



alleged that Mr. Pryor directed him to work from 4 a.m. to 9:30 p.m., six to seven days a week, and he was required to be on call at all times. He stated that these directives were not included in his job description. Appellant alleged that Mr. Pryor constantly bullied, insulted and harassed him in front of his peers and other employees. On April 27, 2007 during a telephone conversation with him, Mr. Pryor was hostile and abusive and used offensive language regarding his job performance. On May 24, 2007 his tone was hostile when he called appellant to discuss work issues while he was on leave because his mother was undergoing heart surgery. On June 11, 2007 Mr. Pryor treated appellant in a hostile and disrespectful manner in front of his subordinates. Appellant informed the postmaster but the abuse continued. On September 18, 2007 Mr. Pryor threatened to terminate him because of his job performance. He alleged that some of his employees were often detailed to other facilities while his own requests for assistance were denied.

By letter dated November 30, 2007, the Office asked appellant to submit additional evidence including a detailed description of the work situations or incidents that contributed to his emotional condition and a comprehensive medical report from his treating physician with a rationalized medical opinion as to how the condition was causally related to factors of his employment.

On December 12, 2007 appellant stated that when he began working at the employing establishment, Mr. Pryor and the postmaster for the Capital Metro Area tasked him with bringing the facility up to standards. He repeatedly asked for assistance with personnel and training but Mr. Pryor told him that he did not need help and to “kick a-- and make my people work.” The ongoing harassment and pressure to produce improvements at the facility led to appellant’s emotional condition. Appellant stated that he first became aware of his emotional condition on October 6, 2007 when he was hospitalized with a diagnosis of several minor strokes.

By decision dated May 20, 2008, the Office denied appellant’s claim on the grounds that he failed to establish that his emotional condition was causally related to a compensable employment factor.

On May 29, 2008 appellant requested an oral hearing that was held on September 16, 2008. He testified that he sought the assistance of union officials regarding his work problems when he was threatened with termination and had filed Equal Employment Opportunity (EEO) and Merit Systems Protection Board (MSPB) complaints. There were no final decisions yet issued regarding his complaints. Appellant submitted medical evidence containing diagnoses of multiple strokes and a family history of stroke, hypertension, severe high cholesterol, hypothyroidism secondary to Grave’s disease and dyslipidemia. Subsequent to the hearing, he submitted a copy of an October 24, 2007 letter to Mr. Pryor requesting work accommodation for an unspecified medical condition.

By decision dated December 1, 2008, an Office hearing representative affirmed the May 20, 2008 decision on the grounds that the evidence submitted did not establish any compensable factors 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 employment but nevertheless does not come within the coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>1</sup> 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>2</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. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.<sup>3</sup>

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment, which may be considered by a physician when providing an opinion on causal relationship, and which are not deemed compensable factors of employment and may not be considered.<sup>4</sup> When an employee fails to establish a compensable factor of employment, the Office should make a specific finding in that regard. If an employee does establish a compensable factor of employment, the Office should then determine whether the evidence of record substantiates that factor.<sup>5</sup> As a rule, allegations alone by an employee are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by other evidence.<sup>6</sup> Where the employee alleges compensable factors of employment, he must substantiate such allegations with probative and reliable evidence.<sup>7</sup> When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.<sup>8</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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

<sup>3</sup> *Michael Thomas Plante*, 44 ECAB 510 (1993).

<sup>4</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>5</sup> *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>6</sup> *See Charles E. McAndrews*, 55 ECAB 711 (2004).

<sup>7</sup> *Joel Parker, Sr.*, 43 ECAB 220 (1991).

<sup>8</sup> *See Charles D. Edwards*, 55 ECAB 258 (2004).

## ANALYSIS

Several of appellant's allegations are not established as factual. His allegations that Mr. Pryor directed him to work from 4 a.m. to 9:30 p.m., six to seven days a week and he was required to be on call at all times; that Mr. Pryor constantly bullied, insulted and harassed him in front of other employees; that on April 27, 2007 during a telephone conversation with appellant, Mr. Pryor was hostile and abusive and used offensive language regarding his job performance; that on May 24, 2007 his tone was also hostile when he called appellant to discuss work issues while his mother was undergoing heart surgery; and on June 11, 2007 Mr. Pryor treated him in a hostile and disrespectful manner in front of his subordinates. The evidence, however, does not establish these allegations as factual. There are no witness statements or other evidence establishing that these incidents occurred. Therefore, the allegations do not constitute compensable factors of employment.

Several of appellant's allegations involve administrative or personnel matters. When he began working at the employing establishment, Mr. Pryor and the postmaster for the Capital Metro Area tasked him with bringing the facility up to standards. Appellant alleged that he repeatedly asked for assistance with personnel and training to improve performance but Mr. Pryor told him that he did not need help. The Board has held that an administrative or personnel matter will be considered to be an employment factor only where the evidence discloses error or abuse on the part of the employing establishment.<sup>9</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>10</sup> Appellant alleged that Mr. Pryor erred or acted abusively in not granting his requests for additional staff and training. However, this allegation involves an administrative or personnel decision by Mr. Pryor and there is insufficient evidence to establish error or abuse. Complaints regarding the manner in which a supervisor performs their duties fall outside the scope of the Act, absent error or abuse.<sup>11</sup> Employees may sometimes dislike administrative or personnel actions taken but a supervisor or manager must be able to perform their duties. Mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent error or abuse.<sup>12</sup> Appellant failed to establish error or abuse in management's assignment of employees or a decision regarding training and this does not constitute a compensable employment factor. He alleged that some of his employees were detailed to other facilities while his own requests for assistance were denied. However, the assignment of employees to perform temporary work at other facilities is an administrative or personnel matter. Appellant did not provide sufficient evidence of regarding the detailing of employees to other facilities. Therefore, this allegation does not constitute a compensable employment factor. Appellant alleged that Mr. Pryor unfairly threatened him with termination because of his job performance, but provided insufficient evidence of this allegation. Therefore, it does not constitute a compensable employment factor. Although appellant filed EEO and

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<sup>9</sup> *Id.*

<sup>10</sup> *Janice I. Moore*, 53 ECAB 777 (2002).

<sup>11</sup> *See Marguerite J. Toland*, 52 ECAB 294 (2001).

<sup>12</sup> *Id.*

MSPB complaints, there are no final decisions of record with findings of error or abuse by management in the handling of any administrative or personnel matters or any other evidence establishing error or abuse. Therefore, these allegations do not constitute compensable factors of employment.

Appellant failed to establish that his emotional condition was causally related to a compensable factor of employment. Therefore, the Office properly denied his emotional condition claim.<sup>13</sup>

### **CONCLUSION**

The Board finds that appellant failed to establish that his emotional condition was causally related to a compensable factor of employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated December 1 and May 20, 2008 are affirmed.

Issued: September 14, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>13</sup> See *supra* note 5 (in the absence of compensable factors of employment, there is no need to address the medical evidence).