



Appellant advised that on March 2, 2006 he was summoned to the office of Ralph Vargas, the area manager, over the public address system at about 9:00 a.m. When he entered Mr. Vargas' office, the area manager put a copy of an Investigative Memorandum (IM) for an employee (a supervisor) under his control on the desk. Mr. Vargas advised appellant that he needed to take that employee off the clock and remove her. Appellant told Mr. Vargas that, prior to making any decision, he needed to read the IM and consult with the Labor Relations office to determine the appropriate action as his name would ultimately go on the decision. Mr. Vargas made several comments which appellant could not recall and he again asked Mr. Vargas a couple of times for time to review the IM prior to making a decision. When appellant reached for the IM package, he stated that Mr. Vargas pulled it away and denied his request to review the package prior to making a decision. Mr. Vargas told appellant that, if he did not take the requested action, he would be disciplined and removed. Appellant became uncomfortable, with anxiety and a headache. To avoid further confrontation, he told Mr. Vargas that he needed to go back to the workroom floor. Mr. Vargas made a comment about the number of split routes he was reporting. After appellant responded, Mr. Vargas told him that he was a "lousy manager." Appellant experienced dizziness, shortness of breath, headache, blurred vision and heart palpitations. He left Mr. Vargas's office and went to the supervisor's office to regain his composure. Appellant called Eduardo Blanco, a customer service supervisor, and told him about the confrontation with Mr. Vargas, that he was not feeling well and would go to see his physician. He stated that, although he was directed to return to the area manager's office over the public address system, he called Mr. Vargas' secretary and told her to inform Mr. Vargas that he was not feeling well and was leaving to see his physician. A few minutes later, Mr. Vargas's secretary knocked on the door and wanted him to sign for an envelope marked "registered." Appellant stated that he was in no condition to accept any documents and the secretary departed.

In form reports dated March 2 to April 21, 2006, Dr. Francisco G. Miranda, an internist, diagnosed atrial fibrillation, chest pain and anxiety. He opined, with a checkmark "yes," that such conditions were caused or aggravated by appellant's employment.

In a March 16, 2006 letter, the employing establishment controverted the claim, indicating that the March 2, 2001 meeting was an administrative matter. In a March 9, 2006 statement, Mr. Vargas noted that on March 2, 2006 he called appellant into his office as he had two inspection service memorandums for two employees under appellant's direction. Appellant was aware of the investigation against two of his employees as well as the alleged improprieties. On January 16, 2006 appellant was informed of the investigation against the employees and had informed Mr. Vargas of the pending investigation and offered to help in the investigation. On February 17, 2006 appellant had responded to the postmaster's secretary with respect to the issues involving the employees. Mr. Vargas stated that appellant needed to take corrective action but wanted to wait until he got the memorandums in writing. He noted that appellant became very irate and belligerent over the disciplinary actions which needed to be taken against the employees and grabbed the IM's off his desk. Mr. Vargas indicated that the memorandums needed to be signed over to appellant before he could take them, a procedure which appellant knew. He indicated that appellant then stormed out of his office. Mr. Vargas denied ever saying that appellant was a lousy manager.

In a May 22, 2006 statement, Mr. Blanco, the customer service supervisor, acknowledged that on March 2, 2006 appellant was paged to Mr. Vargas's office. Appellant looked pale and

upset after the meeting and stated that he was experiencing chest pains and shortness of breath. Mr. Blanco indicated that appellant stated that Mr. Vargas had instructed him to remove a supervisor and that, if he did not do as instructed, he would be disciplined. He noted that appellant told him that he needed to go to the doctor.

In reports dated April 21 to September 19, 2006, Dr. Miranda opined that the work situation of March 2, 2006 triggered a chain reaction where most of appellant's underlying conditions of atrial fibrillation, diabetes, hypertension, coronary artery disease, hyperlipidemia and sleep apnea, became more difficult to control.

By decision dated October 11, 2006, the Office denied the claim on the grounds that the evidence did not establish that appellant sustained an emotional condition in the performance of duty.

On November 12, 2006 appellant requested reconsideration. He argued that the March 2, 2006 meeting with Mr. Vargas regarding the disciplinary action to be taken concerning his employees was an integral part of his duties as a manager. Appellant had the latitude to consider all the facts and utilize all the available resources to arrive at a reasonable penalty for inappropriate conduct on the part of the employees. He argued that Mr. Vargas abused his authority. Appellant indicated that his atrial fibrillation condition was not under control even following a May 5, 2006 hospitalization. Copies of diagnostic testing was submitted together with medical reports dated October 3 to November 12, 2006 from Dr. Miranda who advised that, after the May 2, 2006<sup>1</sup> event with the area manager, appellant complained of chest pain, shortness of breath, anxiety, sad and depressive mood. Appellant was placed on an anti-depressive medication and was referred to a psychiatrist.

In reports dated May 5 to November 8, 2006, Dr. Efrain H. Gonzalez, an internist specializing in cardiovascular disease, reported on appellant's heart condition. In a November 9, 2006 report, Dr. Edgar Patino, a Board-certified psychiatrist, noted the history of appellant's physical illness and the history of the alleged events of May 2, 2006<sup>2</sup> as stated by appellant. He diagnosed generalized anxiety disorder, dysthymic disorder and post-traumatic disorder. Dr. Patino advised that appellant has worked for the employing establishment for the past 30 plus years and has had some traumatic problems in the last three years which have worsened in the last few months, very likely due to the altercation that he had with the area manager, who threatened his job security, his stability and his self-esteem.

