

In a statement accompanying her claim, appellant related that she was being harassed by the wife of her supervisor, Charles M. Angell, the associate regional director (ARD). On December 8, 1973 she formally requested that Mr. Angell stop any further harassment by his wife. On March 28, 1974 Ms. Angell, the supervisor's wife, physically attacked appellant in her office at work. Appellant filed charges related to the incident and attended a preliminary court hearing on April 15, 1974 and a trial on April 28, 1974. On May 6, 1974 appellant, through her attorney, again requested that her supervisor prevent further harassment by his wife. On June 5, 1974 the employing establishment conducted an investigation into appellant's use of leave and work performance from December 1973 through May 1974. The investigation aggravated her condition and resulted in her hospitalization from June 5 through 22, 1974.

Appellant related that her position as a regional director of the women's bureau necessitated a close working relationship with the regional director, including participating in conferences and meetings in a tri-state area. She stated, "As a result of this working relationship, a social problem developed between the ARD/ESA's wife and me which grew progressively worse as time when on...." Appellant attempted to discuss the issue with Ms. Angell on December 7, 1974. She stated:

"[Ms. Angell] was beyond reasoning. She compared my work with that of my predecessor and concluded that I did not need to work that closely with her husband. She then made some unrealistic demands of me which if met I could no longer perform my responsibilities effectively. Specifically, the ARD/ESA's wife demanded that I sever my relationship with the ARD/ESA including joint participation in meetings, consultations and conferences both local and regional."

Appellant asserted that Ms. Angell threatened her life. On December 8, 1974 she formally notified Mr. Angell of the harassment. Appellant related:

"My work suffered because I was afraid to carry out my work plans locally or regional[ly], except under severe tension. I knew I had to complete my projects by June 30, 1974, yet I was unable to get on with the work which required participation by the ARD/ESA and others for fear that this crazy, jealous woman would indeed carry out her threats."

On March 28, 1974 Ms. Angell came to appellant's office and physically attacked her. Security guards removed Ms. Angell from the building. Appellant filed a criminal complaint but it did not yield a conviction. On May 5, 1975 she suffered a mental breakdown and sought medical treatment. Appellant returned to work on May 29, 1975. On June 4, 1974 the employing establishment investigated her use of sick leave. Appellant experienced another mental breakdown as a result of the investigation and was hospitalized.

In a December 8, 1973 letter to Mr. Angell, appellant stated:

"As you will recall, on Thursday, December 6, 1973, at 7:30 a.m., you picked me up in front of my residence for the customary ride to work. At approximately 7:35 a.m., Mrs. Angell blocked your car with hers, jumped out, created a street scene, threatened me and made some rather uncomplimentary remarks about our

relationship. You will further recall that I left the scene when it became apparent that she was irrational, therefore, any further conversation with her at that time would have been non-productive.”

Appellant met Ms. Angell at a restaurant after work. She stated:

“During the course of this meeting, Mrs. Angell’s deportment was most disturbing to me. She was beyond reason. I attempted to set her mind at ease by describing the nature of our work which, from necessity, requires a close working relationship. This did not seem to satisfy her. She went on to explain that she has had a privative detective recording our activities since May of this year. She referred to a pocket-calendar and began to mention dates, times and places that we had been observed. Much of the data she had was invalid and/or circumstantial in that the meetings were occasioned by official business.”

Appellant related that Ms. Angell’s demands were not reasonable with the exception of her request that she and Mr. Angell not ride to work together. She asked Mr. Angell to effectively deal with his personal life.

On April 29, 1974 appellant testified regarding the March 28, 1974 incident. She maintained that Ms. Angell came to her office, informed her that she had not done as requested and hit her in the chest with keys in her hand. Appellant believed that Ms. Angell came to the office because she and Mr. Angell rode to work together. She denied having an affair with Mr. Angell or having him over to her home. Ms. Angell testified that she went to appellant’s office but denied any physical contact.

