

George Lewis and Tom Monroe and union steward Frank Derr.¹ She asserted that Mr. Lewis, her supervisor, summoned her to his office regarding an alleged threat that she made against coworker Phil McKinnon on June 2, 2004 while speaking on her cellular telephone. Mr. Monroe, a workplace intervention official, warned appellant that she “could be put on emergency suspension or removal and ... could lose [her] job.” Appellant alleged that Mr. Monroe yelled at her. Mr. Monroe read statements by Mr. McKinnon and coworker Amy Brame regarding the alleged threat but refused to provide appellant copies of these statements. She asserted that her telephone bill proved that she was not on the telephone at the time of the alleged threat. Appellant stated that, during the conversation with Mr. Monroe, she became “overwhelmed with feelings of anxiety, nervousness and nausea” and experienced a migraine headache. She also experienced anxiety over the possible loss of her job. Appellant asserted that the June 30, 2004 incident constituted harassment, discrimination and disparate treatment.² She stopped work on June 30, 2004 and claimed wage-loss compensation from September 1 to November 6, 2004.

In a July 28, 2004 statement, Mr. Derr recalled that, on June 30, 2004, Mr. Lewis called him into the supervisor’s office as he was about to meet with appellant regarding two incidents with Mr. McKinnon. Mr. Derr stated that the officials discussed a June 29, 2004 incident when Mr. McKinnon placed a letter tray on appellant’s side of the letter case and appellant moved it back several times. Mr. Lewis admonished appellant but not Mr. McKinnon. After this portion of the discussion, Mr. Lewis left the office. Mr. Monroe then accused appellant of threatening Mr. McKinnon on June 2, 2004. According to Mr. Monroe, Mr. McKinnon wrote a statement on June 9, 2004 stating that “while he was outside loading his truck, he noticed appellant “on the loading dock so he went back in” to request that Ms. Brame “come out to the loading area and listen in case [appellant] started something.” Mr. Monroe stated that Mr. McKinnon heard appellant “tell someone on her cell phone that she had someone at work she wanted capped and that he lived in Nashville.” Ms. Brame made a similar allegation. Mr. Monroe then told appellant that if he had “just a little more information she would be on emergency suspension.” Appellant and Mr. Derr were “denied when [they] asked to see the statements.” Appellant then left the office, “extremely upset and very, very emotional.”

In a July 13, 2004 report, Dr. Judith Yongue, an attending psychiatrist, related appellant’s account that, on June 30, 2004, a supervisor “verbally accused unjustly and was loud and no chance to explain...” Dr. Yongue diagnosed post-traumatic stress disorder and found appellant totally disabled for work from July 8 to 26, 2004. In a July 20, 2004 letter, Dr. Yongue stated that appellant was at risk for decompensation if she returned to work and was on “medical leave until further notice.”

¹ Appellant initially filed a claim for recurrence of disability (Form CA-2a), asserting that her emotional condition was related to a January 23, 2002 incident under File No. 06-20528629, an emotional condition claim not before the Board on the present appeal. In an August 16, 2004 memorandum, the Office stated that as appellant claimed a new June 30, 2004 injury, her claim for recurrence of disability would instead be processed as a new occupational disease claim.

² In a July 26, 2004 letter, Antonetta Wilkins, a coworker of appellant’s, stated that she delivered forms related to appellant’s claim to Mr. Lewis.

Appellant submitted notes and slips dated July 26 to November 8, 2004 from Margaret Yankov, a counselor. She also submitted an emergency room form regarding a September 25, 2004 episode of back pain. This form does not have a legible physician's signature.

Appellant participated in a September 17, 2004 Equal Employment Opportunity (EEO) mediation but no agreement resulted.³

By decision dated November 30, 2004, the Office denied appellant's emotional condition claim on the grounds that she had not established any compensable factors of employment. The Office found that appellant's reaction to Mr. Monroe yelling at her and threatening her job was self-generated and not in the performance of duty as appellant did not establish administrative error or abuse. The Office stated that proof of administrative error "consists of a decision by an outside adjudicatory board.... [Our] [O]ffice does not make findings concerning administrative matters." The Office further found that being denied copies of statements against her was not compensable.

