

his conditions were caused by his federal employment. Appellant stopped work on July 24, 1986 and did not return.

On May 6, 1987 the Office prepared a statement of accepted facts listing incidents that it found had occurred while appellant was in the performance of his work duties and in his personal life. Included were: appellant's complaint that on October 7, 1985 he was reassigned to a new supervisor; that on October 10, 1985 a prior supervisor instructed him to establish a division tickler system for monitoring correspondence and tasks assigned to his subordinates; that on November 15, 1985 the employing establishment issued a letter of caution to him regarding his absences on November 5, 6 and 7, 1985; that on January 9, 1986 his supervisor suggested that he reconsider his career objectives and the possibility of obtaining a nonsupervisory or alternative position due to his tardiness and poor work performance; that on January 9, 1986 the employing establishment issued a letter of caution to him for failure to follow proper leave request procedures and being absent without leave (AWOL) on December 31, 1985; that on January 9, 1986 the employing establishment issued a letter of requirement regarding the submission of medical verification in support of his requests for sick leave and submission of his requests for annual leave; that on January 21, 1986 his request for annual leave to cover his late arrival at work was denied by the employing establishment; that his request for leave without pay on February 5 and 25, 1986 were denied by the employing establishment; that on March 3, 1986 the employing establishment issued a notice of proposed suspension for two days for being AWOL on January 2 and February 5 and 25, 1986; that on March 12, 1986 his supervisor counseled him about his job responsibilities; that on March 12, 1986 his supervisor instructed him to direct his subordinates in an unprofessional and unnecessary manner to generate hatred between management and its subordinates ensuring their top performance. On March 19, 1986 appellant's supervisor issued a letter of caution to him and a coworker for failing to obtain approval prior to performing compensatory work and insinuating that he was incompetent for failing to follow instructions as a supervisor which placed his subordinates in a bad situation; that his supervisor delayed placing him on work standards so that he could improve to meet them in light of a March 25, 1986 memorandum which addressed his division's untimely responses to correspondence; that on April 1, 1986 he filed a grievance against his supervisor for unwarranted acts to discolor his character and fabricate performance deficiencies which were denied by the supervisor on April 3, 1986; that on April 4, 1986 his supervisor attempted to resolve the grievance but, instead he had to file another one on April 8, 1986; that on April 23, 1986 he and a subordinate were interviewed by the head of civilian personnel concerning morale problems in his division and department and a female subordinate resigned due to sexual harassment by his supervisor; and that on July 9, 1986 the employing establishment issued a notice of proposed unsatisfactory rating and initiation of work in improvement to him.

The Office found that a March 20, 1986 decision reduced the March 3, 1986 notice of proposed suspension to a letter of reprimand. It also found that an April 28, 1986 decision determined that there was no official action to remove appellant or violation of his due process rights. The decision also addressed the monitoring of his work duties, training and designation as an acting supervisor in his supervisor's absence. The Office found that appellant lived with his wife, two sons and one daughter who experienced physical and emotional conditions and his mother. On December 1, 1985 appellant and his son were involved in a nonwork-related motor vehicle accident, which required him to take time off work to handle insurance and legal matters and his son's treatment. On May 26, 1987 the Office accepted his claim for adjustment disorder.

On June 22, 1999 the Office prepared a revised statement of accepted facts to conform to current procedures for identifying compensable employment factors. It stated that the incidents listed in the prior statement of accepted facts related to administrative matters with the possible exception of the March 19, 1986 letter of caution. However, the Office stated that there was no evidence to establish that the comment made by the supervisor regarding appellant's work performance constituted error or abuse given the context of the meeting. The revised statement of accepted facts accepted no factors as having occurred while in the performance of duty. The October 7, 1985 and March 19, April 1 and July 9, 1986 incidents, the reversal of appellant's within grade step increase, the December 1, 1985 motor vehicle accident and the matters related to his family including, a recent death of a family member were accepted as factual but not compensable. The March 12, 1986 incident, April 23, 1986 resignation of a subordinate and a supervisor's threat to remove him without cause were not accepted as factual.¹

On June 25, 2008 the Office issued a proposed notice to rescind its acceptance of appellant's emotional condition claim and to terminate his wage-loss compensation and medical benefits on the grounds that it erred in accepting his claim. It reviewed the evidence and explained that the events and incidents that he cited as causing his emotional condition did not arise in the performance of duty. The Office determined that the evidence failed to establish a compensable employment factor.

In an August 6, 2008 decision, the Office finalized the proposed rescission and terminated appellant's wage-loss compensation and medical benefits effective August 6, 2008.

By letter dated August 8, 2008, appellant, through his attorney, requested an oral hearing before an Office hearing representative.

At the December 10, 2008 hearing, appellant contended that he received no training to keep up with his work duties. His request to attend training was denied by his supervisor during the March 19, 1986 meeting.

By decision dated March 23, 2009, an Office hearing representative affirmed the August 6, 2008 rescission decision.

LEGAL PRECEDENT

Section 8128 of the Federal Employees' Compensation Act provides that the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or application.² The Board has upheld the Office's authority to set aside or modify a prior decision and issue a new decision under section 8128 of the Act.³ The power to annul an

¹ In a June 4, 2002 decision, the Board affirmed the Office's finding that the constructed position of graphic arts technician represented appellant's wage-earning capacity. Docket No. 01-1186 (issued June 4, 2002).

² 5 U.S.C. § 8128.

