

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

_____)
H.L., Appellant)

and)

**DEPARTMENT OF THE ARMY, ARMAMENT)
RESEARCH, DEVELOPMENT &)
ENGINEERING CENTER,)
Picatinny Arsenal, NJ, Employer**)

_____)

**Docket No. 07-1481
Issued: January 7, 2008**

Appearances:
Thomas R. Uliase, Esq., for the appellant
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 May 9, 2007 appellant filed a timely appeal of the November 3, 2006 merit decision of the Office of Workers' Compensation Programs, which affirmed the denial of his claim for an employment-related emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

Appellant, a 45-year-old electronics technician, filed a claim for employment-related stress and anxiety. He alleged that his condition arose on March 28, 2003 when the employing establishment once again changed directions on a project he was assigned. Appellant also stated

that the employing establishment had changed deadlines numerous times which contributed to his stress and anxiety. At the time, he was being treated for preexisting attention deficit hyperactivity disorder (ADHD). Because of the increased stress at work, appellant had been taking almost three times as much medication (Ritalin) in order to meet his deadlines. On April 4, 2003 his psychiatrist excused him from work for approximately four weeks while his psychiatric and blood pressure medications were being adjusted. Appellant reportedly experienced severe chest pains beginning April 5, 2003 and he underwent an electrocardiogram (EKG) on April 7, 2003. Although the EKG results were normal, appellant claimed that the increased medication was affecting his heart. He also said he had been advised to get off of Ritalin in favor of a less addictive medication. Appellant filed the instant claim on April 7, 2003.

In an April 18, 2003 statement, appellant's supervisor, Robert J. Schlenner, indicated that appellant was currently working under a 90-day performance improvement plan (PIP), which was initiated January 30, 2003 and scheduled to conclude May 1, 2003.¹ On March 27, 2003 Mr. Schlenner, Division Chief, Frank P. Puzycki and two other managers met with appellant to review his progress under the PIP. According to Mr. Schlenner, biweekly meetings were a normal part of the PIP process. The purpose was to provide appellant with as much coaching, mentoring and direction as possible. Another purpose of the biweekly meeting was to ensure that appellant fully understood his assignment. In prior meetings, he repeatedly assured the group that he would have no problem completing his assignment by the May 1, 2003 PIP deadline. During the March 27, 2003 meeting, appellant provided a progress report and acknowledged that he had fallen behind his own project implementation schedule. He reportedly assured the group that the prior delays would not prevent him from finishing the project on time. Mr. Schlenner indicated that appellant also advised the group that the work originally slated for completion that day would be available in about a week. Appellant was instructed to report back the following day with an update on when the group would meet for next week's progress report. Soon after the meeting adjourned, there was some confusion about when appellant was next expected to provide a project update. He was under the impression he had been given a few weeks' reprieve to complete the first two stages of the project. However, Mr. Schlenner said that that was not the case and he reiterated to appellant that the project was to be completed by May 1, 2003 as originally scheduled. He denied that he or any of the other managers ever changed appellant's deadlines, except for the one instance on March 27, 2003 when appellant was afforded additional time to complete an interim task.

Group Leader, Harvey L. Moore, Jr., was one of the participants in the March 27, 2003 meeting. He provided an April 17, 2003 statement corroborating Mr. Schlenner's account of what transpired during the meeting. Mr. Moore further indicated that with approximately two weeks left before the conclusion of the PIP appellant had completed no more than 10 percent of the required work. Senior Project Leader, Hardev (Dave) Singh also attended the March 27, 2003 meeting and provided a similar statement dated April 16, 2003. He indicated that, by March 27, 2003, appellant was expected to deliver a detailed electronic layout, wiring schematics

¹ Appellant was previously on a PIP in 2001. Because of his unsuccessful performance on the earlier PIP, appellant was downgraded from an Electronics Engineer (GS-12) to an Electronics Technician (GS-7) effective December 2, 2001.

and parts list with all the specifications. Appellant failed to complete the work by the scheduled date, but promised he would provide the information the following week.

In a supplemental statement dated July 9, 2003, appellant indicated that there was an apparent misunderstanding regarding the basis of his complaint. He explained that he was not complaining about changed due dates, but that management had changed the project's requirements. Appellant also alleged that management failed to recognize his disability. He believed the employing establishment should have taken steps to accommodate his ADHD rather than placing him on a PIP. Additionally, appellant claimed that he worked in a hostile environment as a result of having previously filed an equal employment opportunity (EEO) complaint. He alleged that management falsely testified during a November 2001 EEO deposition. Appellant also stated that he was traumatized when his previous request for a transfer to another department, at a higher grade level (GS-12), was mistakenly denied.