In a December 31, 2004 letter, appellant requested reconsideration. She asserted that, on June 30, 2004, Supervisor George Lewis violated the employing establishment's policy on violence in the workplace by yelling at her, slamming a tray of mail on the table, blocking her path and stepping toward her as she tried to move away from him. She submitted additional evidence.

In July 9 and 30, 2004 letters, appellant made a request under the Freedom of Information Act (FOIA) for copies of statements related to the June 30, 2004 incident.

Appellant submitted a December 9, 2004 report from Dr. Yongue. She also submitted reports dated from October to December 2004 by Ms. Yankov, Patricia Wallace, a psychiatric nurse specialist and Johnie G. Hamilton, a psychologist.

In a January 20, 2005 letter, Mr. Derr stated that the employing establishment did not properly investigate the alleged June 2, 2004 incident as witness statements were not obtained "until 9 days after the fact" and appellant was not interviewed until June 30, 2004.

In a May 18, 2005 letter, the Office requested that the employing establishment submit additional information regarding appellant's allegations. The employing establishment did not respond.

By decision dated June 15, 2005, the Office denied reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review. The Office conducted a limited review of the evidence and determined that appellant had not established any compensable factors of employment.⁴

³ In a September 20, 2004 letter, appellant characterized a September 17, 2004 mediation as "disastrous, unpleasant and traumatic," causing "enhanced feelings of anxiety, stress and hopelessness."

⁴ The Board notes that in the June 15, 2005 decision the Office stated both that it denied modification of the previous decision and that it denied a merit review. The cover letter indicated that the Office conducted a nonmerit review.

LEGAL PRECEDENT -- ISSUE 1

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.⁵ 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.⁶

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.⁷ 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.⁸

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.⁹ 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.¹⁰

ANALYSIS -- ISSUE 1

Appellant claimed that she sustained an emotional condition due to a June 30, 2004 meeting with management officials during which she was accused of threatening a coworker on June 2, 2004. In its November 30, 2004 decision, the Office denied appellant's claim on the grounds that she had not established any compensable factors of employment. The Office

⁵ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁶ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁷ 5 U.S.C. §§ 8101-8193.

⁸ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁹ See *Charles D. Edwards*, 55 ECAB ____ (Docket No. 02-1956, issued January 15, 2004); *Norma L. Blank*, 43 ECAB 384 (1993).

¹⁰ *Lori A. Facey*, 55 ECAB ____ (Docket No. 03-2015, issued January 6, 2004); *Norma L. Blank*, *supra* note 9.

indicated that Mr. Monroe, an employing establishment workplace intervention official, yelled at appellant, threatened her job and denied her copies of the statements received from Mr. McKinnon and Ms. Brame. However, the Office found that these factors were noncompensable as appellant did not establish administrative error or abuse by submitting “a decision by an outside adjudicatory board.” The Office added that it did not “make findings concerning administrative matters.”

There is no requirement that a claimant submit findings from an outside adjudicatory board in order to establish administrative error or abuse. Conversely, it is well established that findings of other administrative bodies are not determinative with regard to proceedings under the Act, which is administered by the Office and the Board.¹¹ Therefore, the Office’s finding that appellant did not meet her burden of proof because she did not submit a decision from an outside adjudicatory agency is in error. The Office’s comment that it is not empowered to “make findings concerning administrative matters” is also in error. It is axiomatic that the Office makes findings of fact regarding the employment factors identified by the claimant, including administrative actions of the employer.¹²

The Board finds that the Office’s erroneous statements regarding its adjudicatory function and appellant’s burden of proof deprived appellant of a proper consideration of the evidence. The case will be remanded for further development. On remand, the Office shall adjudicate the evidence of record. Following any other development deemed necessary, the Office shall issue an appropriate decision in the case.

As the case must be remanded for further development on the issue of whether appellant established any compensable factors of employment, the Board finds that the second issue regarding the June 15, 2005 denial of reconsideration is moot.

CONCLUSION

Regarding the first issue, the Board finds that the case is not in posture for a decision as the case must be remanded for further development on the issue of whether appellant established any compensable employment factors. The second issue regarding the denial of reconsideration is moot.

¹¹ *Raj B. Thackurdeen*, 54 ECAB 396 (2003).

¹² *See Charles D. Edwards*, *supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 15, 2005 and November 30, 2004 be set aside and the case remanded for further development consistent with this opinion.

Issued: April 6, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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