By letter dated July 12, 1974, Mr. Angell notified appellant that an audit of her leave showed no improprieties. On October 3, 1974 he informed the Office that he was not concerned about her leave usage.

In a January 17, 1975 statement, Carmen R. Maymi, director, related that appellant was concerned about the incident in which where Ms. Angell entered her office and struck her. She “felt [that] she did not have any peace or security because Ms. Angell parked her car in front of [her] home, telephoned and threatened her, making her very nervous and afraid.” Ms. Maymi related that the employing establishment performed a leave audit due to “alleged irregularities” on appellant’s time card.

In an undated statement, Mr. Angell noted that an investigator reported that he had received a complaint that appellant was off work but not being charged with sick or annual leave. The investigator researched the matter and found no improprieties regarding leave usage.

On June 24, 1974 Donald M. Essig, an acting director, concluded that appellant’s time and attendance records for May 1974 showed no discrepancies. He stated, “The controversy over time and attendance may have been avoided if the ARD had authorized the compensatory time and signed the time cards since he is [appellant’s] supervisor.” Mr. Angell agreed to start certifying appellant’s time and attendance report.

On January 18, 1975 Mr. Essig related that his office conducted a review of appellant's time and attendance after receiving notification that she was absent for a month. He informed appellant and her supervisor on the date of his visit that there were no discrepancies.

On February 28, 1975 Richard E. Laron, an investigator, submitted an investigative report describing his interviews with various individuals, including appellant, Mr. Essig and Ms. Angell. Appellant related that Ms. Angell did not want her to ride to work with her husband. Ms. Angell accused appellant of having an affair and threatened to blind her with lye. She showed her a list of dates that they spent together. Appellant recalled two of the dates, both of which occurred when she and Mr. Angell attended work meetings. In December 1973, she wrote an official letter requesting that Mr. Angell stop his wife's behavior but he refused to intervene. On March 28, 1974 appellant gave Mr. Angell a ride to work because he was leaving for a meeting later in the date. Ms. Angell came to her office, accused her of doing what she had been told not to do and hit her in the chest. Appellant filed a civil complaint against Ms. Angell but the judge found her not guilty. She denied having an affair with Mr. Angell.

In his interview with Mr. Laron, Mr. Essig related that he regularly conducted leave inspections. He had received an allegation that appellant was absent from the Office for an extended period. Mr. Essig found no problems with her leave usage.

Mr. Angell, in his interview, indicated that he discussed appellant's December 1973 letter with his wife. On March 28, 1974 he met his wife walking with a guard out of the building. Ms. Angell said that she did not strike appellant. Mr. Angell asserted that the leave audit was unusual and that he would have sent appellant's time cards to those concerned if he had been notified. He related that his wife was jealous and threatened by his working relationship with appellant. Mr. Angell denied having an affair with her.¹ Mr. Laron also interviewed Ms. Angell, who denied making any demands of appellant other than that she stop accepting rides from her husband. Ms. Angell further denied striking appellant on March 28, 1975. She described why she believed that her husband and appellant were having an affair.²

On March 4, 1975 the Office determined that appellant did not establish harassment by Ms. Angell as a compensable employment factor. It found that the harassment and alleged assault on March 28, 1974 were imported into the workplace from her personal life. The Office found, however, that matters involving the leave audit were compensable. It cited *Raymond H. Schulz, Jr.*,³ as the basis for its finding that appellant's preexisting condition led to the administrative action and, thus, compensable.

On April 17, 1975 the Office advised appellant that it had approved her claim and paid compensation beginning November 20, 1974.

¹ Mr. Angell did not provide a written statement, as requested, regarding his personal relationship, if any, with appellant.

² Ms. Angell refused to provide a written statement alleging an affair.

³ 23 ECAB 25 (1971) (the Board found that the employing establishment's requirement that appellant, who had a preexisting emotional condition, undergo a fitness-for-duty examination constituted a compensable work factor).

