

section. He stated that he represented appellant during the investigation. Mr. Hernandez stated: offered the following statement: “Agents accused [appellant], he was lying and he could go to jail. Told him [that] he was digging his own hole. Told him not to play Gomer Pyle; Told him he could be terminated. He was accosted and intimidated by agents.” By letter dated December 5, 2006, the Office requested that appellant submit additional evidence in support of his claim. Appellant did not respond.

In a decision dated January 8, 2007, the Office denied appellant’s claim for compensation. It found that, while the evidence supported that the claimed investigation occurred, there was no medical evidence providing a diagnosis that could be connected to the event.

Appellant was admitted to a psychiatric hospital on October 9, 2006. He stated that his wife brought him there because she knew he was depressed. Hospital records show the following history:

“Apparently, [appellant] became significantly depressed after he was diagnosed with diabetes about three months ago. [He] has general fears of losing an extremity or experiencing complications with diabetes. [Appellant] denies any prior treatment in a psychiatric setting. He has lost about 45 pounds since his diagnosis three months ago. [Appellant] denies being suicidal. He denies any auditory or visual hallucinations. [Appellant] states that he has been expressing passive death wishes, all of which have led to his current admission.”

Appellant received principal diagnoses of bipolar disorder, Type 2, with recent depressive episode; psychotic disorder, not otherwise specified; seasonal depression; dementia, not otherwise specified; severe insomnia secondary to obstructive sleep apnea; and generalized anxiety disorder with panic attacks. He was noted to have dependent personality traits and paranoid personality organization.

An October 23, 2006 discharge summary addressed the investigation at work:

“Last week, [appellant] felt a complete loss of interest in outside activities. He became secluded, was unable to sleep or eat and was frequently crying. [Appellant] had feelings of desperation, hopelessness and worthlessness which at times were accompanied by suicidal ideas. This exacerbation in his depression was attributed to his legal issues at his work while he was working at the Customs Border Protection, which happened last week. [Appellant] was placed under investigation and had his gun taken away from him three days ago and [he] became profoundly depressed with exacerbation of his old typical symptoms of depression as well as suicidal ideas. This was the major reason for his referral to us.”

In a decision dated April 4, 2007, the Office reviewed the merits of appellant’s claim and denied modification of its prior decision. It found that the incident to which he attributed his emotional condition was not a compensable factor of employment and there was no evidence to substantiate any employer error in the matter.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.¹ But workers' compensation law does not cover each and every injury or illness that is somehow related to employment.² An employee's emotional reaction to an administrative or personnel matter is generally not covered. Thus, the Board has held that an oral reprimand does not constitute a compensable factor of employment,³ nor do disciplinary matters⁴ or investigations.⁵

Nonetheless, the Board has held that error or abuse by the employing establishment in an administrative matter may afford coverage.⁶ But perceptions alone are not sufficient to establish entitlement to compensation. To discharge his burden of proof, a claimant must establish a factual basis for his claim by supporting his allegations with probative and reliable evidence.⁷

Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.⁸ The Board has generally held that being spoken to in a raised or harsh voice does not in itself constitute verbal abuse or harassment.⁹

ANALYSIS

Appellant attributed his depressive episode on or about October 6, 2006 to an investigation at work. An investigation is not something that workers' compensation covers as a general rule. The investigation is an administrative matter and therefore lies outside the scope of the Act. However, error or abuse of an investigation may give rise to a compensable work factor. Appellant alleged that he was accosted, intimidated and threatened about losing his job. To the extent that he alleges error or abuse by management in its conduct of the investigation, appellant's claim may fall within the exception to the general rule and may afford coverage.

It is not enough simply to allege administrative error or abuse. Appellant must submit evidence to substantiate his allegations. Mr. Hernandez advised that he had represented appellant during the investigation. He stated that agents told appellant that he was lying and

¹ 5 U.S.C. § 8102(a).

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Joseph F. McHale*, 45 ECAB 669 (1994).

⁴ *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

⁵ *Sandra F. Powell*, 45 ECAB 877 (1994).

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

⁷ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁸ *Harriet J. Landry*, 47 ECAB 543 (1996).

⁹ *Beverly R. Jones*, 55 ECAB 411, 418 (2004).

could go to jail, told him he was digging his own hole, told him not to play Gomer Pyle, told him he could be terminated and otherwise accosted and intimidated appellant. Appellant was requested by the Office to submit additional evidence in support of his allegations; however, he did not respond. Based on the evidence of record, the Board finds that appellant has not substantiated his allegations of error or abuse pertaining to the October 6, 2006 investigation. There is simply no proof that any statements alleged were improper under the circumstances and therefore no proof to show that the statements constituted administrative error or abuse.

Raised voices and harsh tones are not enough by themselves, to bring appellant's claim within the coverage of workers' compensation. Because he has submitted no proof that the agents acted improperly, appellant's emotional reaction to the investigation is not compensable. The Board will affirm the Office decisions denying compensation benefits.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an emotional injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the April 4 and January 8, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 9, 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