

stated that he investigated the situation and that the alleged confrontation negatively impacted appellant's physical and emotional health, causing him to miss work and seek medical care.

In a February 19, 2008 letter, the Office notified appellant of the deficiencies in his claim and requested additional information.

In an e-mail dated February 20, 2008, Brenda M. Gangnon, appellant's coworker, stated that she witnessed the incident between Diane Nadeau and appellant. She stated that Ms. Nadeau approached appellant's cubicle and stated that she needed to speak with him. Ms. Gangnon returned to her adjoining cubicle. She overheard Ms. Nadeau tell appellant that he should not have informed anyone that she was working at the employing establishment. Appellant responded that her information was posted on an electronic portal home page. Ms. Nadeau mentioned something about her previous employment, to which appellant replied that the issue was between her and his wife and refused to discuss the matter. After she continued to bring up the same issues, appellant requested that she leave and advised that he would call security. Ms. Nadeau stated that he need not bother because she was going to security and walked away visibly annoyed. Ms. Gangnon noted that appellant was clearly shaken by the incident.

Further, in a February 20, 2008 e-mail, Lois A. Barnes, another coworker, stated that she also witnessed the February 1, 2008 incident between appellant and Ms. Nadeau. According to Ms. Barnes, Ms. Nadeau approached appellant and began talking about things that happened at her prior job. Appellant responded that he did not want to hear about the problem. Ms. Nadeau stated that appellant informed people that she was working at the employing establishment. Appellant denied this and stated that her employment was public knowledge because her name was on the electronic portal. She asked her to leave and threatened that he would go to security. Ms. Nadeau stated that she was going to security and walked away.

In February 1, 2008 chart notes from the employing establishment's medical clinic, a nurse stated that appellant presented at the clinic with his supervisor and was visibly shaken. Appellant stated that his new coworker came to his work section and threatened him. He did not expect the confrontation and started shaking uncontrollably. On February 4, 2008 appellant returned to the clinic and stated that he needed someone to accompany him to get his coffee that morning because he was afraid he would be confronted again by his coworker. He continued to shake over the incident and was teary-eyed. The nurse noted that appellant previously obtained counseling from the Department of Veterans Affairs (VA) for post-traumatic stress disorder (PTSD) and that he made need to see a counselor due to an aggravation of this condition.

On February 6, 2008 appellant was admitted to an emergency room for medical treatment related to chest pain. Dr. Guy Raymond, Board-certified in family medicine, stated that appellant had a history of chest pain beginning the day prior. He reported appellant's belief that the pain was likely related to anxiety and that he had a history of increased stress over the last few weeks. Dr. Raymond referred appellant to Dr. Sunila Jo, a Board-certified internist.

In a February 6, 2008 medical report, Dr. Jo stated that appellant was admitted for complaints of intermittent retrosternal chest pain beginning the day prior. She relayed appellant's belief that his condition was related to the severe stress he was experiencing at work.

Dr. Jo reported a history of coronary artery disease, dyslipidemia, hypertension, depression, PTSD, gastroesophageal reflux disease and chronic obstructive pulmonary disease. On February 7, 2008 she performed a stress test with negative results. Dr. Jo provided discharge diagnoses of chest pain, with acute coronary syndrome ruled out, coronary artery disease, depression, PTSD, dyslipidemia, hypertension, chronic obstructive pulmonary disease, gastroesophageal reflux disease and severe degenerative cervical disc disease.

By decision dated April 24, 2008, the Office denied the claim. It found that, although witness statements supported an encounter between appellant and his coworker, appellant did not provide a sufficiently detailed explanation of the incident to establish that it occurred in the performance of duty.

On April 28, 2008 appellant filed a request for a review of the written record by an Office hearing representative.

