

employment on March 28, 2008. The employing establishment controverted the claim as appellant did not “mention this until after he resigned” on March 3, 2008.

In an April 10, 2008 letter, the Office advised appellant of the additional factual and medical evidence needed to establish his claim, including a detailed explanation of why his work was stressful.

In an April 28, 2008 letter, an employing establishment official noted that appellant was hired in August 2007. From August 5 to mid-October 2007, he was in a training group working cases with a senior claims examiner. Appellant was assigned a caseload on October 16, 2007, excluding cancer and psychiatric claims. Three mentors assisted him with his work. On December 18, 2007 a director instructed appellant to keep a work log and assigned a fourth mentor. In January and February 2008, the director checked appellant’s deadline reports, instructed him in case management and assigned three coworkers to complete his cases. Appellant’s supervisor offered additional assistance. On February 25, 2008 the supervisor discovered that appellant listed items as complete that he had not finished. The director spoke with appellant on February 26, 2008 and found he did not meet deadlines for completing his cases. Appellant left work early, called in sick the following two days and resigned on March 2, 2008.

By decision dated May 13, 2008, the Office denied appellant’s claim on the grounds that fact of injury was not established. It found that appellant did not submit sufficient evidence corroborating any work incident or exposure. Also, he did not submit any medical evidence.

In a May 27, 2008 letter, appellant requested reconsideration. He attributed his condition to inadequate training, excessive supervision, supervisory intimidation and senior claims examiners delaying his work. Appellant alleged that he was overworked because he was assigned cases of absent coworkers in addition to his own work. He submitted April 4 and May 7, 2008 letters from two coworkers, noting that they assisted him when his mentor was busy.

In a June 9, 2008 letter, appellant’s supervisor stated that appellant received extensive training and could have asked him or other claims examiners for assistance. The supervisor noted that appellant’s work was not delayed by senior claims examiners. Appellant also falsified his work logs. The supervisor stated that he dealt with appellant professionally and “with a kind tone.”

Appellant responded by July 7, 2008 letter, asserting that he worked diligently and conscientiously. He denied falsifying work logs.

In an undated report, Dr. Barbara Cruikshank, an attending family practitioner, noted that appellant presented on March 19, 2008 for unspecified symptoms but did “not have a psychiatric condition.” She attributed an unspecified condition to inadequate training and mentoring,

excessive workload, pressure from management and inappropriate management style. Dr. Cruikshank stated that appellant recovered on March 3, 2008.¹

By decision dated August 25, 2008, the Office denied modification, finding that appellant did not establish any of his allegations as factual, including overwork, intimidation, inadequate training, lack of assistance, being assigned a full caseload as a new claims examiner, or being assigned cases from absent coworkers. It found that appellant failed to establish any compensable factor of employment.

LEGAL PRECEDENT

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.² 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.³

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.⁴ 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.⁵

ANALYSIS

Appellant claimed that he sustained an emotional condition with stress headaches due to overwork, managerial intimidation, excessive supervision, inadequate training, workflow

¹ Appellant also submitted an April 2, 2008 form signed only by a physician's assistant. As physicians' assistants are not considered physicians under the Act, this form does not constitute medical evidence. 5 U.S.C. § 8101(2); *Richard E. Simpson*, 57 ECAB 668 (2006).

² 5 U.S.C. §§ 8101-8193.

³ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ See *Norma L. Blank*, 43 ECAB 384 (1992).

⁵ *Id.*

mismanagement and an inability to do his job well enough to meet deadlines. Therefore, the Board must review whether appellant submitted sufficient evidence to establish these allegations as factual.

Appellant attributed his emotional condition, in part, to not receiving sufficient training to perform his job. The Board has held that an employee's emotional reaction to being made to perform duties without adequate training is compensable.⁶ However, appellant submitted insufficient evidence to establish this contention as factual. In an April 28 and June 9, 2008 letter, appellant's supervisors stated that appellant had eight to nine weeks of group training in how to process various types of cases, with detailed instructions from an experienced claims examiner. In addition, appellant had assistance from four different mentors to answer questions about his cases and assist in their completion. The Board finds that the supervisory letters are sufficient to establish that appellant had adequate job training. Therefore, he failed to establish a compensable factor in this regard.

