



employing establishment improperly denied his requests for sick leave, treated him unfairly, harassed him and wanted to fire him.<sup>1</sup> He noted that he was improperly brought back to work against his doctor's orders and without a fitness-for-duty examination. Appellant alleged that he was brought back to work by his supervisors merely so they could fire him.

A transcript of an October 24, 2004 investigative interview shows that appellant was questioned regarding his use of sick leave for October 18 to 21, 2004. He was asked whether he owned a clock repair shop and he responded, "No." After conferring with a union steward, appellant asked for the question to be repeated and he replied, "What does this have to do with my sick leave?" After a number of questions were asked, appellant requested a claim form, stating that he was extremely upset. Joseph G. Lucas, supervisor of maintenance operations, indicated that appellant was hostile and did not appear to be upset.

In a November 16, 2004 notice of removal for improper conduct,<sup>2</sup> Mr. Lucas stated that an investigation revealed that appellant was working at his private business repairing clocks at an antiques mall booth during a period when he had taken sick leave (October 18 to 21, 2004), claiming that he was medically disabled from his federal employment. Appellant was seen moving items from his booth for relocation to a different business site between October 16 and 21, 2004 and patronizing a restaurant on October 21, 2004.<sup>3</sup> He did not receive approval to engage in gainful employment while in sick leave status, as required by employing establishment regulations. James Holland, a maintenance manager, stated that appellant had requested sick leave for October 18 and 19, 2004 and called in for additional sick leave for October 20 and 21, 2004. On October 21, 2004 he and another supervisor, Brian Fisher, observed appellant leave the antiques mall where his clock repair business was located and proceed to a restaurant to have lunch. They observed that appellant did not appear to be sick.

Appellant submitted medical evidence in support of his claim which contained diagnoses of severe depression, anxiety, panic and mood disorders and post-traumatic stress disorder.

By decision dated December 20, 2004, the Office denied appellant's claim on the grounds that the evidence did not establish that his emotional condition was causally related to a compensable work factor.

Appellant requested a hearing that was held on November 22, 2005. At the hearing he alleged that the employing establishment improperly denied sick leave for the period October 18 to 21, 2004 which he used for prostate surgery and for an infection which resulted from the

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<sup>1</sup> Appellant filed a previous emotional condition claim alleging that in 2001 he was forced to work with a vacuum cleaner that did not have a proper filter and he was concerned about exposure to anthrax. The Office denied his claim. On October 4, 2004 appellant submitted a letter to the employing establishment indicating that he was medically cleared to return to work and asking for information regarding his proposed job duties.

<sup>2</sup> The record shows that the issue of the employing establishment's proposed removal of appellant was resolved through a March 23, 2005 prearbitration settlement agreement. The approval of appellant's disability retirement by the Office of Personnel Management on January 31, 2005 rendered the issue moot.

<sup>3</sup> Appellant stated that he underwent prostate surgery on October 18, 2004 and developed an infection which caused him to require sick leave for two additional days, October 20 and 21, 2004.

surgery. Appellant contended that the purpose of the interview was to obtain grounds to fire him. Mr. Perez, appellant's representative, stated that, on one of appellant's sick leave days, he went to his wife's antique store and was there for less than five minutes when they left to have lunch together.

By decision dated February 14, 2006, an Office hearing representative affirmed the December 20, 2004 decision.

### **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>

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 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 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>

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<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).

<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).

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>

### ANALYSIS

Appellant alleged that he experienced a panic attack on October 24, 2004 because he was unfairly threatened with removal from his job during an investigative interview regarding his use of sick leave. He alleged that the employing establishment unfairly denied him sick leave. These actions are administrative matters which generally do not fall within coverage of the Act.<sup>13</sup> An administrative or personnel matter will be considered to be an employment factor only where the evidence discloses error or abuse on the part of the employing establishment.<sup>14</sup> As to the denial of sick leave, there is insufficient evidence to establish this allegation as factual. The record indicates that appellant utilized sick leave from October 18 to 21, 2004. Appellant was not specific as to dates such leave requests were denied. Therefore, it is not deemed a compensable employment factor. Regarding the proposed job removal, the Board has previously held that a claimant's job security is not a compensable factor of employment under the Act.<sup>15</sup> There is insufficient evidence of record of error or abuse by the employing establishment management in issuing the letter of proposed removal for improper use of sick leave. Appellant has provided insufficient evidence that the employing establishment erred or acted abusively in handling these administrative matters. Therefore, these allegations are not deemed compensable employment factors.