Another reported incident involved Mr. Schlenner's refusal to approve appellant's request for a week off from work. Appellant indicated that upon receiving the PIP on January 29, 2003 he requested a week off to "recover." However, he was given only one day off. Appellant argued that management should have recognized the problem he was having and granted the additional time off. After the first week of the PIP, appellant reportedly told management that he was in no condition to continue. He also stated that there was some initial confusion regarding the commencement date of the PIP. Appellant believed the start date was February 6, 2003, the day he went over the assignment, rather than January 29, 2003 when he received the PIP. He stated that it was unfair for the PIP to begin prior to the time when he and management first reviewed and discussed the "game plan."

Appellant also identified what he considered to be technical deficiencies with the project assigned under the PIP. He stated that he had no prior experience and the assignment required extensive reading and writing which was too difficult given his ADHD. Appellant also stated that the person who initiated the PIP did not fully understand what it would take to successfully complete the project. Two experts reportedly advised appellant that the project could take from 16 weeks to 6 months to complete, rather than the 3 months allotted.² Additionally, appellant claimed that certain parts needed for the project were unavailable. He further stated that at one point he was ahead of schedule by more than a week and then management began adding more requirements to the previously agreed upon schedule.

Appellant claimed that his progress was impeded when Mr. Schlenner inexplicably failed to approve a request to copy a video he needed to complete his technical drawings. He also alleged that during their regularly scheduled biweekly meetings Mr. Singh belittled him in front of the other managers. Another alleged incident involved Mr. Schlenner chastising appellant for working one Saturday despite appellant having obtained prior approval from Mr. Puzycki.

Appellant provided the Office a copy of the PIP as well as the project implementation schedule he prepared. He also submitted copies of various emails he exchanged with the

² The "16 weeks to 6 months" timeframe appellant referenced pertained to the estimated time it would take to obtain certain parts from outside vendors. One particular device was not expected to be available until the end of 2003.

employing establishment and outside vendors regarding the project. The employing establishment submitted copies of emails pertaining to several meetings with appellant regarding the PIP. Also submitted were documents regarding his proposed transfer in January 2003.

In response to appellant's allegations, Mr. Schlenner and Mr. Puzycki submitted joint statements dated September 12 and 25, 2003. They explained that he was placed on a PIP in January 2003 because of poor technical performance during the prior rating period. Under the PIP, appellant was tasked to design and fabricate a test bed device to evaluate thyristors -- high-power electronic switches. Mr. Schlenner and Mr. Puzycki specifically denied changing project requirements and deadlines. They explained that the May 1, 2003 PIP completion date remained fixed and that appellant developed his own project implementation schedule which he did not adhere to. Although appellant acknowledged falling behind his own implementation schedule, he reassured management that he would still be able to finish the assignment by May 1, 2003.

Mr. Schlenner and Mr. Puzycki also stated that, what appellant claimed were modifications to the PIP, were all part of the original plan. Regarding appellant's confusion about the PIP commencement date, Mr. Schlenner and Mr. Puzycki indicated that the document he received January 30, 2003 clearly identified the beginning and end dates of the project. Mr. Schlenner also verbally informed appellant of the January 30, 2003 PIP commencement date. Moreover, appellant had previously been on a PIP and, therefore, should have known from prior experience that the date one received the PIP was also the date the assignment started.

Mr. Schlenner and Mr. Puzycki refuted appellant's allegation that the project required more than 90 days to complete. They explained that he was tasked to design a test bed, but not to actually test the product.³ Appellant was specifically told that the existence or nonexistence of the item to be tested was irrelevant. But despite management's guidance, he was preoccupied with ordering items to be tested rather than designing the actual test bed. The capacitors appellant claimed were unavailable for at least "16 weeks" had already been acquired and were located at another building on the employing establishment's premises. He was apprised of their location. Mr. Schlenner and Mr. Puzycki indicated that all the technical information necessary to complete the project was made available to appellant and the project could have been completed in 12 weeks.

Mr. Schlenner also addressed the incident involving appellant's video. On March 13, 2003 appellant asked to have an eight millimeter videotape transferred to VHS format so that he could take it home to view over the weekend. The request was by email and directed to Kobi O'Malley. Mr. Schlenner was copied on the March 13, 2003 email. A week later, appellant forwarded a copy of the original email to Mr. Schlenner and asked if he would "give Kobi the green light" to make the copy. Appellant stated that Mr. Schlenner never approved the request. Mr. Schlenner responded that his approval was not necessary to have the tape copied. He also indicated that appellant could have viewed the eight millimeter tape on the same video camera he used to record it. Additionally, Mr. Schlenner noted that appellant chose to make the video on his own. It was neither required by the PIP nor was it a necessary component to completing the assigned project.

