

FACTUAL HISTORY

On January 22, 2004 appellant, then a 47-year-old logistics management specialist, filed an occupational disease claim for post-traumatic stress disorder (PTSD), depression and anxiety. He generally alleged that he had been threatened, retaliated against, denied promotions, bullied by supervisors, overworked, denied training and forced to perform multiple jobs due to staff reductions. Appellant also alleged that his supervisor, Captain Cinthya A. Hammer, placed him on absent without leave (AWOL) status on October 7, 10, 15, 16 and 22-31, 2003, despite having submitted medical documentation to support his leave requests. Appellant also noted that Captain Hammer counseled him in October 2003 for leave-related accounting matters and absenteeism.

From October 17 to December 4, 2003, appellant participated in daily outpatient therapy for his depression and PTSD. Following his return to work on December 8, 2003, Captain Hammer allegedly harassed appellant for medical documentation to support his request to attend weekly aftercare appointments. He also alleged that Captain Hammer improperly ordered him to report for duty on December 22, 2003 after he requested sick leave that morning due to depression. Appellant claimed that despite receiving authorization to leave work early on December 31, 2003, she marked him AWOL for one hour because of his early departure. Appellant also alleged that Captain Hammer wrongfully ordered him to report for duty on January 5, 2004 when he was incapacitated due to an employment-related right ankle fracture he sustained on December 31, 2003. In summary, appellant claimed that Captain Hammer created a hostile work environment by repeatedly requesting detailed medical documentation for each of his absences and by placing him on AWOL status without just cause.

In a series of statements dated January 30, April 13 and July 9, 2004, Captain Hammer indicated that she began supervising appellant on October 7, 2003 and acknowledged placing him on AWOL status for October 7 and 10, 2003. She stated that he did not have approval for annual leave, sick leave or leave without pay on those dates. Captain Hammer further stated that appellant was not placed on AWOL status every time he called in sick. She acknowledged counseling appellant in October 2003 for falsifying employee time sheets.² According to Captain Hammer, appellant certified time sheets while on AWOL status. She noted that from October 7, 2003, when she began supervising appellant, until January 30, 2004, appellant was present for duty on 16 days. During those 16 days, Captain Hammer stated that she had not denied any promotions, had not bullied or overworked appellant nor did she deny him any work-related training or require him to perform in a dual work capacity.

Captain Hammer also indicated that she placed appellant on AWOL status on December 31, 2003 because he left work one hour prior to completing his eight-hour workday. She denied appellant's claim that she released him from his duties early on New Year's Eve because of the 59-minute rule. Captain Hammer stated that it was within her discretion to release her section 59 minutes early on December 31, 2003 and she chose not to. She also recalled having instructed appellant to take advantage of the quite time to catch-up on some

² According to Captain Hammer, appellant admitted to taking training holidays off for the past six years without requesting leave.

work. Captain Hammer stated that she left her office area to turn in some time sheets and when she returned, appellant was gone and she did not hear from him again until January 5, 2004.

On July 9, 2004 Captain Hammer indicated that appellant had not worked any overtime from October 7, 2003 to the present, he did not travel nor did he receive any intense assignments. She also noted that appellant received training on October 8, 2003. Captain Hammer further stated that appellant had not experienced any conflicts with coworkers or supervisors and there were no conduct problems. She did note, however, that appellant had not performed his required duties in accordance with expectations. She commented that appellant's frequent, unpredictable and lengthy absences created an undue hardship on the agency's mission in general and on the individual workloads of the staff.

The medical evidence consists of a series of reports from Dr. John C. Butchart, a Board-certified psychiatrist, who treated appellant at the Baltimore Veterans Administration Medical Center. In a December 3, 2003 report, Dr. Butchart indicated that appellant experienced major depression and service-related PTSD. Beginning October 17, 2003, appellant participated in the partial hospitalization program (PHP), which involved five hours of daily clinical treatment. Dr. Butchart noted that the work environment exacerbated appellant's symptoms of depression and PTSD. Upon completion of his PHP treatment on December 4, 2003, appellant was released to return to full duty without restriction. He was also advised to continue weekly aftercare therapy.

In a decision dated September 14, 2004, the Office denied appellant's claim based upon his failure to establish a compensable employment factor as the cause of his claimed emotional condition.

By letter dated October 12, 2004, appellant requested a review of the written record. The request was postmarked October 22, 2004 and the Office received it on November 9, 2004. The Branch of Hearings and Review denied appellant's request by decision dated November 23, 2004.

LEGAL PRECEDENT -- ISSUE 1

To establish that he sustained an emotional condition causally related to factors of his federal employment, a claimant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.³

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is

³ See Kathleen D. Walker, 42 ECAB 603 (1991).

deemed compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.⁴ Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.⁵

ANALYSIS -- ISSUE 1

Appellant has not substantiated his general allegations of threats, retaliation, denial of promotions, bullying by supervisors, work overload, denial of training and being required to perform multiple jobs due to staff reductions. He did not provide any specific details regarding these alleged employment incidents. Captain Hammer stated that during her supervisory tenure dating back to October 7, 2003, appellant had not been denied a promotion, had not been bullied or overworked and was not required to perform in a dual work capacity. Regarding the availability of training, Captain Hammer noted that appellant received training on October 8, 2003 and he was afforded at least four more opportunities thereafter for refresher training. The Board finds that the record does not support appellant's contentions; he has not established any compensable employment factors with respect to the above-referenced general allegations.

