United States Department of Labor
Employees' Compensation Appeals Board

E.A., Appellant	)	
and	)	**Docket No. 07-911**
	)	**Issued: September 19, 2007**
DEPARTMENT OF HOMELAND SECURITY, CITIZEN & IMMIGRATION SERVICE, El Monte, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 16, 2007 appellant filed a timely appeal from a December 1, 2006 Office of Workers' Compensation Programs' denial of reconsideration and a July 31, 2006 decision denying compensation for an alleged emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty; and (2) whether the Office properly refused to reopen his case for reconsideration under 5 U.S.C. § 8128.

FACTUAL HISTORY

On June 7, 2006 appellant, a 55-year-old district adjudications officer, filed a claim for benefits based on an emotional condition. He alleged that he developed stress, anxiety, chest pain and severe headaches due to an incident which occurred on June 2, 2006.

In a June 2, 2006 memorandum describing the incident in question, appellant stated that Supervisory District Adjudication Officer Robert Kettle, came to his workstation stating that appellant had been observed walking from his car in the employing establishment parking lot to his office with an administrative file [A-file]. He immediately informed his supervisor, Supervisory District Adjudication Officer Ray Phillips, about this incident.

In a treatment slip dated June 5, 2006, a Dr. Rafaelito S. Victoria advised that appellant was seen in the emergency room on June 2, 2006 and was experiencing chest pain. He released him to return to work on June 7, 2006.

In an interoffice memorandum dated June 7, 2006, Supervisory District Adjudication Officer Delfin Tapalla, stated:

> "On June 2, 2006 at approximately 7:05 a.m., I was on my way to my office on the second floor when I observed [appellant] in the hallway [looking] distraught and stressed. I asked him if he was doing okay and he responded in a loud and unusual manner saying, 'No, I am not okay!' [Appellant] looked so angry and distressed and this continued [for] a few minutes ... I decided to give him some space.
>
> "Subsequently, about an hour thereafter, I went inside [appellant's] office and he was still so upset[,] when I asked why. He then mentioned ... the incident that happened to him earlier in the morning in [which] somebody allegedly saw him walking with an A-file from his car in the parking lot.
>
> "I observed [appellant] as having an anxiety attack and being ... distressed on the morning of June 2, 2006."

In an interoffice memorandum dated June 7, 2006, Supervisory District Adjudication Officer Artemio J. Parcero, stated that appellant informed him on June 2, 2006 between 7:15 a.m. to 7:30 a.m., that someone had accused him of walking from the parking lot to the building with a file in his hand. He expressed his disbelief to appellant that he would engage in that type of activity. Officer Parcero noted that appellant was shaking a little bit and becoming pale. He related that the employing establishment had undertaken a review of administrative files on June 1, 2006 and had noted that some of these files were missing documents. Officer Parcero advised that another employee told him that a coworker of appellant's had taken the A-file in question and given it to Officer Pacheco, appellant's immediate supervisor; she stated that Officer Pacheco probably placed the A-file in appellant's sign-in basket that day so that he would notice it and review it. Officer Parcero stated that, by the time appellant left his office, he was "really shaking badly," "not looking good" and "really getting mad."

By letter dated June 21, 2006, the Office requested that appellant submit additional medical evidence in support of his claim, including a comprehensive medical report describing how the claimed incident on June 2, 2006 resulted in the diagnosed condition and provide factual evidence, which would establish that he had developed an emotional condition caused by factors of his employment. The Office made no inquiry of the employing establishment.

In a July 17, 2006 statement, appellant indicated that the exact words Officer Kettle used during the June 2, 2006 were "Manny, there is an issue we have to resolve. Somebody has observed you bringing an A-file from your car in the parking lot." He explained that this was a significant issue for him because there was an administrative rule prohibiting adjudication officers from removing A-files from the office and taking them home or outside of the office. Appellant stated that, when an adjudication officer is accused of bringing a file from his car to the office, as he was, this is tantamount to being accused of illegal activity. He considered the accusation a direct attack on his personal integrity and character.

On July 31, 2006 the Office denied the claim.

On November 13, 2006 appellant requested reconsideration.

In a treatment slip dated June 15, 2006, Dr. Victoria stated that he was treating appellant for stress and anxiety due to an incident at work. He recommended excusing appellant from work and having him rest for three to four weeks. Appellant also submitted a June 2, 2006 hospital form which indicated that he left the hospital on that date against medical advice and refused to permit medical treatment. The form recommended admitting appellant to prevent a possible heart attack.

By decision dated December 1, 2006, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition, and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.[1] There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.[2]

The first issue to be addressed is whether appellant has cited factors of employment that contributed to his alleged emotional condition or disability.

Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[3] On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position or to secure a

[1] *See Debbie J. Hobbs*, 43 ECAB 135 (1991).

[2] *See Ruth C. Borden*, 43 ECAB 146 (1991).

[3] *Lillian Cutler*, 28 ECAB 125 (1976).

promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.[4]

ANALYSIS

The Board finds that appellant has established a factor of employment which may have resulted in a compensable emotional condition; *i.e.*, Officer Kettle's statement that appellant had been observed walking from his car in the employing establishment parking lot to his office with an A-file. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act unless there is evidence that the employing establishment acted unreasonably.[5] The statement by Officer Kettle, uttered while appellant was in the performance of his regular duties, was that appellant had engaged in improper and illegal activity. It was based on an unproven allegation, in lieu of any formal investigation. Further, Officer Parcero's statement that the A-file in question was probably placed in appellant's sign-in basket that day for his review casts doubt on Officer Kettle's statement that appellant had been observed walking through the parking lot with the A-file. Based on these circumstances, the Board finds that Officer Kettle acted unreasonably in making an unsupported, unconfirmed statement about appellant, which constitutes a factor of employment. This evidence was not rebutted by the employing establishment.

However, appellant's burden of proof is not discharged by the fact that he has merely identified an employment factor which may give rise to a compensable disability under the Act. He also has the burden of submitting sufficient medical evidence to support his claim that the statement by Officer Kettle, a management official, resulted in an employment-related emotional condition.[6] In the instant case, appellant has submitted supporting medical evidence in the present case; *i.e.*, Dr. Victoria's June 5 and 15, 2006 treatment slips. These reports indicated that appellant was treated for chest pain in the emergency room on June 2, 2006 and was subsequently treated for stress and anxiety caused by the work incident. Dr. Victoria recommended that appellant rest at home for three to four weeks.

Although the medical evidence submitted by appellant is not sufficient to meet his burden of proof, it is sufficient to raise an uncontroverted inference that the identified factor of his federal employment may have contributed to his alleged emotional condition or disability and is sufficient to require further development of the record.[7]

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[4] *Id.*

[5] *See Alfred Arts*, 45 ECAB 530, 543-44 (1994).

[6] *Chester R. Henderson*, 42 ECAB 352 (1991).

[7] *John J. Carlone*, 41 ECAB 354 (1989).

On remand, therefore, the Office should further develop the medical evidence as is appropriate. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.[8]

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 31, 2006 is set aside and the case is remanded for further action in accordance with this decision.

Issued: September 19, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[8] In light of the Board's decision to set aside and remand the July 31, 2006 Office decision, the Board need not consider the Office's December 1, 2006 nonmerit decision.