

**United States Department of Labor
Employees' Compensation Appeals Board**

D.L., Appellant

and

DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Honolulu, HI, Employer

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**Docket No. 07-1069
Issued: September 26, 2007**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 8, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 2, 2007 with respect to his claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established an emotional condition or hypertension as causally related to compensable work factors.

FACTUAL HISTORY

On March 22, 2005 appellant, then a 52-year-old medical administration specialist, filed an occupational disease claim (Form CA-2) alleging that he sustained hypertension as a result of his federal employment. In a narrative statement dated April 11, 2005, he noted that he had enclosed documentation dating back to January 2004 of countless incidents which he believed

contributed to his condition. Appellant stated that his working relationship with a supervisor, Ms. Connolly, gradually progressed to open antagonism. He alleged that he had testified for coworkers in Equal Employment Opportunity (EEO) and Office complaints, and Ms. Connolly “barged into his office” and demanded information regarding his testimony. When appellant refused, the supervisor “stormed out of my office slamming the door.” He alleged that unreasonable demands were placed upon him from that time, and his supervisor’s manner was often rude and demeaning. Appellant concluded that there was a continuing hostile work environment created by his supervisor.

The documentation submitted by appellant included e-mail correspondence and memoranda. A June 21, 2004 memorandum stated that on that date Ms. Connolly requested information regarding a deposition that appellant had given with respect to “an [Office] complaint” against the supervisor, specifically did he recall the alleged incident on a specific date and what was his response regarding the allegation. Appellant stated that he considered the inquiry inappropriate. In a memorandum dated June 25, 2004, he stated that in the morning his supervisor was upset with computer problems and advised him that her needs were of priority and needed to be addressed immediately.¹ Appellant stated that he was told to stop sending the supervisor e-mails because she did not have time to read them. An August 3, 2004 memorandum alleged that on that date Ms. Connolly shouted “Where were you?” and then she became agitated and slammed the office door. According to appellant, a few minutes later he was told to redo a monthly report and to prepare additional training materials. He also stated that the supervisor had questioned his leaving the office early the day before, but he had advised her of a meeting and physical therapy appointment.

In a letter dated July 12, 2005, Ms. Connolly stated that she did not shout at appellant or any employee and did not recall the August 3, 2004 incident. She indicated that she may have asked about his whereabouts if he was absent for a prolonged period without notification. Ms. Connolly stated that she did ask appellant to submit a leave request prior to leaving for the day, at the request of the timekeeper, since appellant had been absent without leave. She also reported that appellant was responsible for troubleshooting computer problems and she may have asked him to prioritize her request. Ms. Connolly stated that she did ask appellant to stop sending e-mails that contained information received from other sources.

By decision dated September 20, 2005, the Office denied the claim for compensation. The Office found that appellant had not established any compensable work factors with respect to his claim.

On February 28, 2006 appellant submitted additional evidence, including additional e-mail correspondence and medical evidence. The evidence submitted included a grievance form dated September 24, 2004 for criticism and threats made by supervisors. In a letter dated March 21, 2006, appellant indicated that Ms. Connolly had resigned or retired effective March 10, 2006.

¹ The alleged incident apparently occurred on January 27, 2004, as appellant stated he originally wrote the memorandum on that date.

By decision dated March 2, 2007, the Office reviewed the case on its merits and denied modification. The Office again found that no compensable work factors had been established.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment.² This burden includes the submission of detailed descriptions of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.³

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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁴

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.⁵ Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.⁶

ANALYSIS

The initial question presented is whether appellant has alleged and substantiated compensable work factors with respect to his claim. In this case, he has alleged harassment, retaliation and a hostile work environment caused by his supervisor. Appellant did not submit any evidence or findings with respect to an EEO complaint. While he does not have to submit an EEO finding supporting his claim,⁷ he must submit detailed factual evidence regarding

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

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

⁵ *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

⁶ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

⁷ *See Martha L. Cook*, 47 ECAB 226, 231 (1995).

employment incidents and supporting evidence, such as witness statements, which provide a sufficient background to substantiate the claimed factors.⁸

Appellant did not submit sufficient evidence to establish a compensable work factor. He refers to several specific incidents involving his supervisor, such as a June 21, 2004 incident where the supervisor asked for information regarding deposition testimony involving another coworker. There was no detailed description of the incident, nor any probative evidence presented, that the actions of the supervisor were erroneous or abusive. Appellant alleged that as a result of his testimony he was subject to retaliation, but again no probative evidence was submitted. There was a general allegation that the supervisor's manner was often rude and demeaning, without additional detail or supporting evidence. With respect to an August 3, 2004 incident where the supervisor inquired as to where appellant had been, there is nothing in the allegation that constitutes a compensable work factor. The supervisor denied shouting at appellant and no probative evidence of error or abuse was submitted. As noted above, a reaction to an administrative matter is not compensable unless there is probative evidence of error or abuse.

The record contains a number of e-mail correspondences from appellant. To the extent that appellant alleges the evidence supports a compensable work factor, the e-mails do not on their face establish any error or abuse or otherwise substantiate a compensable work factor. The Board finds that the record does not substantiate a claim of harassment or retaliation, nor does it establish a specific incident of error or abuse by the employing establishment with regard to an administrative matter. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.⁹

CONCLUSION

The evidence of record does not substantiate a compensable work factor and therefore appellant did not meet his burden of proof to establish an injury in the performance of duty.

⁸ See *Charles D. Edwards*, 55 ECAB 258 (2004).

⁹ See *Margaret S. Krzycki*, 43 ECAB 496 (1992). Once a compensable work factor is established, then the medical evidence is reviewed to determine if it establishes causal relationship between a diagnosed condition and the compensable work factor. *Beverly R. Jones*, 55 ECAB 411 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 2, 2007 is affirmed.

Issued: September 26, 2007
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