In an April 26, 2008 statement, appellant stated that his wife was a former supervisor of Ms. Nadeau, at a different employing establishment. Ms. Nadeau did not want anyone to know of her new position with the employing establishment, however, appellant's wife knew about her new employment due to paperwork. Appellant asked security personnel if he was in the wrong by knowing that Ms. Nadeau was starting employment with the employing establishment. Security responded that he was not in violation of her rights because Ms. Nadeau had not requested that her name be excluded from the electronic portal, which was available to all of the employing establishment's sites and supporting air force bases. Appellant claimed that, on February 1, 2008, Ms. Nadeau approached his workstation and asked if she could speak with him. Ms. Nadeau proceeded to accuse him of violating her rights by disclosing that she was starting in a position with the employing establishment. Appellant requested that Ms. Nadeau leave his work area and advised that he was going to call security. Ms. Nadeau continued to verbally accuse him and after two more warnings, appellant called security. No one at security answered the telephone. Ms. Nadeau stated that she was going to the security office and left. Appellant described the incident to his supervisor, Mr. Whitehead, who informed appellant that he, in turn, would have to report the incident to his supervisor. In the meantime, appellant went to the on-site nurse and laid down. Mr. Whitehead retrieved appellant from the clinic and requested that he meet with Ms. Barnes who asked him if he would accept an apology from Ms. Nadeau, which he refused. He returned to his desk but was unable to concentrate and went home early. Appellant stated that he was a Vietnam combat veteran with a 50 percent rating for PTSD from the VA. He contended that the February 1, 2008 confrontation aggravated his PTSD to the point where he could no longer rest at night and did not feel comfortable moving around the building at work due to fear of another confrontation. When appellant did leave his area, he tried to have another person with him to prevent a confrontation. He stated that, due to the incident, he regularly sees a psychologist and had applied for disability retirement. Appellant has not worked a full week since he was hospitalized. Further, he alleged that during his hospitalization on February 6, 2008 he contracted a virus from the gentleman with whom he was sharing a room. Finally, appellant argued that the February 1, 2008 confrontation was work related because it occurred while he was performing his work duties and was caused by a coworker.

By decision dated August 18, 2008, the Office hearing representative affirmed the April 24, 2008 decision, finding that, although appellant established that the incident occurred as alleged, he did not establish any compensable factors of employment. She found that the incident did not rise to the level of harassment and did not relate to appellant's work duties. The conflict arose out of a personal situation based on appellant's knowledge from his wife regarding Ms. Nadeau's position with the employing establishment rather than from an employment factor.

LEGAL PRECEDENT

The Federal Employees' Compensation Act¹ provides for the payment of compensation benefits for injuries sustained in the performance of duty. To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying compensable employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.²

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*,³ the Board explained that there are distinctions in the type of employment situations giving rise to a compensable emotional condition under the Act. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the coverage under the Act.⁴ When an employee experiences emotional distress 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 an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.⁵ 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.⁶ Generally, actions of the employing establishment in administrative matters, unrelated to the employee's regular or specially assigned work duties, do not fall within the coverage of

¹ 5 U.S.C. §§ 8101-8193.

² *George C. Clark*, 56 ECAB 162 (2004).

³ 28 ECAB 125 (1976).

⁴ *George C. Clark*, *supra* note 2.

⁵ *Lillian Cutler*, *supra* note 3.

⁶ *Id.*

the Act.⁷ However, an administrative or personal matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.⁸

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 may not be considered.⁹ If a claimant does indicate 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.¹⁰

ANALYSIS

The issue is whether appellant established that he sustained an emotional condition in the performance of duty. The Office denied appellant's claim on the grounds that the February 1, 2008 verbal altercation between him and Ms. Nadeau was not a compensable factor of employment. The Board finds that the altercation constitutes a compensable work factor; however, appellant did not establish that he sustained an injury causally related to this dispute.

Appellant alleged that a new coworker, Ms. Nadeau, approached his office space on February 1, 2008 and verbally harassed him regarding his notifying coworkers of her position with the employing establishment. He repeatedly requested her to leave and eventually called security. Appellant alleged that the altercation aggravated his PTSD. After the incident, he was unable to concentrate on his work and left work early. Appellant was admitted to the hospital on February 6 and 7, 2008. On his return to work, he alleged that he was afraid to move around the employing establishment by himself for fear of another altercation and when he did have to leave his desk he tried to find a coworker to accompany him. Further, appellant did not work a full week after the incident and applied for disability retirement. Both Ms. Gangnon and Ms. Barnes, appellant's coworkers, witnessed the February 1, 2008 incident and provided a similar account of the events. They both contended that appellant was visibly shaken after Ms. Nadeau confronted him.

The Board finds that the February 1, 2008 altercation constitutes a compensable employment factor. It is well established that verbal altercations in the workplace may constitute a compensable factor of employment.¹¹ In the instant case, appellant and Ms. Nadeau had an altercation about a work-related matter, *i.e.*, her status as an employee at the employing

⁷ *Michael L. Malone*, 46 ECAB 957 (1995).

⁸ *Charles D. Edwards*, 55 ECAB 258 (2004).

⁹ *See Norma L. Blank*, 42 ECAB 384, 389-90 (1992).