³ *John W. Graves*, 52 ECAB 160, 161 (2000).

award, however, is not an arbitrary one and an award for compensation can only be set aside in the manner provided by the compensation statute.⁴

Workers' compensation authorities generally recognize that compensation awards may be corrected, in the discretion of the compensation agency and in conformity with statutory provision, where there is good cause for so doing, such as mistake or fraud.⁵ It is well established that, once the Office accepts a claim, it has the burden of justifying the termination or modification of compensation benefits.⁶ The Office's burden of justifying termination or modification of compensation holds true where the Office later decides that it has erroneously accepted a claim for compensation. In establishing that its prior acceptance was erroneous, the Office is required to provide a clear explanation of its rationale for rescission.⁷

ANALYSIS

The Office accepted that appellant sustained an adjustment disorder due to various incidents at work and in his personal life. However, it reopened the case, noting that it accepted the claim based on his allegations without clearly identifying the compensable factors of his employment. The Board finds that the Office provided an extensive discussion of why it determined that appellant did not establish any compensable employment factors and provided sufficient support for its finding to rescind its prior acceptance of his emotional condition claim. The Board has carefully reviewed the Office's analysis of his allegations regarding employment factors and finds that the Office properly applied the relevant Board precedent to the evidence of record.⁸

In the August 6, 2008 and March 23, 2009 decisions, rescinding its prior acceptance of appellant's emotional condition claim, the Office described each of his claimed employment factors, as well as the employing establishment's responses to these allegations. It addressed Board precedent to explain why none of the allegations were established as compensable employment factors. The Office correctly discussed Board precedent which showed that the employing establishment did not commit error or abuse with respect to such administrative and personnel matters as reassigning appellant to a new supervisor on October 7, 1985⁹ taking

⁴ See 20 C.F.R. § 10.610; *Stephen N. Elliott*, 53 ECAB 659 (2002).

⁵ *L.C.*, 58 ECAB 493 (2007).

⁶ *Andrew Wolfgang-Masters*, 56 ECAB 411 (2005).

⁷ See *Delphia Y. Jackson*, 55 ECAB (2004).

⁸ To establish an emotional condition claim, a claimant must establish compensable employment factors and present medical evidence showing that one or more of those factors contributed to the claimed condition. When an employee does not establish any compensable employment factors, the Office need not consider the medical evidence of record. See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992) *Pamela R. Rice*, 38 ECAB 838, 841 (1987); *Lillian Cutler*, 28 ECAB 125 (1976).

⁹ *Donald W. Bottles*, 40 ECAB 349, 353 (1988). See also *D.L.*, 58 ECAB 217 (2006) (the assignment of work by a supervisor the granting or denial of a request for a transfer and the assignment to a different position are administrative functions that are not compensable absent error or abuse).

disciplinary action against him which consisted of the issuance of the November 15, 1985 and January 9 and March 19, 1986 letters of caution, March 3, 1986 notice of proposed suspension and July 9, 1986 notice of proposed unsatisfactory rating and initiation of work in improvement and conducting the November 8, 1985 and January 9 and March 12, 1986 counseling sessions related to his attendance, leave usage and work performance,¹⁰ denying his leave requests on January 21 and February 5 and 25, 1986, issuing the January 9, 1986 letter providing requirements for leave requests,¹¹ delaying his placement on performance standards,¹² assigning work and discussing his work performance on October 10, 1985 and March 12 and 25 and April 23, 1986¹³ and denying his request for training on March 19, 1986.¹⁴ The Office properly determined that appellant did not submit any evidence establishing error or abuse by the employing establishment in handling the above administrative and personnel matters. Although the March 3, 1986 notice of proposed suspension was reduced to a letter of reprimand by a March 20, 1986 decision, the Office properly noted that the mere fact that personnel actions were later modified or rescinded does not in and of itself, establish error or abuse.¹⁵ It also properly noted the employing establishment's explanation for its delay in placing appellant under performance standards as it wanted him to first improve to meet the standards. As appellant failed to submit any evidence establishing that the employing establishment committed error or abuse in handling the above-stated administrative and personnel matters, the Board finds that the Office properly found that he failed to establish a compensable employment factor.

The Office indicated that harassment and discrimination had to be established by evidence that the implicated acts did, in fact, occur and not by mere perceptions of harassment or discrimination. The Board finds that the Office properly found that appellant did not submit such evidence to substantiate his allegation. The April 23, 1986 resignation of appellant's female subordinate due to sexual harassment by his supervisor does not specifically relate to how he was treated by the supervisor. Thus, he did not establish a compensable factor of employment under the Act with respect to the claimed harassment and discrimination.

The Board further finds that the Office correctly determined that appellant's December 1, 1985 car accident, the health problems of appellant's wife, sons and daughter and death of a family member are personal matters unrelated to his federal employment and, therefore, do not fall within the coverage of the Act.

¹⁰ *Barbara E. Hamm*, 45 ECAB 843 (1994); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

¹¹ *T.G.*, 58 ECAB 189 (2006) (actions of the employing establishment in matters involving the use of leave are generally not considered compensable factors of employment as they are administrative functions of the employer and not duties of the employee).

¹² *Beverly R. Jones*, 55 ECAB 411 (2004).

¹³ *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

¹⁴ *See Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

¹⁵ *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

For the stated reasons, the Board finds that the Office provided a clear explanation of the rationale for its rescission of its prior acceptance of appellant's emotional condition claim.¹⁶

CONCLUSION

The Board finds that the Office properly rescinded its acceptance of appellant's emotional condition claim.

ORDER

IT IS HEREBY ORDERED THAT the March 23, 2009 and August 6, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 16, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

¹⁶ *L.C.*, *supra* note 5.