Appellant alleged that the employing establishment improperly conducted an investigation regarding his use of sick leave. Investigations are considered to be an administrative function of the employer when they are not related to an employee's day-to-day

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<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).

<sup>13</sup> *Michael L. Malone*, 46 ECAB 957 (1995).

<sup>14</sup> *Charles D. Edwards*, 55 ECAB \_\_\_\_ (Docket No. 02-1956, issued January 15, 2004).

<sup>15</sup> *See Robert Breeden*, 57 ECAB \_\_\_\_ (Docket No. 06-734, issued June 16, 2006); *Artice Dotson*, 41 ECAB 754 (1990).

duties or specially-assigned duties or to a requirement of the employee's employment.<sup>16</sup> The employing establishment retains the right to investigate an employee if wrongdoing is suspected or as part of the evaluation process.<sup>17</sup> An employee's fear of being investigated is not covered under the Act.<sup>18</sup> The evidence shows that, while appellant was on approved sick leave, he was observed at a location which could be construed as a place of family business. His presence there could be seen as a violation of employing establishment policy which requires that an employee obtain approval to engage in gainful employment while in sick leave status. Under these circumstances, it was reasonable for the employing establishment to investigate the matter. The evidence does not establish that appellant's supervisors acted unreasonably or abusively in conducting an investigation into his use of sick leave. Appellant's union steward was present at the October 24, 2004 investigative meeting to represent his interests. The nature of the questions should have made him aware of the possible charges against him. Although appellant indicated that he won a grievance concerning the investigation and proposed removal, the record shows that the employing establishment chose not to pursue the removal because appellant had already retired. Under these facts, the withdrawal of the removal action does not support a finding of error or abuse. Appellant alleged that inappropriate comments were made during the meeting but he provided insufficient evidence in support of this allegation. The Board finds that appellant has not established a compensable employment factor regarding the investigation and proposed removal.

Appellant alleged generally that his supervisors treated him unfairly. The Board has held that mere disagreement or dislike of a supervisory or management action will not be compensable without a showing, through supporting evidence, that the incidents or actions complained of were unreasonable.<sup>19</sup> Appellant submitted insufficient information regarding this allegation such as the dates of the incidents and the supervisors involved. Therefore, this allegation is not deemed a compensable factor of employment.

Appellant alleged that his supervisors harassed him. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute a compensable employment factor.<sup>20</sup> However, for harassment and discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.<sup>21</sup> Appellant alleged that he was improperly brought back to work against his doctor's orders and without a fitness-for-duty examination. He alleged that he was brought back to work by his supervisors merely so they could fire him.

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<sup>16</sup> *Jeral R. Gray*, *supra* note 12; *Thomas O. Potts*, 53 ECAB 353 (2002).

<sup>17</sup> *Sandra F. Powell*, 45 ECAB 877 (1994).

<sup>18</sup> *Garry M. Carlo*, 47 ECAB 299 (1996).

<sup>19</sup> *Janice I. Moore*, 53 ECAB 777 (2002).

<sup>20</sup> *Id.*

<sup>21</sup> *Donna J. DiBernardo*, 47 ECAB 700 (1996).

However, the record shows that on October 4, 2004 appellant sought to return to work, indicated that he was medically cleared to return to work and inquired as to his proposed duties.<sup>22</sup> Therefore the employing establishment did not err or act abusively in allowing appellant to return to work.

Appellant failed to establish that his emotional condition was causally related to a compensable factor of employment. Therefore, the Office properly denied his claim.

### **CONCLUSION**

The Board finds that appellant failed to establish that his emotional condition was causally related to a compensable factor of employment.<sup>23</sup>

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 14, 2006 is affirmed.

Issued: September 13, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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<sup>22</sup> See *supra* note 1.

<sup>23</sup> Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence. See *Barbara J. Latham*, 53 ECAB 316 (2002); *Garry M. Carlo*, *supra* note 18.