



supervisor told him that he was to wait until he was called by telephone to work. He described the nature of the injury as “head, stomach and blood pressure.”

Appellant submitted a November 13, 2006 report from Dr. Ghislaine Fougy, a Board-certified psychiatrist, who stated that he saw appellant on that date on an emergency basis. Dr. Fougy indicated that appellant’s workers’ compensation benefits under a prior claim were terminated on October 29, 2006, although he remained disabled due to a plantar fasciitis condition. He stated that appellant had been “cut off from his job” and had plummeted into severe depression, which rendered him totally disabled.

The record contains a November 14, 2006 statement from Prince E. Jones, Jr., the employing establishment’s officer in charge. Mr. Jones reported that appellant was a limited-duty employee, who had been receiving workers’ compensation benefits since September 2005, while working four hours per day, due to a January 14, 2005 work injury (File No. xxxxxx925). Following the Office’s October 29, 2006 termination of benefits, appellant’s physician recommended that he be restricted to working four hours per day. Mr. Jones stated that, when appellant requested light duty on November 13, 2006, he was told that the request must be approved by the postmaster, that his request was an administrative procedure, and that the employing establishment would be able to accommodate his request. In order to clarify appellant’s status, he contacted his case worker, Paula Field, who informed him that appellant was on limited-duty status. After receiving status clarification, Mr. Jones reportedly informed appellant that he could continue to work in his restricted-duty position. He stated that appellant refused to perform his regular duties, complaining that his feet hurt and that he required a special chair. Appellant was told that a letter from his physician was required in order to accommodate his request for a special chair.

In a letter dated December 12, 2006, the Office notified appellant that the information submitted was insufficient to establish his claim. It requested additional details regarding the alleged November 13, 2006 employment events, as well as a medical report, with a diagnosis and an opinion as to how the diagnosed condition was causally related to those events.

In an undated statement, appellant alleged that his job-related stress was due to management’s erroneous and abusive behavior. He stated that he had never experienced a stress-related problem prior to the alleged date of injury. Appellant submitted a memorandum referencing a Merit Systems Protection Board case, *Pittman v. Merit Systems Protection Board*, 832 F.2d. 598 (Fed Cir. 1987), which states that an employee who is placed on leave for more than 14 days is on an appealable suspension.

In a decision dated January 26, 2007, the Office denied appellant’s claim. It found that the claimed event occurred, but denied the claim on the grounds that the evidence was insufficient to establish that the claimed medical condition was causally related to the established work event. On February 13, 2007 appellant requested reconsideration.

Appellant submitted an excerpt from the Postal Service Contract Administration Manual (November 2005) reflecting that an employee may request reassignment to light duty, in writing, along with a medical statement from his doctor. The manual provided that the employing establishment is to make a bona fide effort to identify light duty.

Appellant submitted reports from Dr. Fougy, dated January 8, 2007, reflecting a diagnosis of “major depression, reactive, job related.” Dr. Fougy opined that appellant’s emotional condition was directly caused by the improper actions of his employer in imposing a layoff and in failing to grant him reasonable accommodations on November 13, 2006.

By decision dated March 22, 2007, the Office vacated its January 26, 2007 decision on the grounds that it had failed to follow proper procedures.

In a decision dated April 13, 2007, the Office denied appellant’s claim. It found that he had failed to establish a compensable factor of employment.

On May 11, 2007 appellant requested reconsideration. He contended that the supervisor’s act of refusing to allow him to work, and asking him to complete a light-duty request form, constituted error and abuse. In a March 27, 2007 statement, appellant alleged that, on November 13, 2006, his supervisor initially informed him that there was no work available for him; that the manager, Darryl Jones, instructed him to fill out a light-duty assignment request for work, which he completed, and told him that his request had to be approved by the postmaster; that he informed the manager that he needed a special chair; and that, after two hours, the postmaster informed him that he could return to his regular limited-duty position. He contended that he never should have been required to complete a light-duty request and that such a designation should have been made in writing. The record contains largely illegible progress notes from Dr. Fougy for the period November 13, 2006 to June 15, 2007, reflecting a diagnosis of depression.

By decision dated August 28, 2007, the Office denied modification of its April 13, 2007 decision.

On December 26, 2007 appellant again requested reconsideration. He reiterated his claim that the employing establishment’s actions of telling him there was no work available for him and requiring him to complete a light-duty job request form constituted error and abuse. Appellant stated that his supervisor led him to his manager to discuss the issue, and that the postmaster telephoned his case manager to clarify his status. The postmaster reportedly admitted that a mistake had been made and appellant was allowed to return to work. Appellant submitted a copy of the November 14, 2006 letter of challenge, which was previously submitted by the officer in charge.

By decision dated March 21, 2008, the Office denied appellant’s request for reconsideration, on the grounds that the evidence submitted was repetitious and immaterial and, thus, insufficient to warrant merit review.

