



the claimed condition to his employment, “notice of decision from fitness for duty. I was retired on disability retirement.” Appellant first became aware of his emotional condition on January 14, 2003. He retired effective June 13, 2003.

On January 14, 2003 the employing establishment withdrew an August 3, 2001 proposal to terminate appellant’s employment.<sup>1</sup> This was based on a February 1, 2002 Merit Systems Protection Board (MSPB) settlement agreement<sup>2</sup> and a November 2, 2002 medical report, which indicated that appellant was totally disabled due to a mental disorder.<sup>3</sup> The employing establishment advised appellant that he would be separated effective February 22, 2003. A March 26, 2003 social security decision granted appellant disability insurance benefits.

Appellant submitted medical reports dated January 21, 1998 to May 2, 2001, with diagnoses of depression, anxiety and a pain disorder. In an April 21, 1999 report, a physician stated that appellant had been treated for depression since 1997 and that the employing establishment had not made accommodation for his military service-related back condition. In a May 2, 2001 report, David B. Rush, Ph.D., a licensed clinical psychologist, noted appellant’s allegation that past supervisors had asked him to perform work outside of his physical limitations.

On February 15, 2006 the Office advised appellant to submit additional evidence and include specific details of the employment factors causing his emotional condition, such as specific incidents, dates and the names of the individuals involved.

By decision dated April 27, 2006, the Office denied appellant’s claim on the grounds that the evidence did not establish that he sustained an emotional condition causally related to a compensable factor of employment.

### **LEGAL PRECEDENT**

To establish a claim that he sustained an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.<sup>4</sup>

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<sup>1</sup> The record shows that the employing establishment proposed to remove appellant from his position for failing to respond to official directives and being absent without leave.

<sup>2</sup> This MSPB agreement is not of record.

<sup>3</sup> In a November 7, 2002 fitness-for-duty report, Dr. Michael H. Haberman, a psychiatrist, made a tentative diagnosis of a paranoid disorder with elements of psychosis consistent with delusional disorder or paranoid schizophrenia. He opined that appellant was unable to work due to his mental condition.

<sup>4</sup> *Pamela D. Casey*, 57 ECAB \_\_\_\_ (Docket No. 05-1768, issued December 13, 2005); *George C. Clark*, 56 ECAB \_\_\_\_ (Docket No. 04-1573, issued November 30, 2004).

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 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 employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act.<sup>5</sup> 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 frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>6</sup>

Administrative and personnel matters, although generally related to the employees' 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 Federal Employees' Compensation Act.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

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 work 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 compensable factors of employment and may not be considered.<sup>10</sup> If a claimant does implicate a factor of employment, the Office should then consider whether the evidence of record substantiates that factor. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim; the claim must be supported by probative evidence.<sup>11</sup> Where the matter asserted is a compensable factor of employment and the evidence of record established the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>12</sup>

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

<sup>6</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>7</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>8</sup> See *William H. Fortner*, 49 ECAB 324 (1998).

<sup>9</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>10</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>11</sup> See *Charles E. McAndrews*, 55 ECAB \_\_\_\_ (Docket No. 04-1257, issued September 10, 2004).

<sup>12</sup> *Jeral R. Gray*, 57 ECAB \_\_\_\_ (Docket No. 05-1851, issued June 8, 2006).

### ANALYSIS

Appellant did not address the specific employment factors in his emotional condition claim. However, medical reports of record noted his allegation that the employing establishment required that he perform work outside of his physical limitations. The Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if such activity was substantiated by the record.<sup>13</sup> However, there is insufficient evidence that the employing establishment required appellant to perform work that was not within his physical limitations. Therefore, this allegation is not deemed a compensable factor of employment.

The Board notes that appellant alluded to his disability retirement and fitness for duty. However, the March 26, 2003 Social Security Administration decision is not dispositive of appellant's entitlement to benefits under the Federal Employees' Compensation Act. The Board has held that entitlement to benefits under one federal act does not establish entitlement to benefits under the Federal Employees' Compensation Act. In determining whether an employee is disabled under the Act, the findings of the Social Security Administration are not determinative of disability under the Act. The Social Security Act and the Federal Employees' Compensation Act have different standards of medical proof on the question of disability. Under the Federal Employees' Compensation Act, appellant's injury or occupational disease must be shown to be causally related to an accepted injury or factors of his federal employment. Under the Social Security Act, conditions which are not employment related may be taken into consideration in rendering a disability determination.<sup>14</sup> For this reason, the evidence submitted does not establish appellant's claim for a work-related emotional condition.

### CONCLUSION

The Board finds that appellant failed to establish that he sustained an emotional condition causally related to compensable factors of his employment.

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<sup>13</sup> *Diane C. Bernard*, 45 ECAB 223 (1993).

<sup>14</sup> *See Daniel Deparini*, 44 ECAB 657 (1991); *Hazelee K. Anderson*, 37 ECAB 277 (1986).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 27, 2006 is affirmed.

Issued: October 18, 2006  
Washington, DC

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

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

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