the Boston District on Accident Reporting. She stated that appellant not only failed to report an accident, but inappropriately handled a customer's property damage claim. Ms. Dimock noted that appellant had been extensively trained and knew the proper procedure, but failed to follow proper procedures. Appellant was allowed to maintain the same schedule he had prior to leaving work on June 24, 2002 because personnel could not provide documentation that he received written notification when he assumed the new position. Ms. Dimock reiterated that her behavior has always been professional and denied ever speaking about appellant to any other employee or being rude or threatening to appellant.

By decision dated March 7, 2005, the Office denied appellant's emotional condition claim finding that the evidence of record failed to establish that appellant's condition arose out of the performance of duty.

LEGAL PRECEDENT

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 her 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.¹ 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.²

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.³ 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.⁴

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.⁵ However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative or personnel matter, coverage will be afforded.⁶ In determining whether the employing establishment erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁷

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.⁸ A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. The issue

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

⁶ See *William H. Fortner*, 49 ECAB 324 (1998).

⁷ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁸ See *Michael Ewanichak*, 48 ECAB 364 (1997).

is whether the claimant has submitted sufficient evidence under the Act to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁹ The primary reason for requiring factual evidence from the claimant is support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.¹⁰

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.¹¹ 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.¹²

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of harassment and retaliation by Ms. Dimock which started with a June 18, 2004 meeting when she inquired about his nonscheduled days; being charged AWOL on June 25, 2004; issued a letter of warning on June 29, 2004; denied training; charged more sick leave than he took; Ms. Dimock's refusal to remove his excess sick leave usage when he returned to work; and to performing the work of two supervisors for the three months.

Although the meeting of June 18, 2004 regarding his nonscheduled days and the fact that appellant was issued a letter of warning on June 25, 2004 occurred, these administrative actions do not rise to the level of a compensable factor of employment. They represent administrative and personnel actions. As previously stated, a claimant's reaction to administrative or personnel matters fall outside the scope of the Act absent evidence which demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities.¹³ The evidence does not substantiate appellant's allegations that he was harassed by Ms. Dimock at the June 18, 2004 meeting or in issuing the letter of warning or that such actions constituted a form of retaliation.

⁹ See *James E. Norris*, 52 ECAB 93 (2000).

¹⁰ *Beverly R. Jones*, 55 ECAB ____ (Docket No. 03-1210, issued March 26, 2004).

¹¹ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹² *Id.*

¹³ *Ruthie M. Evans*, 41 ECAB 416 (1990).

Regarding the discussion of his work schedule on June 18, 2004 and the issuance of the letter of warning, the Board has explained that oral reprimands or disciplinary matters consisting of counseling sessions, discussions, or letters of warning for conduct, do not constitute a compensable factor of employment.¹⁴ Furthermore, the reinstatement of appellant's nonscheduled work days after he returned to work on August 2, 2004, the alleged mishandling of his sick leave hours and the alleged denial of training are also noncompensable administrative matters. Although the handling of leave requests and attendance matters and training are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.¹⁵ Appellant has presented insufficient evidence of error or abuse in the performance of these administrative actions, and therefore, they are not compensable under the Act. The Board has held that an employee's frustration from not being permitted to work in a particular environment or hold a particular position is not compensable.¹⁶ Ms. Dimock provided a reasonable explanation for her actions and denied any unreasonable conduct regarding these matters. Appellant has not submitted sufficient evidence to establish error or abuse.

Appellant alleged that he did the work of two supervisors for three months. The Board has held that emotional reactions to situations in which an employee is trying to meet his position requirements are compensable.¹⁷ Appellant made a general allegation that he was overworked as he was performing the work of two supervisors. The record is devoid of any evidence, however, substantiating this allegation. Moreover, the monitoring of an employee's activities at work by a supervisor relates to administrative or personnel matters unrelated to the employee's regular or specially assigned work duties. Such actions do not fall within the coverage of the Act unless the evidence discloses error or abuse by employing establishment personnel.¹⁸ Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant has also alleged that Ms. Dimock retaliated against him from August 2 to October 26, 2004 by undermining him, talking about him to other employees and in being rude to him. Appellant, however, provided no evidence, such as witnesses' statements to support these allegations, and they were denied by the personnel involved. Therefore, these allegations have not been established by substantial evidence to have occurred, as alleged.

Moreover, appellant failed to provide a sufficiently detailed account of most of the alleged incidents to establish a pattern of harassment by Ms. Dimock. As noted above, mere perceptions of harassment are not enough to establish a factual basis for a claim. Thus, appellant

¹⁴ See *Janet I. Jones*, 47 ECAB 345 (1996). The Board has characterized criticisms of performance, supervisory discussions of job performance and reprimands as administrative or personnel matters of the employing establishment, which are covered only when a showing of error or abuse is made. *Roger W. Robinson*, 54 ECAB ____ (Docket No. 03-348, issued September 30, 2003).

¹⁵ *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

¹⁶ See *Dennis J. Balogh*, 52 ECAB 232 (2001); *William P. George*, 43 ECAB 1159 (1992).

¹⁷ *Donna J. DiBernardo*, *supra* note 15; *Joseph A. Antal*, 34 ECAB 608 (1983).

¹⁸ See *Dennis J. Balogh*, *supra* note 11; *John Polito*, 50 ECAB 347 (1999).

has failed to substantiate his allegation that he was subject to a pattern of harassment by Ms. Dimock.

As appellant has not established a compensable factor of employment as a cause of his condition, it is not necessary for the Board to review the medical evidence.¹⁹

CONCLUSION

Appellant has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the March 7, 2005 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: September 15, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

¹⁹ See *Lori A. Facey*, 55 ECAB ____ (Docket No. 03-2015, issued January 6, 2004).