On April 26, 2004 the Office notified appellant of its proposed rescission of her claim. It found that it had erred in determining that the leave audit was a compensable work factor. The Office determined that the leave audit was an administrative action and, as there was no evidence of error or abuse by the employing establishment in the administrative action, did not constitute a compensable employment factor.

On May 10, 2004 appellant disagreed with the Office's proposed rescission. She noted that she worked in a high visibility position and that her supervisor often appeared with her on television and radio. Ms. Angell believed that they were having an affair and threatened to throw lye in her face if she did not stop attending meetings with her husband.

By decision dated May 27, 2004, the Office finalized the rescission of its acceptance of appellant's claim and terminated her compensation benefits effective June 13, 2004.

On June 24, 2004 appellant requested an oral hearing. At the hearing held on January 27, 2005 she described the assault by Ms. Angell and the investigation into her leave usage. Appellant asked Mr. Angell to intervene with his wife but he did not comply. She believed that Ms. Angell thought that they were having an affair because they traveled together.

On March 3, 2005 appellant's attorney argued that she was required to work with her supervisor as part of her job and the assault would not have occurred absent their workplace relationship.

By decision dated April 25, 2005, the Office hearing representative affirmed the May 27, 2004 decision. He found that there was no evidence showing error or abuse by the employing establishment in auditing appellant's leave. The hearing representative further determined that the alleged assault on March 28, 1974 resulted from a privately motivated quarrel imported into the workplace.

Appellant appealed to the Board. In an order dated March 23, 2007, the Board found that the case record was incomplete.⁴ The Board set aside the April 24, 2005 decision and remanded the case for reconstruction of the case record.

On May 23, 2007 the Office reissued the April 25, 2005 hearing representative's decision.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying the termination or modification of compensation benefits. This holds true where, as here, the Office later decides that it erroneously accepted a claim.⁵ The Office's regulation on rescission states:

“If the Director determines that a review of the award is warranted (including, but not limited to circumstances indicating a mistake of fact or law or changed

⁴ Docket No. 06-1035 (issued March 23, 2007).

⁵ A.W., 59 ECAB ___ (Docket No. 08-306, issued July 1, 2008).

conditions), the Director (at any time and on the basis of existing evidence) may modify, rescind, decrease or increase compensation previously awarded, or award compensation previously denied.”⁶

The Board has held that the power to annul an award of compensation is not an arbitrary one and that such an award can only be set aside in the manner provided by the statute. In establishing that its prior acceptance was erroneous, the Office is required to provide a clear explanation of its rationale for rescission.⁷

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 her 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.⁸ 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.⁹

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.¹⁰ 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.¹¹ 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.¹²

Larson, in addressing assaults arising out of employment, states the following:

“Assaults arise out of the employment either if the risk of assault is increased because of the nature or setting of the work or if the reason for the assault was a quarrel having its origin in the work.... Assaults for private reasons do not arise out of the employment unless, by facilitating an assault which would not

⁶ 20 C.F.R. § 10.610.

⁷ *Andrew Wolfgang-Masters*, 56 ECAB 411 (2005).

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

⁹ *Gregorio E. Conde*, 52 ECAB 410 (2001).

¹⁰ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff’d on recon.*, 42 ECAB 556 (1991).

¹¹ See *William H. Fortner*, 49 ECAB 324 (1998).

¹² *Ruth S. Johnson*, 46 ECAB 237 (1994).

otherwise be made, the employment becomes a contributing factor.¹³ When the animosity or dispute that culminates in an assault is imported into the employment from claimant's domestic or private life and is not exacerbated by the employment, the assault does not arise out of the employment under any test."¹⁴

ANALYSIS

The Office accepted appellant's claim after finding that the leave audit constituted a compensable factor of employment. The Board has held that a claim for an emotional condition must be based on compensable work factors as substantiated by the probative evidence of record. An emotional reaction to regular or specially assigned work duties comes within coverage of the Act, but not every situation that has some connection to employment is considered a compensable work factor.¹⁵ An allegation regarding an administrative or personnel matter, rather than regular or specially assigned duties, will not be considered a compensable work factor unless there is evidence of error or abuse by the employing establishment.¹⁶ Matters involving the use of leave are not considered compensable factors of employment without a finding of error or abuse as they are administrative functions of the employer and not duties of the employee.¹⁷