³ The particular model of thyristor appellant's test bed was designed to evaluate was not currently in production and unavailable commercially.

As to the incident involving overtime, Mr. Schlenner explained that he was responsible for approving all overtime requests and appellant had not obtained prior approval from him to work one Saturday in March 2003. The policy in place at the time required employees to obtain prior approval for any overtime work. Contrary to appellant's assertion, Mr. Puzycki did not authorize him to work on the weekend. He said he merely responded to appellant's inquiry about whether the building would be open on Saturday. The following Monday when Mr. Schlenner learned that appellant had worked overtime, he reminded him of the policy regarding the need for prior approval.

Mr. Schlenner also stated that appellant never requested a week off after receiving his PIP January 30, 2003. According to him, appellant only requested one day off which was Monday, February 3, 2003.⁴ The leave request was made via email and Mr. Schlenner approved it. Had appellant asked for additional time off, Mr. Schlenner said he would have granted the request.

Mr. Schlenner denied any wrongdoing with respect to appellant's failed attempt to obtain a transfer to the Fire Support Armaments Center (FSAC). He stated that he concurred with the transfer, but FSAC denied appellant's request because, in their opinion he did not qualify for the job. FSAC notified appellant of its decision, whereupon, he returned to his former job. Mr. Schlenner indicated that apart from agreeing to the transfer he was not otherwise involved in the decision-making process. He and Mr. Puzycki denied that management falsely testified during a November 2001 deposition regarding an EEO complaint appellant filed. They also denied that there was a hostile work environment.

Appellant submitted July 8 and 17, 2003 progress reports from his psychiatrist, Dr. Alene P. Strahan, who diagnosed anxiety, depression and ADHD. Dr. Strahan also indicated that appellant's current symptoms which she attributed to his employment prevented him from returning to work. The Office also received a July 9, 2003 report from appellant's psychotherapist, Catherine Bergman, who attributed appellant's severe anxiety, depression and stress to his employment. On January 12, 2004 Dr. Strahan indicated that appellant was able to return to work which he did the following day.⁵

In a decision dated March 11, 2004, the Office denied appellant's claim as he failed to establish any compensable employment factors as the cause of his emotional condition. Appellant requested an oral hearing which was held on August 1, 2006. By decision dated November 3, 2006, the Office hearing representative affirmed the March 11, 2004 decision.

LEGAL PRECEDENT

To establish that he sustained an emotional condition causally related to factors of his federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition;

⁴ Friday, January 31, 2003 was appellant's scheduled day off. He returned to work Tuesday, February 4, 2003.

⁵ Effective August 24, 2004, the employing establishment dismissed appellant because of his inability to maintain regular attendance.

(2) rationalized medical evidence establishing that he has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.⁶

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.⁷ Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.⁸ Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.⁹ When the matter alleged represents a compensable factor of employment and the evidence of record establishes the truth of the matter, the Office must then base its decision on an analysis of the medical evidence.¹⁰

ANALYSIS

Appellant initially based his claim on alleged modifications to the January 30, 2003 PIP plan. On April 7, 2003 he filed a traumatic injury claim (Form CA-1), alleging that he was injured as of March 28, 2003 "because management again changed directions on a project." Appellant also stated that management had changed deadlines numerous times which caused stress and anxiety problems for him, but according to his July 9, 2003 supplemental statement, there were numerous other employment incidents that caused or contributed to appellant's psychiatric disorder.

Several of the alleged incidents, even if factually established, would generally not be considered compensable employment factors because they fall into the category of administrative or personnel matters. An employee's emotional reaction to administrative or personnel matters generally falls outside the scope of the Federal Employees' Compensation Act.¹¹ However, to the extent the evidence demonstrates that the employing establishment either

⁶ See *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁷ *Lillian Cutler*, 28 ECAB 125 (1976).

⁸ *Id.*

⁹ See *Kathleen D. Walker*, *supra* note 6.

