



disorder was caused by being accused of misconduct and deprived of his job duties by the employing establishment.

On appellant's CA-2 form, James Holland, an employing establishment officer-in-charge, stated that he was unable to verify appellant's conditions because appellant never discussed them with him. He was aware of appellant's preexisting blood pressure problems.

By letter dated June 5, 2007, the employing establishment controverted appellant's claim. It contended that his emotional condition was self-generated and not caused by his employment. The employing establishment further contended that it had not acted abusively or erred in handling administrative matters. It stated that appellant had not submitted any medical evidence establishing a causal relationship between his emotional condition and employment factors.

In a June 27, 2007 narrative statement, appellant attributed his emotional condition to several work incidents. In September 2006, he returned to the office to drop something off after attending safety training and before going to a 3:00 p.m. medical appointment. Mr. Holland ordered him to immediately complete a form and fax it either before or after his medical appointment to an employee in the internal control group who needed it before she left work at 3:30 p.m. Appellant stated that he was forced to cancel and reschedule the appointment because he was going to be late and he would not have been able to return to the office before the end of the employee's tour since he had to travel 25 miles each way.

Appellant stated that in October 2006 he was never released to work in a detail assignment despite being given several release dates. He stated that the assignment could have helped him to obtain a promotion. Appellant was never given a reason for why he was not allowed to work in the position.

In November 2006, Mr. Holland continually made excuses as to why appellant could not be released to work in a detail assignment as a customer services manager. He stated that appellant would fail and that he would be released for a short defined term. Mr. Holland made it clear to him that he would not be allowed to apply for annual leave in December 2006 despite his plans to use leave for personal family reasons. Appellant stated that he was only able to take a couple of days off because he had use or lose leave. Mr. Holland ordered him to work six days per week until further notice while another supervisor in his office was allowed to take a nonscheduled day off.

On December 7, 2006 Mr. Holland advised appellant that his inventory of unit reserve stock revealed a shortage of \$46,000.00. On December 8, 2006 appellant conducted an inventory of retail floor stock which revealed an overage. Mr. Holland told him to discard the paperwork from this inventory and that either he or someone else would recount the stock on December 10, 2006. Appellant performed the recount on December 10, 2006 which revealed the same overage found on December 8, 2006.

On December 9, 2006 appellant was scheduled to start work in a higher level detail position. Mr. Holland instructed him to advise his manager that he would not be able to start work until an investigation regarding the stock shortage had been completed. After doing so, the manager rescinded the job offer because he needed someone to start work immediately.

During a meeting on December 14, 2006 Mr. Holland verbally and in writing advised appellant that he was relieved of his financial accountability. He took appellant's office keys and advised him that his access to various areas of the office was limited because he was not allowed to go near accountable papers.

On January 25, 2007 appellant called in sick with an illness protected under the Family Medical and Leave Act (FMLA) for which he had received prior approval. In February 2007, he received a "five day" letter from Mr. Holland regarding his absence. Appellant stated that he should not have received this letter since he had submitted the necessary documentation. He related that Mr. Holland did not issue a disciplinary letter to a coworker who was out on sick leave three days prior to his absence and was still out of work.

On January 29 and in March 2007, Mr. Holland revoked appellant's access to network programs, including the time and attendance control system which was vital to his performance as a supervisor.

A National Association of Letter Carriers (NALC) officer advised appellant that during a March 29, 2007 meeting, a former operations manager stated that appellant was out of work due to a stock shortage. The NALC officer also informed appellant that other postal employees had related this incident to him. Appellant contended that the mishandling of the count had irreparably harmed his reputation especially to individuals who were responsible for making selections for higher level detail and permanent assignments.

In May 2007, Mr. Holland advised appellant that since he had exceeded 480 hours of protected sick leave, he could no longer submit his medical documentation to the FMLA coordinator. Instead, he had to submit all future medical documentation directly to the employing establishment. Appellant believed that this was an attempt to circumvent the Privacy Act as his physicians would not release his records without his consent.

Appellant originally submitted his CA-2 form to Mr. Holland in early May 2007 but he returned it because it was incomplete. He advised appellant to submit the necessary information and any medical reports to him despite appellant's desire to submit the form himself.

Appellant applied for numerous positions at the employing establishment from December 7, 2006 through the present. During an interview for one of these positions, he was questioned for the first time about his stock overages and shortages. Appellant contended that, if the original count had been handled correctly and Mr. Holland had not been so determined to prevent him from obtaining higher level assignments, he would have received a promotion.

A June 6, 2007 medical report of Dr. Thomas S. Sacchetti, a Board-certified neurophysiologist, an undated report of Mark H. Wagner, Ph.D. and hospital discharge instructions addressed appellant's emotional condition.

By letter dated July 30, 2007, the Office requested that the employing establishment respond to appellant's allegations. Also on July 30, 2007, it advised appellant that the evidence submitted was insufficient to establish his claim. The Office requested additional factual evidence.

