

and daydream of what I want to do to my managers and other employees.” Appellant attributed his emotional condition to “abusive actions of my employer towards me and from the injuries I endured while covered under the [Office] system.” He did not stop work.

The record indicates that appellant received a November 2, 2005 proposed suspension for 21 days for sleeping on duty and failing to follow his supervisor’s instructions on September 15, 2005. The proposed suspension indicated that it was his third offense.

By letter dated November 22, 2005, the Office requested that appellant describe in detail the employment factors to which he attributed his condition and submit reasoned medical evidence in support of his claim.

In a statement received by the Office on November 22, 2005, the employing establishment controverted appellant’s claim. In a statement dated November 18, 2005, Robert Loving, appellant’s supervisor, related that he was first aware that appellant was having problems when he received his clam for an emotional condition. Mr. Loving stated that disciplinary actions taken against him were warranted and that appellant was not “abused or treated unfair[ly] in any way.”

On November 18, 2005 the employing establishment notified appellant of a temporary change in duty station to his home pending a fitness-for-duty examination and possible administrative investigation.

By letter dated December 1, 2005, the employing establishment indicated that no employees witnessed appellant crying or sweating and noted that he was unable to perform the full duties of his position due to “several nonwork injuries and one work-related injury which occurred approximately six years ago.” In a statement dated December 7, 2005, the employing establishment related that appellant’s reference on his Form CA-2 to dreaming about what he wanted to do to managers and coworkers was “considered as a threat by the medical center management.” Consequently, his duty station was changed to his residence on November 18, 2005.

By decision dated January 5, 2006, the Office denied appellant’s claim on the grounds that he did not establish an emotional condition in the performance of duty. Appellant requested a review of the written record on January 11, 2006. In a decision dated April 12, 2006, a hearing representative affirmed the January 5, 2005 decision after finding that appellant did not provide a description of the employment factors to which he attributed his condition.

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

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.³ 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 matter, coverage will be afforded.⁴ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁵

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.⁶ 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.⁷

ANALYSIS

On his claim form, appellant generally asserted that his emotional condition was caused by abusive actions taken against him by management. He received a proposed 21-day suspension on November 2, 2005 for sleeping on duty and failing to follow instructions on September 15, 2005. The employing establishment also changed his duty station to his home on November 18, 2005 pending further investigation due to his statement on his claim form that he daydreamed about what he wanted to do to managers and coworkers. The Board notes that disciplinary actions and matters involving transfers are administrative functions of the employer and not duties of the employee and, unless the evidence discloses error or abuse on the part of

¹ 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

² *Gregorio E. Conde*, 52 ECAB 410 (2001).

³ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

⁴ See *William H. Fortner*, 49 ECAB 324 (1998).

⁵ *Myrna Parayno*, 53 ECAB 593 (2002).

⁶ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁷ *Id.*

the employing establishment, not compensable employment factors.⁸ Appellant has not submitted any evidence supporting that the actions taken by the employing establishment in issuing the proposed November 2, 2005 suspension or transferring him to his residence to work constituted error or abuse in an administrative or personnel matter. Thus, he has not established a compensable employment factor.

Appellant generally alleged that his emotional condition resulted from injuries he “endured while covered under the [Office] system.” The Board notes that an emotional condition related to pain and other limitations resulting from an employment injury is covered under the Act.⁹ To establish entitlement to benefits, however, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹⁰ Appellant has not submitted any factual evidence in support of his allegation and thus has not established a compensable employment factor.

Appellant failed to provide a description of the specific employment factors which he alleged caused his emotional condition. The Office advised him in its November 22, 2005 letter that he should submit a detailed factual statement describing the employment incidents alleged to have caused his emotional condition; however, he did not submit such a statement. A claimant’s burden of proof includes the submission of a detailed description of the employment factors or conditions which he or she believes caused or adversely affected the condition or conditions for which compensation is claimed.¹¹ As appellant failed to specifically identify the factors to which he attributed his claimed condition, he has failed to establish an essential element of his claim.

On appeal, appellant argued that he timely submitted evidence to the Office which was not considered prior to its last merit decision. The Board’s jurisdiction to decide appeals from final decisions of the Office is limited to reviewing the evidence that was before the Office at the time of its final decision.¹² In this case, the record contains no evidence that the hearing representative received any submission from appellant prior to issuing his April 12, 2006 decision.

CONCLUSION

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty.

⁸ See *Bobbie D. Daly*, 53 ECAB 691 (2002); *James E. Norris*, 52 ECAB 93 (2000).

⁹ *Arnold A. Alley*, 44 ECAB 912 (1993).

¹⁰ *William Karl Hansen*, 49 ECAB 140 (1997).

¹¹ *Janet L. Terry*, 53 ECAB 570 (2002); *John Polito*, 50 ECAB 347 (1999).

¹² 20 C.F.R. § 501.2(c). Appellant may submit such argument and any supporting evidence in a request for reconsideration to the Office pursuant to 5 U.S.C. § 8128.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 12 and January 5, 2006 are affirmed.

Issued: October 5, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board