Appellant's remaining allegations pertain to Captain Hammer's handling of various leave requests. Although the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.⁶ As a general rule, an employee's reaction to administrative or personnel matters falls outside the scope of the Federal Employees' Compensation Act.⁷ However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.⁸

Appellant claimed that Captain Hammer placed him on AWOL status on October 7, 10, 15, 16, 22-31 and December 31, 2003. The record, however, indicates that appellant was on AWOL status on October 7, 10 and December 31, 2003. With respect to October 7 and 10, 2003, Captain Hammer explained that appellant did not have approval for annual leave, sick leave or leave without pay on those dates. She further stated that appellant was not placed on AWOL status every time he called in sick. On December 31, 2003 Captain Hammer charged appellant with one hour of AWOL because he left work early before the conclusion of his eight-hour shift. Appellant did not deny leaving work early, but instead claimed that Captain Hammer authorized an early departure on New Year's Eve. However, Captain Hammer denied authorizing appellant or any of her other staff members to depart work 59 minutes early on

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

⁵ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁶ *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997).

⁷ *Andrew J. Sheppard*, 53 ECAB 170, 173 (2001).

⁸ *Id.*

December 31, 2003. Appellant has not demonstrated error or abuse on Captain Hammer's part in placing him on AWOL status for October 7, 10 and December 31, 2003.

Appellant also alleged that Captain Hammer created a hostile work environment by repeatedly requesting medical documentation to support his work absences. While the record indicates that Captain Hammer was particularly vigilant about having appellant submit documentation to support his absences, the record does not demonstrate that Captain Hammer's actions were either erroneous or abusive. Upon receipt of the requested documentation, Captain Hammer ultimately granted the majority of appellant's leave requests. Complaints about the manner in which a supervisor performs her duties or the manner in which a supervisor exercises her discretion fall, as a rule, outside the scope of coverage provided by the Act.⁹ This principle recognizes that a supervisor or manager in general must be allowed to perform her duties and employees will, at times, dislike the actions taken, but mere disagreement or dislike of a supervisory or managerial action will not be actionable, absent evidence of error or abuse.¹⁰

Appellant also took exception to being counseled for falsifying time and attendance records. On October 22, 2003 Captain Hammer counseled appellant and issued a letter of warning regarding an October 17, 2003 incident when appellant made a false statement regarding his leave status. Appellant reportedly admitted to taking training holidays off for the past six years without requesting leave. His only explanation for his conduct was that this was "how it was done." Disciplinary actions are an administrative function of the employer.¹¹ Again, appellant has failed to demonstrate error or abuse on Captain Hammer's part in counseling him about appropriate leave usage and agency policy.

As appellant failed to establish a compensable employment factor, the Office properly denied his claim.

LEGAL PRECEDENT -- ISSUE 2

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought.¹² If the request is not made within 30 days, a claimant is not entitled to a hearing or a review of the written record as a matter of right. However, the Office has discretion to grant or deny a request that was made after this 30-day

⁹ *Marguerite J. Toland*, 52 ECAB 294, 299 (2001).

¹⁰ *Id.*

¹¹ *Janice I. Moore*, 53 ECAB 777, 781 (2002); *Bobbie D. Daly*, 53 ECAB 691, 696 (2002).

¹² 20 C.F.R. § 10.616(a) (1999).

period.¹³ In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.¹⁴

ANALYSIS -- ISSUE 2

The Office denied appellant's emotional condition claim by decision dated September 14, 2004. Appellant's request for a review of the written record was postmarked October 22, 2004.¹⁵ Because he filed his request more than 30 days after the Office's September 14, 2004 decision, appellant is not entitled to a review of the written record as a matter of right.¹⁶ Moreover, the Office considered whether to grant a discretionary review and correctly advised appellant that the issue could equally well be addressed by requesting reconsideration.¹⁷ Accordingly, the Office properly exercised its discretion in denying appellant's request for a review of the written record.

CONCLUSION

The Board finds that appellant failed to establish that he sustained an emotional condition in the performance of duty. The Board also finds that the Branch of Hearings and Review properly denied appellant's request for a review of the written record.

¹³ *Herbert C. Holley*, 33 ECAB 140 (1981).

¹⁴ *Rudolph Bermann*, 26 ECAB 354 (1975).

¹⁵ The applicable regulation provides that the hearing request must be sent within 30 days "as determined by postmark or other carrier's date marking...." 20 C.F.R. § 10.616(a) (1999).

¹⁶ *Id.*

¹⁷ The Board has held that a denial of review on this basis is a proper exercise of the Office's discretion. *E.g., Jeff Micono*, 39 ECAB 617 (1988).

ORDER

IT IS HEREBY ORDERED THAT the November 23 and September 14, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 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