The Office properly determined that it erred in accepting the leave audit as a compensable work factor. The employing establishment audited appellant's leave because she had been absent from work for a month. Mr. Essig investigated her leave usage and told her on the date of the investigation that he had found no irregularities. He suggested that Mr. Angell certify appellant's timesheet to prevent future misunderstandings. As there is no evidence that the employing establishment erred or acted abusively in investigating her leave usage, its audit of her leave does not constitute a compensable employment factor.

Appellant also alleged that Ms. Angell entered her office on March 28, 1974 and struck her in the chest with keys. Ms. Angell told her that she had not done as instructed. Appellant believed that she meant the fact that she had ridden with Mr. Angell to work that morning. She has not, however, established that the assault occurred as alleged. The record contains no witness statements and Ms. Angell denied assaulting appellant. Appellant brought criminal charges against Ms. Angell but did not obtain a conviction. Additionally, assaults arise out of the employment either if the risk of assault is increased because of the nature or setting of the work or if the reason for the assault was a quarrel having its origin in the work. Assaults for private reasons do not arise out of the employment unless, by facilitating an assault which would

¹³ A. Larson & L.K. Larson, *The Law of Workers' Compensation* § 8.00 (2008); R.S., 58 ECAB ____ (Docket No. 06-1312, issued August 17, 2007).

¹⁴ A. Larson, *The Law of Workers' Compensation*, *supra* note 13 at § 8.02(1)(a).

¹⁵ *See Bobby D. Daly*, 53 ECAB 691 (2002).

¹⁶ *See Roger Williams*, 52 ECAB 468 (2001).

¹⁷ *Judy L. Kahn*, 53 ECAB 321 (2002).

not otherwise be made, the employment becomes a contributing factor.¹⁸ The Board has held that when an animosity or dispute which culminates in an assault is imported into the employment from a claimant's domestic or private life, the assault does not arise out of the employment.¹⁹ Appellant indicated that the March 1974 incident occurred because she gave Mr. Angell a ride to work in the morning against the wishes of his wife. She and Mr. Angell thus had a personal relationship outside of the workplace as they carpooled together. To the extent that the altercation on March 1974 occurred because of Ms. Angell's anger over appellant and Mr. Angell riding to work together, the animosity would be considered to be imported into the workplace and the assault noncompensable.²⁰

Appellant contended, however, that the harassment and assault by Ms. Angell occurred because her working relationship with Mr. Angell required her to travel with him on business and attend numerous meetings. She asserted that Ms. Angell threatened to throw lye in her face if she did not stop participating in meetings with Mr. Angell. Larson addresses the case where a cause not arising out of the employment is mixed with a cause arising out of the employment by stating the fact that one cause was personal will not defeat compensability if it remains that the employment was a contributing factor.²¹ Appellant, however, has the burden to establish a factual basis for her allegations with reliable and probative evidence.²² She has not submitted sufficient factual evidence to support her contention that Ms. Angell threatened her if she did not stop going to meetings with Mr. Angell. Consequently, appellant has not established a compensable employment factor.

CONCLUSION

The Board finds that the Office met its burden of proof to rescind acceptance of appellant's claim based on its finding that it erred in accepting the leave audit as a compensable work factor.

¹⁸ See *supra* note 13.

¹⁹ See *A.K.*, 58 ECAB ____ (Docket No. 06-626, issued October 17, 2006); *Agnes V. Blackwell*, 44 ECAB 2000 (1992).

²⁰ *Guadalupe P. Americano*, 53 ECAB 297 (2002).

²¹ See A. Larson, *The Law of Workers' Compensation*, *supra* note 13 § 4.04.

²² See *Pamela D. Casey*, 57 ECAB 260 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 23, 2007 is affirmed.

Issued: December 18, 2008
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