The employing establishment submitted documents related to appellant's use of leave under the FMLA beginning on January 26, 2007 and its investigation of his shortage. In a July 27, 2007 Equal Employment Opportunity (EEO) investigative affidavit, Mr. Holland stated that the limitation of appellant's access to certain network systems, confiscation of keys and changes to the safe combinations occurred because he was relieved of any responsibility pertaining to the handling and accounting of postal funds and accountable items. These actions were necessary to protect the interest of the employing establishment during the investigation of appellant's shortage. Mr. Holland stated that no disciplinary action had been taken against appellant related to this matter. He revoked appellant's access to certain systems while he was home on extended sick leave because the employing establishment's policy stated that employees who worked off the clock at home were not allowed to access these systems. Mr. Holland noted that no other employees had access to this system unless they were acting as "POOM." He had not provided appellant with a reason for revoking his access because he had not returned to duty. Mr. Holland planned to discuss this matter with him when he returned to work. He stated that appellant was not out of work due to his shortage but, rather he was on sick leave under the FMLA. Mr. Holland denied telling John Harrison, an acting operations manager, that appellant was out of work due to the shortage. He was not aware of any regulation that addressed confidentiality when a stock shortage occurred. Mr. Holland noted that reports generated about this matter were available to anyone with access to the postal networks and who witnessed the count. The inspector general's office, internal control group and Mr. Harrison were also notified about the shortage.

By letter dated August 7, 2007, appellant stated that he was never removed from his supervisory position due to a financial discrepancy. Instead, the employing establishment took his keys and limited his access to areas in the building that did not contain accountable papers. Appellant contended that these actions created a hostile work environment for which he filed an EEO complaint. In an undated EEO affidavit, appellant stated that on March 17, 2007 he discovered that his access to network systems at work was revoked by Mr. Holland when he attempted to access them from his home computer. He stated that Mr. Harrison disclosed that he was not working due to his stock shortage to the NALC officer. Appellant contended that a manager had an obligation to keep investigative information confidential. He noted that a decision was issued on May 10, 2001 regarding a 1997 EEO claim he filed against the employing establishment alleging discrimination on the basis of race, color, sex and reprisal for prior EEO activity. Appellant contended that his coworkers who had stock discrepancies did not have their access to programs revoked by the employing establishment. He stated that, since Mr. Holland refused to discuss the decision to revoke his access, the only reason for such action was either retribution or unlawful bias.

In an undated letter, Hans P. Aglidian, Mid-East Vice President of the National Association of Postal Supervisors, stated that one of his primary responsibilities was to attempt to resolve problems/issues between supervisors and higher level managers. He stated that Mr. Holland refused to resolve the issue with appellant regarding the imbalance in appellant's stock even though an independent audit by the internal control group could have helped resolve the issue.

By decision dated November 7, 2007, the Office found that appellant failed to establish a compensable factor of his employment.

On December 1, 2007 appellant requested a telephonic hearing before an Office hearing representative. During the March 18, 2008 hearing, he testified that there were no witnesses to corroborate his allegations regarding the employing establishment's statements as they were made behind closed doors.

By letter dated April 19, 2008, appellant advised the Office that Ivan Butts, President of the Pennsylvania State National Association of Postal Supervisors Organization, was not comfortable with providing a written witness statement but, he was willing to provide a verbal statement if contacted by the Office. An April 11, 2008 narrative statement of Geary Wertz, a NALC union representative, stated that, following a meeting, Postmaster Harrison mentioned appellant's shortage. Mr. Wertz did not recall exactly how or why appellant's name arose during the conversation.

By decision dated July 7, 2008, an Office hearing representative affirmed the November 7, 2007 decision. Appellant failed to establish a compensable factor of his employment.

### **LEGAL PRECEDENT**

A claimant 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.<sup>1</sup> To establish that he sustained an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.<sup>2</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,<sup>3</sup> the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.<sup>4</sup> 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 under the Act.<sup>5</sup> When an employee experiences emotional stress in carrying out his employment duties and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his emotional reaction to a special assignment

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<sup>1</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>2</sup> *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>3</sup> 28 ECAB 125 (1976).

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *See Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

or other requirement imposed by the employing establishment or by the nature of his work.<sup>6</sup> 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 under the Act.

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

Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. 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 his frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>9</sup> Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act.<sup>10</sup> However, an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.<sup>11</sup>

### ANALYSIS

Appellant attributed his emotional condition to the alleged actions of Mr. Holland, an officer-in-charge. According to appellant, Mr. Holland's request that he submit a document by a certain deadline caused him to reschedule his medical appointment and Mr. Holland's refusal to release appellant to work in his approved detail assignments prevented him from obtaining a promotion. Mr. Holland never told appellant the reasons he could not work in the detail assignments. Appellant contended that, because Mr. Holland mishandled the investigation of his stock shortage his keys were taken from him, preventing him from access to various areas in the office. He was unable to obtain a promotion. Appellant also stated that the revocation of his computer access prevented him from performing his job as a supervisor. He noted that other coworkers who had stock discrepancies were not denied access to computer programs.