¹⁰ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

¹¹ *Andrew J. Sheppard*, 53 ECAB 170, 173 (2001).

erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹²

Appellant's counsel argued that the deadlines imposed by the PIP and the fact that appellant had to work harder to meet those deadlines are compensable factors of employment. However, counsel's arguments are not consistent with the facts of the case. An emotional reaction to a situation in which an employee is trying to meet his position requirements is compensable.¹³ Additionally, employment factors such as an unusually heavy workload and the imposition of unreasonable deadlines are covered under the Act,¹⁴ but appellant's emotional reaction to his PIP is not compensable.¹⁵

The design, implementation and oversight of appellant's PIP are purely administrative functions. Even if he established that project requirements and deadlines had been altered, this too would not be compensable absent evidence of error or abuse on the part of the employing establishment. With respect to meeting the May 1, 2003 PIP deadline, appellant has not demonstrated that the project was either unmanageable or that it could not have been completed within the 90-day time frame. He worked less than two months on the project. On March 27, 2003 the day before he stopped work, he assured Mr. Schlenner that he would still be able to meet the May 1, 2003 project deadline. Access to capacitors, the availability of thyristors and videotape conversion delays were proven to be inconsequential factors with respect to the timely completion of the PIP project.

Appellant stopped work with a month remaining under the PIP and only 10 percent of the work completed. Although there was skepticism regarding the likelihood of him completing the project on time, there is no evidence that his limited progress was a function of the plan's design and implementation as opposed to appellant's abilities or limitations. Moreover, there is no evidence that appellant would not have completed the project had he persevered beyond March 28, 2003. Counsel claims that appellant had to work harder to meet the requirements of the PIP and therefore, this factor should be compensable. By definition a PIP is designed to improve one's performance. Therefore, it is not unreasonable to expect that an employee might have to increase his efforts to improve his overall performance. Appellant completed only 10 percent of the work after 60 percent of the allotted time had elapsed. These statistics do not lend credence to counsel's contention that appellant had to work harder and in fact worked harder, to meet the deadlines imposed. The record indicates that appellant did not meet his self-imposed deadlines and his overall progress towards completing the PIP was less than stellar. Accordingly, the circumstances regarding the design, implementation and oversight of the January 30, 2003 PIP are noncompensable factors of employment.

¹² *Id.*

¹³ See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

¹⁴ See *Georgia F. Kennedy*, *supra* note 13.

¹⁵ *Sherry L. McFall*, 51 ECAB 436, 439 (2000).

Appellant identified two incidents regarding time and attendance issues which are inherently administrative matters.¹⁶ He claimed to have been denied a week off following receipt of the January 30, 2003 PIP. However, Mr. Schlenner said that he approved the leave appellant requested at the time which was only for one day absence. Appellant also claimed to have gotten into trouble for working one Saturday in March 2003. Mr. Schlenner indicated that he merely reminded appellant of the agency's policy of requiring preapproval for all overtime work. Appellant claimed that nmhe had already received permission from Mr. Puzycki, but Mr. Puzycki denied authorizing him to come in on Saturday. The circumstances surrounding both incidents are in dispute. However, even if appellant established the facts as alleged, neither incident is compensable because there is no evidence of error or abuse on the part of the employing establishment.

Some of appellant's other allegations are too vague to be considered factually established. One example is his claim that Mr. Singh belittled him during their biweekly meetings. While verbal abuse is compensable under certain circumstances, appellant did not specify what Mr. Singh allegedly said during the biweekly meetings that appellant found belittling.¹⁷ Appellant's allegation of a hostile work environment is similarly vague. He did not describe any particular offensive workplace circumstances, but merely accused management of lying during a November 2001 deposition concerning his EEO complaint. Both Mr. Schlenner and Mr. Puzycki denied this allegation. Thus, appellant has not established that he was subjected to a hostile work environment or that Mr. Singh was verbally abusive.

Appellant also claimed to have been traumatized when his request to transfer to another agency (FSAC) was denied. The record indicates that, while Mr. Schlenner supported appellant's proposed reassignment, the transfer was not approved by FSAC because appellant was not fully qualified for the particular position. An employee's frustration from not being permitted to work in a particular environment or hold a particular position is not compensable.¹⁸

Appellant did not establish that a compensable employment factor caused his psychiatric disorder. Therefore, the Office properly denied his claim for an employment-related emotional condition.

CONCLUSION

Appellant has not established that he sustained an emotional condition in the performance of duty.

¹⁶ Although leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee. *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997).

¹⁷ Verbal altercations and difficult relationships with supervisors, when sufficiently detailed and supported by the record, may constitute compensable factors of employment. *Marguerite J. Toland*, 52 ECAB 294, 298 (2001).

¹⁸ *Lillian Cutler*, *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the November 3, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 7, 2008
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