Appellant also attributed the claimed emotional condition to overwork, including that he was assigned cases of absent coworkers. Overwork is a compensable factor of employment if appellant submits sufficient evidence to substantiate this allegation.⁷ He did not submit work logs or similar documents corroborating the number of cases assigned to him or that he was assigned his coworkers' cases. Although two coworkers noted assisting appellant when his mentor was busy, this does not establish that appellant's workload was excessive or that he was overworked. Therefore, he has failed to establish his allegation of overwork as factual.

Appellant contended that he sustained stress regarding employing establishment workflow methods and in how cases were assigned. He also alleged that senior claims examiners delayed his cases. An employee's dissatisfaction with the way a supervisor performs duties or exercises discretion in assigning work is not compensable absent error or abuse.⁸ Appellant did not submit corroborating evidence substantiating that work was assigned or managed in an erroneous or abusive manner. In an April 28, 2008 letter, a supervisor explained that appellant was assigned an introductory caseload that excluded difficult matters. The Board finds that, under the circumstances of this case, the supervisory statement regarding work assignment is reasonable. Appellant's supervisor stated in a June 9, 2008 letter that appellant's work was not delayed by senior claims examiners. This directly refutes appellant's allegation. Therefore, he has not established a compensable employment factor regarding assignment of work or workflow methods.

Appellant asserted a pattern of intimidation and unprofessional behavior by his supervisors. Intimidation or harassment by supervisors, if established as occurring and arising from the employee's performance of his or her regular duties, could constitute employment factors.⁹ To give rise to a compensable disability under the Act, there must be probative and

⁶ *Donna J. Dibernardo*, 47 ECAB 700 (1996).

⁷ *Bobbie D. Daly*, 53 ECAB 691 (2002).

⁸ *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

⁹ *Janice I. Moore*, 53 ECAB 777 (2002).

reliable evidence that the intimidation or harassment did in fact occur.¹⁰ Mere perceptions of harassment or discrimination are not compensable under the Act.¹¹ In this case, appellant did not submit coworker's statements, witness statements or other evidence corroborating any incident of intimidation or unprofessional behavior by a supervisor. In a June 9, 2008 letter, appellant's supervisor noted that he always dealt with appellant professionally and "with a kind tone." This statement refutes appellant's allegations of intimidation or improper conduct. Therefore, he has not established his allegations of intimidation as factual.

In an April 28, 2008 letter, an employing establishment official asserted that appellant experienced stress because his work was "sub par" and he was unable to fulfill his duties. Appellant was hired in August 2007. From August 5 to mid-October 2007, he was in a training group working cases with a senior claims examiner. During the training, appellant was "not grasping the material." He was assigned a caseload on October 16, 2007, excluding cancer and psychiatric claims. Three mentors assisted appellant but his work did not improve. On December 18, 2007 a director instructed appellant to keep a work log and assigned a fourth mentor. In January and February 2008, the director checked appellant's deadline reports, instructed him in case management and assigned three coworkers to complete his cases. Appellant's supervisor offered additional assistance. On February 25, 2008 the supervisor discovered that appellant listed items as complete that he had not finished. The director spoke with appellant on February 26, 2008 and found he did not meet deadlines for completing his cases. Appellant left work early, called in sick the following two days and resigned on March 2, 2008.

In a June 9, 2008 letter, appellant's supervisor stated that appellant received extensive training and could have asked him or other claims examiners for assistance. The supervisor noted that appellant's work was not delayed by senior claims examiners. Appellant also falsified his work logs. The supervisor stated that he dealt with appellant professionally and "with a kind tone."

Letters from employing establishment officials directly refute appellant's account of these events. Therefore, appellant has not established any compensable work factors in this regard.

CONCLUSION

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

¹⁰ *Marlon Vera*, 54 ECAB 834 (2003).

¹¹ *Kim Nguyen*, 53 ECAB 127 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 25 and May 13, 2008 are affirmed.

Issued: November 25, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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