By decision dated January 9, 2007, the Office denied modification of its October 11, 2006 decision.

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<sup>1</sup> The Board notes that the meeting involving appellant and Mr. Vargas was on March 2, 2006.

<sup>2</sup> See note 1.

## LEGAL PRECEDENT

To establish a claim that an emotional condition arose in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.<sup>3</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 illness has some connection with employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that 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. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of his work or his fear and anxiety regarding his ability to carry out his work duties.<sup>4</sup> By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.<sup>5</sup>

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.<sup>6</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>7</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>8</sup>

The Board has held that the manner in which a supervisor exercises his or her discretion falls outside the coverage of the Act. This principle recognizes that a supervisor or manager must be allowed to perform their duties and that employee's will at times disagree with actions

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<sup>3</sup> *D.L.*, 58 ECAB \_\_\_\_ (Docket No. 06-2018, issued December 12, 2006).

<sup>4</sup> *Ronald J. Jablanski*, 56 ECAB 616 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>5</sup> *Id.*

<sup>6</sup> See *Matilida R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>7</sup> See *William H. Fortner*, 49 ECAB 324 (1998).

<sup>8</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.<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 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 factors of employment and may not be considered. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>10</sup>

### ANALYSIS

Appellant noted that his duties as a manager included disciplining subordinate employees for inappropriate conduct. Any action taken by him to discipline an employee would properly be considered a factor of his employment under *Cutler*. However, appellant's claim is not premised on disciplinary actions taken with regard to his subordinate employees. Rather he attributed stress and various physical symptoms to the March 2, 2006 meeting with Mr. Vargas. At the meeting, Mr. Vargas instructed appellant to take an employee off the clock. He and appellant disagreed on the disciplinary action to be taken. Mr. Vargas wanted the employee removed while appellant first wanted to review the investigative memorandums and explore further options before making a decision. As noted above, the method by which managers perform their supervisory duties generally fall outside the coverage of the Act absent evidence of error or abuse.<sup>11</sup> Mr. Vargas indicated that appellant knew of the investigation as well as the alleged improprieties as early as January 16, 2006 and that he was actively involved with respect to the issues involving the employees. Appellant did not submit sufficient evidence to substantiate his allegation that Mr. Vargas' decision on the disciplinary action to be taken concerning his subordinate employee was erroneous or abusive. Thus, his emotional reaction to his area manager's decision on what disciplinary action should be taken was self-generated. Appellant noted that Mr. Vargas told him that, if he did not do as instructed in removing the employee in question, he would be disciplined. This statement, which the Office accepted as factual, does not establish that Mr. Vargas' decision on the disciplinary action to be taken was either erroneous or done in an abusive manner.<sup>12</sup> Appellant has not presented any evidence of error or abuse by

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<sup>9</sup> *Linda J. Edwards-Delgado*, 55 ECAB 401, 405 (2004).

<sup>10</sup> *A.K.*, 58 ECAB \_\_\_\_ (Docket No. 06-626, issued October 17, 2006); *C.S.*, 58 ECAB \_\_\_\_ (Docket No. 06-1583, issued November 6, 2006); *T.G.*, 58 ECAB \_\_\_\_ (Docket No. 06-1411, issued November 28, 2006); *D.L.*, *supra* note 3.

<sup>11</sup> *Linda J. Edwards-Delgado*, *supra* note 9.

<sup>12</sup> Assigning work and monitoring work are administrative functions of a supervisor. *Beverly R. Jones*, 55 ECAB 411 (2004).

Mr. Vargas' assertion that appellant could be disciplined for failure to follow a direct order.<sup>13</sup> His reaction after being advised that he could be disciplined for failure to follow a direct order is not compensable. Appellant's frustration from not being permitted to work in a particular environment is not a compensable factor under the Act.<sup>14</sup> Appellant has not submitted evidence to establish that Mr. Vargas acted unreasonably in this case. Thus, he has not established a compensable employment factor in this regard.

Appellant alleged that Mr. Vargas called him a "lousy manger." He, however, provided no evidence to corroborate that such remark was made. Mr. Vargas has denied making such a remark. The factual evidence of record fails to support that this remark was made. This allegation is unsubstantiated and, therefore, does not constitute a compensable employment factor.

Appellant alleged that he was harassed when Mr. Vargas' secretary requested him to sign for some registered documents. For harassment or discrimination to give rise to a compensable disability, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable.<sup>15</sup> Appellant has not submitted any evidence, such as witness statements, to corroborate his allegation. Consequently, he has not established a compensable employment factor with respect to the claimed harassment and discrimination. As appellant failed to establish any compensable factors of employment, the Office properly denied his claim.<sup>16</sup>

### CONCLUSION

Appellant has not met his burden of proof in establishing that he developed an emotional condition in the performance of duty.

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<sup>13</sup> *Linda J. Edwards-Delgado*, *supra* note 9.

<sup>14</sup> *See Cyndia R. Harrill*, 55 ECAB 522 (2004).

<sup>15</sup> *Jamal A. White*, 54 ECAB 224 (2002).

<sup>16</sup> As appellant did not establish a compensable employment factor, the Board need not address the medical evidence of record. *See Kathleen A. Donati*, 54 ECAB 759 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated January 9, 2007 and October 11, 2006 are affirmed.

Issued: January 18, 2008  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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