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<sup>6</sup> *Lillian Cutler*, *supra* note 3.

<sup>7</sup> *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>8</sup> *Id.*

<sup>9</sup> *Lillian Cutler*, *supra* note 3.

<sup>10</sup> *Michael L. Malone*, 46 ECAB 957 (1995).

<sup>11</sup> *Charles D. Edwards*, 55 ECAB 258 (2004).

Appellant filed an EEO claim pertaining to Mr. Holland's removal of his keys and revocation of his computer access. He related that Mr. Holland incorrectly issued a "five day" letter to him even though he had received prior approval for sick leave beginning January 25, 2007 under the FMLA, yet he contended that his coworker who was out of work on sick leave did not receive this type of letter. Appellant stated that Mr. Holland improperly instructed him to submit medical documentation.

Appellant's allegations regarding the denial of his request to be assigned to a different position,<sup>12</sup> investigation of his stock shortage,<sup>13</sup> his filing of a grievance,<sup>14</sup> issuance of a disciplinary letter,<sup>15</sup> request for medical documentation<sup>16</sup> and handling of his occupational disease claim<sup>17</sup> relate to noncompensable administrative and personnel matters. However, error or abuse by the employing establishment in an administrative or personnel matter may afford coverage.<sup>18</sup> Appellant did not submit any evidence which established error or abuse in the issuance of the "five day" letter, request for medical documentation and handling his occupational disease claim by Mr. Holland. He stated that Mr. Holland stated that he would fail in a detail assignment and that he could only work in the position for a definite time period. However, appellant has not submitted any evidence to corroborate his allegation. He filed an EEO grievance related to the investigation of his stock shortage but, the record does not contain a final decision regarding the grievance. Although, Mr. Aglidian stated that Mr. Holland refused his offer to help resolve the issue pertaining to appellant's stock shortage, the record does not establish that Mr. Holland was required to accept assistance from Mr. Aglidian. Mr. Holland explained that appellant's access to certain computer systems was revoked because he was at home on sick leave and employing establishment policy did not allow employees who worked off the clock at home to access its system. He further stated that appellant was not provided a reason for the revocation because he had not returned to work. Mr. Holland planned to discuss this matter with him when he returned to work. He noted that appellant was not working because he was on sick leave under the FMLA and not due to the stock shortage. The Board finds that appellant has not substantiated that the employing establishment erred or acted abusively with regard to its denial of his request to be assigned to a different position, investigation of his stock shortage, issuance of the disciplinary letter, request for medical documentation and the handling of his occupational disease claim. Accordingly, appellant has not established a compensable factor of employment.

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

<sup>13</sup> *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>14</sup> *Michael A. Salvato*, 53 ECB 666, 668 (2002).

<sup>15</sup> *Diane C. Bernard*, 45 ECAB 223 (1993).

<sup>16</sup> *James P. Guinan*, 51 ECAB 604, 607 (2000); *John Polito*, 50 ECAB 347, 349 (1999).

<sup>17</sup> *See Ronald K. Jablanski*, 56 ECAB 616 (2005).

<sup>18</sup> *Margreate Lublin*, 44 ECAB 945 (1993). *See generally Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

Appellant contended that he did not receive a promotion because Mr. Harrison, an acting operations manager, and his unidentified coworkers had informed a NALC officer that appellant was not working due to a shortage in his stock. He was asked about the shortage during an interview for a position at the employing establishment. Appellant contended that a manager had an obligation to keep investigative information confidential. Mr. Wertz, a NALC union representative, stated that Postmaster Harrison told him about appellant's stock shortage, but he did not recall exactly how or why his name arose during the conversation. Further, Mr. Holland stated that he was not aware of any employing establishment regulation which required confidentiality when a stock shortage occurred. He related that several people had access to the reports regarding the shortage and investigation. Although appellant may not have liked Postmaster Harrison's statement, it is well established that not every statement uttered in the workplace will give rise to coverage under the Act.<sup>19</sup> The Board finds that he has not established a compensable employment factor.<sup>20</sup>

### **CONCLUSION**

The Board finds that appellant has not established that he sustained an emotional condition while in the performance of duty.

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<sup>19</sup> *Charles D. Edwards*, 55 ECAB 258, 271 (2004).

<sup>20</sup> As appellant has not submitted the necessary evidence to substantiate a compensable factor of employment as the cause of her emotional condition, the medical evidence regarding appellant's emotional condition need not be addressed. *Karen K. Levene*, 54 ECAB 671 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 7, 2008 and November 7, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 3, 2009  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board