¹⁰ *Id.*

¹¹ *A.K.*, 58 ECAB ____ (Docket No. 06-626, issued October 17, 2006).

establishment, while he was reasonably fulfilling the duties of his employment.¹² He was emotionally distraught after the altercation, which affected the performance of his essential work duties and ability to function normally in the workplace.¹³ The incident and emotional impact on appellant was independently verified by two coworkers, who witnessed the altercation and the resulting emotional effect on appellant.¹⁴ Further, there is no evidence that appellant and Ms. Nadeau had a personal relationship outside of work or that the dispute was imported into the workplace.¹⁵ The only connection between the two, external to the employment, was that appellant's wife was Ms. Nadeau's former supervisor. However, the altercation did not arise out of this attenuated relationship; but rather, regarded appellant's discussion with other coworkers about Ms. Nadeau's current position at the employing establishment. There was no private, prior relationship between appellant and Ms. Nadeau that was imported into the workplace. The employment brought Ms. Nadeau and appellant together and created the relations and conditions resulting in the altercation, thereby facilitating and contributing to the dispute.¹⁶ Thus, the Board finds that the February 1, 2008 altercation arose out of appellant's employment and constitutes a compensable work factor.

However, appellant's burden of proof is not discharged by the fact that he has identified an employment factor which may give rise to a compensable disability under the Act. He also has the burden of submitting sufficiently rationalized, probative medical evidence to support his allegation that he sustained a specific injury due to the February 1, 2008 altercation.¹⁷

The medical evidence of record includes medical reports dated February 6 and 7, 2008 from Drs. Jo and Raymond relating to appellant's hospitalization and chart notes from a nurse at the employing establishment's onsite clinic. The Board finds this medical evidence is insufficient to establish that appellant sustained an injury causally related to the February 1, 2008 altercation.

¹² See *Leslie C. Moore*, 54 ECAB 132 (2000).

¹³ See *Bobbie D. Daly*, 53 ECAB 691 (2002).

¹⁴ A claimant must establish a factual basis for his allegations of harassment with probative and reliable evidence. See *Charles D. Edwards*, *supra* note 8.

¹⁵ When a dispute is imported into the workplace from a claimant's domestic or private life the dispute does not arise out of the employment. *Agnes V. Blackwell*, 44 ECAB 200 (1992).

¹⁶ Even if harassment or an altercation arose from a nonwork-related topic, the Board has held that such matters are compensable if the employment brought an appellant and his coworker together and created conditions that resulted in the altercation or harassment. See *Joseph A. Pietro*, 46 ECAB 831 (1995) (where the Board held that appellant's reaction to a discriminatory sign was a compensable factor of employment). See also *Josie P. Waters*, 45 ECAB 513 (1994) (where an altercation occurring after a coworker bumped appellant in the arm at work was found to be a compensable work factor. The Board held that there was no private, prior relationship that was imported in the workplace and thus the incident arose in the performance of duty); *Janet D. Yates*, 49 ECAB 240 (1997) (where the Board found that an altercation arising out of the performance of a work duty was a compensable factor of employment. There was no prior relationship between appellant and the coworker and the work contributed and facilitated the dispute).

¹⁷ See *Elaine Pendleton*, 40 ECAB 1143 (1989).

In a February 6, 2008 medical report, Dr. Raymond stated that appellant had a history of chest pain beginning the day prior and reported appellant's belief that his condition was related to anxiety due to increased stress over the last few weeks. Dr. Jo, in February 6 and 7, 2008 reports, diagnosed, *inter alia*, chest pain, depression and PTSD. He also relayed appellant's belief that his condition was related to severe stress at work. These reports are insufficient to establish that the February 1, 2008 altercation resulted in an emotional condition. The only mention of causation in any of the reports was limited to a recitation of appellant's belief that his condition was caused by stress at work.¹⁸ The doctors did not provide a medical opinion as to the cause of appellant's conditions or even mention the February 1, 2008 altercation as a possible catalyst for the current medical complaints. Thus, these reports are of diminished probative value.¹⁹ Finally, the chart notes from the nurse are also of no probative value as a nurse does not meet the definition of a physician as required by the Act.²⁰

The Board notes that appellant submitted additional medical evidence with his appeal. The Board is precluded from reviewing evidence for the first time on appeal and, thus, cannot consider these medical records.²¹

CONCLUSION

The Board finds that the February 1, 2008 verbal altercation constitutes a compensable factor of employment. However, the Board also finds that appellant did not establish with sufficient medical evidence that he sustained a causally related employment condition.

¹⁸ Claimants may not self-certify their disability. *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁹ *See Robert Broome*, 55 ECAB 339 (2004).

²⁰ Under section 8101(2), the definition of a physician includes surgeons, podiatrist, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law. 5 U.S.C. § 8101(2).

²¹ Appellant may submit the additional medical evidence along with a formal, written request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.

ORDER

IT IS HEREBY ORDERED THAT the August 18 and April 24, 2008 decisions of the Office of Workers' Compensation Programs are affirmed, as modified.

Issued: October 9, 2009
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