### **LEGAL PRECEDENT -- ISSUE 1**

The Federal Employees’ Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>1</sup> When an employee experiences emotional stress in carrying out his employment duties, or has fear and

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<sup>1</sup> 5 U.S.C. § 8102(a).

anxiety regarding his ability to carry out his duties, and the medical evidence establishes that the disability resulted from his emotional reaction to such a 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 resulted from his emotional reaction to a special assignment or requirement imposed by the employing establishment, or by the nature of his work. By contrast, there are disabilities having some kind of causal connection with the employment that workers' compensation does not cover because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>2</sup>

Workers' compensation does not cover an emotional reaction to an administrative or personnel action unless the evidence shows error or abuse on the part of the employing establishment.<sup>3</sup> As a rule, however, a claimant's allegations alone are insufficient to establish a factual basis for an emotional condition claim.<sup>4</sup> Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.<sup>5</sup> The primary reason for requiring factual evidence from the claimant in support of his allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.<sup>6</sup>

### ANALYSIS -- ISSUE 1

Appellant did not allege that he sustained an emotional condition as a result of his regular or specially assigned duties. Rather, he alleged that his emotional condition was due to his supervisors' actions on November 13, 2006. The Office denied appellant's claim on the grounds that he had failed to establish a compensable employment factor. The Board finds that he failed to establish that he sustained an emotional injury in the performance of duty on November 13, 2006.

Appellant's allegation that the employing establishment improperly refused to allow him to work and asked him to complete a light-duty request form, relates to administrative or personnel matters, unrelated to his regular or specially-assigned work duties, and does not fall

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<sup>2</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566, 572-73 (1991).

<sup>4</sup> See *Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

<sup>5</sup> *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

<sup>6</sup> *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

within the coverage of the Act.<sup>7</sup> Although the handling of disciplinary actions and leave requests, the assignment of work duties and the monitoring of work activities are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>8</sup> However, the Board has also found that 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. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>9</sup>

In this case, appellant has not submitted sufficient evidence to show that the employing establishment committed error or abuse with respect to this matter. On the one hand, he alleged that his supervisors failed to follow proper procedures and acted unreasonably on November 13, 2006, by informing him that there was no work available and instructing him to fill out a light-duty assignment request for work form. On the other hand, the employing establishment's officer in charge reported that, on the date in question, the employing establishment followed proper procedures in attempting to accommodate appellant's requests. Mr. Jones stated that appellant was informed that his light-duty request could be accommodated; that immediate action was taken to clarify his employment status; and that, after receiving status clarification, appellant was advised that he could continue to work in his restricted-duty position. Mr. Jones indicated that appellant refused to perform his regular duties, complaining that his feet hurt and that he required a special chair. Appellant was then told that a letter from his physician was required in order to accommodate his request for a special chair.

The Board finds that the employing establishment's actions were reasonable, and appellant has not provided evidence to the contrary. It is undisputed that the employing establishment contacted appellant's case worker in order to clarify his employment status. Although appellant was initially told that there was no work available for him on the date in question, within two hours, the employing establishment had obtained sufficient information on which to base its decision to permit him to return to his restricted-duty position. Management took swift action to investigate the situation and to resolve the issue in a reasonable and prudent manner. Appellant's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.<sup>10</sup> The Board also finds that it was reasonable for the employing establishment to require a letter from appellant's physician in order to accommodate his request for a special chair.

In support of his claim, appellant submitted an excerpt from the Postal Service Contract Administration Manual, which provided that an employee may request reassignment to light

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<sup>7</sup> See *Lori A. Facey*, 55 ECAB 217 (2004). See also *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

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

<sup>9</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>10</sup> See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

duty, in writing, with a medical statement from his doctor, and that the employing establishment should make a bona fide effort to identify light duty. He also submitted a memorandum referencing a Merit Systems Protection Board case which addressed an employee's right to appeal a 14-day suspension. The issue in this case is not whether the employing establishment properly identified light duty, but rather whether it erred or abused appellant by refusing to permit him to work and asking him to apply for light duty, nor was appellant placed on leave for more than 14 days. Therefore, the evidence submitted is not relevant to the instant case.

The Board finds that appellant has not established a compensable employment factor under the Act with respect to administrative matters. The Office therefore properly found that appellant failed to establish a compensable factor of employment.<sup>11</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>12</sup> the Office regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>13</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>14</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.<sup>15</sup> The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>16</sup>

### **ANALYSIS -- ISSUE 2**

Appellant's December 26, 2007 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

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<sup>11</sup> The Board notes that, since appellant has not established a compensable work factor, the medical evidence need not be considered. *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>12</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, [t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

<sup>13</sup> 20 C.F.R. § 10.606(b)(2).

<sup>14</sup> 20 C.F.R. § 10.607(a).

<sup>15</sup> 20 C.F.R. § 10.608(b).

<sup>16</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

In support of his request for reconsideration, appellant submitted a narrative statement dated December 26, 2007. His statement merely reiterated information contained in documents previously received and reviewed by the Office and is, therefore, cumulative and duplicative in nature.<sup>17</sup> The Board finds that his report does not constitute relevant and pertinent new evidence not previously considered by the Office.<sup>18</sup> Appellant also submitted a copy of a November 14, 2006 letter of challenge from the employing establishment. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>19</sup> Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), and properly denied his December 26, 2007 request for reconsideration .

### 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 on November 13, 2006. The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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<sup>17</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review. *Denis M. Dupor*, 51 ECAB 482 (2000).

<sup>18</sup> See *Susan A. Filkins*, 57 ECAB 630 (2006).

<sup>19</sup> See *Helen E. Paglinawan*, 51 ECAB 591 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated March 21, 2008, August 28 and April 13, 2007 are affirmed.

Issued: February 12, 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