

On April 18, 2005 appellant submitted a letter dated April 11, 2005 and accompanying evidence. He alleged that he was subject to a hostile work environment and retaliation for speaking out at a November 8, 2004 meeting. With regard to the meeting, appellant had stated his agreement with another manager that there was a delay in meeting deadlines because of improper routing procedures and return of paperwork for corrections. The next day appellant was told by J.D. Robinson, associate warden, that T.R. Sniezek, warden, was offended by appellant's statements. According to appellant, from that time, the warden treated him differently in retaliation. Appellant alleged the following incidents: (1) he was given a three-day suspension; (2) a staff assistance visit was performed on December 8, 2004 because of appellant's comments at the November 8, 2004 meeting, and Barbara Cadogan told appellant he should take English writing classes and improve his grammar; (3) on February 14, 2005 Mr. Sniezek screamed at appellant and was very hostile; (4) on February 28, 2005 he was told not to attend the Department Head meeting and that he was subject to a focus review; (5) on March 1, 2005 a Dr. John Manenti made a derogatory comment to appellant at a meeting regarding an inmate dying; (6) appellant was advised on March 4, 2005 that he was being reassigned to the recreation department; (7) on March 7, 2005 he was escorted out of the department by Steven Lake, executive assistant, and Lois J. Swiderski, human resources manager, causing embarrassment; and (8) Mr. Robinson provided performance logs that contained untrue and unfair statements of appellant's performance.

The evidence submitted include the performance logs, a three-day suspension effective February 7, 2005 and memorandums regarding the suspension, minutes of the department head meeting and a report of the staff assistance visit on December 8, 2004. With regard to the suspension, the employing establishment proposed a three-day suspension on November 29, 2004 based on an allegation that appellant failed to ensure that a transportation van in January 2004 was in proper condition. Appellant's November 29, 2004 response indicated that he did not believe it was his responsibility to inspect the vehicle. On February 4, 2005 the employing establishment indicated that all evidence had been considered and appellant would be suspended for three days commencing February 7, 2005. A letter dated March 4, 2005 advised appellant that he was being reassigned to the recreation department and that the action was not a disciplinary or adverse action. The employing establishment submitted a letter dated May 12, 2005 stating that appellant was under investigation for possible misconduct and specific questions regarding his claim could not be answered at that time.

By decision dated September 20, 2005, the Office denied appellant's claim for compensation. The Office found that appellant had not established a compensable work factor with regard to his claim.

LEGAL PRECEDENT

A claimant 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 factors of his federal employment.¹ This burden includes the submission of detailed description of the employment factors or conditions which the employee believes caused or

¹ Pamela R. Rice, 38 ECAB 838 (1987).

adversely affected the condition or conditions for which compensation is claimed.² A claimant must also submit rationalized medical opinion evidence establishing a causal relationship between the claimed condition and the established, compensable work factors.³

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 the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors 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.⁵ 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.⁶

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.⁷ Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.⁸

² *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

³ *See Bonnie Goodman*, 50 ECAB 139, 141 (1998).

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *See Norma L. Blank*, 43 ECAB 389-90 (1992).

⁶ *Id.*

⁷ *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

⁸ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

ANALYSIS

Appellant made a general allegation of a hostile work environment and retaliation for comments he made at a November 8, 2004 meeting. Many of the specific incidents cited by appellant are administrative actions of the employing establishment, such as a three-day suspension, a reassignment and written descriptions of appellant's work performance in performance logs compiled by a supervisor. In order to establish these incidents as compensable work factors, there must be probative evidence demonstrating that the employing establishment erred or acted abusively. The record does not contain any evidence of error or abuse in this case. The disciplinary action was based on an allegation that appellant failed to ensure that a transportation van in January 2004 was in proper condition; appellant had a chance to respond and his response was considered prior to a final determination. Appellant alleges that the performance logs were unfair, but no probative evidence was presented showing error or abuse with regard to the log entries. The record indicated that appellant was reassigned on March 4, 2005, and the reassignment letter stated that it was not an adverse action and there was no evidence that the reassignment was erroneous or abusive.

With respect to a December 8, 2004 staff assistance visit, appellant alleged that Ms. Cadogan told him that it occurred because of what appellant discussed at the November 8, 2004 meeting. The report of the staff assistance visit states only that it was ordered by the warden and the last visit was in November 2003. A relationship between the ordering of the visit and appellant's comments would not in itself establish error or abuse, appellant's comments related to an inability to meet deadlines and the report made recommendations for improving the efficiency of the organization. There is no evidence of record establishing a compensable factor with respect to the ordering of the staff assistance visit or the recommendations contained in the report.

The Board notes that appellant alleged that Ms. Cadogan told him to improve his English grammar, and he also alleged that on February 14, 2005 Mr. Sniezek yelled at him and spoke in a hostile manner. While the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to a compensable work factor.⁹ In addition, the raising of a voice during the course of a conversation does not in itself warrant a finding of verbal abuse.¹⁰ Appellant did not allege or substantiate any incident of verbal abuse in this case.

In his statement, appellant referred to being escorted out of his department on March 7, 2005 and feeling embarrassed by the incident as some of the inmates made comments and laughed at him. Although appellant may have been unhappy at being escorted, his perceptions are not compensable absent some evidence of error or abuse by the employing establishment. He alleged that he was told the lock to his door had been changed and he was escorted to his office to find an appointment card and was escorted out of the department. No evidence was presented

⁹ *Judy L. Kahn*, 53 ECAB 321, 326 (2002).

¹⁰ *Carolyn S. Philpott*, 51 ECAB 175, 179 (1999).

in the record that the actions of Mr. Lake and Ms. Swiderski in escorting appellant on March 7, 2005 were erroneous or abusive.

The Board accordingly finds that the evidence of record does not substantiate a compensable work factor with respect to appellant's claim.¹¹ Since appellant has not established a compensable work factor, the Board will not address the medical evidence.¹²

CONCLUSION

The Board finds that appellant did not allege and substantiate a compensable work factor with respect to his claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 20, 2005 is affirmed.

Issued: April 21, 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

¹¹ Although appellant submitted evidence on appeal, the Board may review only evidence that was before the Office at the time of the final decision on appeal. 20 C.F.R. § 501.2(c).

¹² See *Margaret S. Krzycki*, 43 ECAB 496 (1992).