



had been absent from work due to a prior employment-related back and neck injury.<sup>1</sup> He alleged that his treating physician released him to resume full-time unrestricted duty in October 2007; however, an employing establishment physician refused to allow him to return to work. Appellant was scheduled for a number of fitness-for-duty examinations that he contended were ill-timed and at inconvenient locations. In one instance, he was scheduled to see a physician in California while he resided in Alabama. Appellant accused the employing establishment of engaging in delay tactics and contended that his medical clearance by the employer was not required.<sup>2</sup> The employer controverted the claim.

In March 2007, appellant came under the care of Dr. Gunilla M. Karlsson, a clinical psychologist. In a September 14, 2007 report, Dr. Karlsson diagnosed major depressive disorder and panic disorder without agoraphobia. She noted findings of anxiety, stress and depression due to hypertension. Dr. Karlsson attributed appellant's psychiatric condition to the failure of his employer to honor medical restrictions regarding the July 20, 1985 injury under claim file number xxxxxx988. She stated that not honoring his medical restriction caused his hypertension, anxiety and depression.

In a September 13, 2008 CA-20 report, Dr. Karlsson reiterated the diagnoses of major depression, anxiety and stress but attributed appellant's condition to "abusive discrimination practice by supervisor against disabled employees." She identified September 12, 2008 as the date of injury and reported a history of injury of stress from the employer by delaying appellant's return to duty after being released. In the remarks section, Dr. Karlsson commented that, because of the delay in returning him back to duty, he had a relapse of his depression. On October 12, 2008 she submitted another CA-20 report that diagnosed major depressive disorder and panic disorder, without agoraphobia. By checkmark, Dr. Karlsson indicated that appellant's condition was directly caused by the employer's refusal to allow him to return to duty. She explained that his treating physician had released him to full, unrestricted duties; however, since October 2007, an employing establishment physician refused to approve his return and the continued delay caused his depressive disorder.

In a decision dated November 10, 2008, the Office denied appellant's claim. It found that he did not attribute his emotional condition to his regular or specially assigned duties or to any requirement imposed by his employer. The Office determined that appellant had not established error or abuse by the employing establishment in referring him for fitness-for-duty examinations. Appellant's anxiety arising from any delay in returning to work was not compensable under the Federal Employees' Compensation Act.

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<sup>1</sup> The prior injury appellant referenced on his September 11, 2008 Form CA-2 involved a July 20, 1985 dog attack. He was delivering mail at the time. The Office accepted the claim file number xxxxxx988 for lumbar sprain, lumbar disc displacement and aggravation of neck sprain. Appellant was unable to resume his letter carrier duties and identified his occupation as a rehabilitation clerk.

<sup>2</sup> In addition to his 1985 employment injury, appellant filed numerous other compensation claims, including the current emotional condition claim. The Board previously addressed these claims by decisions in Docket Nos. 96-1098, 04-2268 and 08-2348. This is the first appeal pertaining to the October 1, 2007 emotional condition under claim file number xxxxxx930.

Appellant requested an oral hearing, which was held on June 30, 2009. He explained that he filed his claim because the employing establishment just sat on his paperwork after his treating physicians had released him to return to work in October 2007.<sup>3</sup> After submitting the necessary paperwork, appellant did not hear anything for several months. Instead of going back to work, his employer requested additional documentation from his treating physicians. Appellant also noted that it took about a year for the employing establishment to schedule fitness-for-duty examinations. Instead of arranging all necessary examinations together, the various examinations were separately scheduled. Appellant reiterated that, while residing in Alabama, the employer scheduled him to see a physician located in California.<sup>4</sup> He noted that all three physicians he had been referred to agreed with his physicians that he was able to go back to work with the same restrictions that were in place when he last worked in December 2006; however, the employing establishment still did not put him back to work.

Appellant further testified that the employing establishment should have brought him back to work first and afterwards schedule the fitness-for-duty examinations. He filed a complaint with the Equal Employment Opportunity (EEO) Commission, which purportedly directed the employer to return him to work, which it had not been done. Appellant noted, however, that he was awaiting a hearing on the EEO Commission complaint and a formal decision had not yet been issued. He contended that an EEO Commission judge verbally ordered the employing establishment to place him back to work.

On July 24, 2009 Lesley Morgan, an employing establishment occupational health specialist, responded to appellant's hearing testimony. She noted that appellant was off duty for various medical conditions, including cervical and lumbar spondylosis, chronic pain, bilateral carpal tunnel, hypertension and his emotional condition. Rather than being released to return to work, the employing establishment medical director noted that appellant's return was with a "guarded" prognosis and with multiple restrictions that impacted his job duties. Several examinations were scheduled as the medical records indicated that appellant's treating physician had never referred him to an orthopedic specialist or a specialist in physical medicine and rehabilitation. Ms. Morgan noted that appellant was restricted from answering incoming telephone calls as he would have problems dealing with potentially angry or hostile customers but it was not adequately explained why this restriction did not also apply to dealing with people face-to-face in his job as a greeter. A fitness-for-duty examination was scheduled for June 9, 2008, that was rescheduled to June 18, 2008 at his request. After the examination, appellant's treating physician went from stating no restrictions to recommending extensive medical restrictions.

The employer scheduled its own fitness-for-duty examination following conflicting recommendations pertaining to appellant's carpal tunnel residuals. While originally scheduled for August 11, 2008, it was cancelled by appellant and rescheduled at his request for October 3, 2008. Subsequent to the evaluation, appellant was cleared on December 2, 2008 for his personal orthopedic conditions but he still had other outstanding medical conditions that required clearance. While Dr. Karlsson indicated that he could return based on his emotional

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<sup>3</sup> Appellant noted that he had a 30 percent service-connected emotional disability.

<sup>4</sup> At the time of the hearing, appellant had relocated to California.

status at no restrictions, she had previously restricted him from telephones. Ms. Morgan noted that despite several attempts, Dr. Karlsson did not adequately respond to inquiries by the employing establishment physician. Appellant was ultimately cleared to return to work based on his behavioral health condition given Dr. Karlsson's December 13, 2008 report. Ms. Morgan noted that appellant did not submit medical documentation clearing his return to work based on his sleep apnea condition until January 28, 2009. She contended that any delay in appellant's return to work was due to his treating physician not responding adequately to the medical director's questions. This necessitated multiple examinations by medical specialists who found significant pathology. In turn, it resulted in reinstatement of restrictions by the treating physician. The need for fitness-for-duty examinations arose because of inconsistencies in the various reports submitted by appellant's treating physician.

Appellant provided additional medical reports from Dr. Karlsson dated November 17 and December 5, 2008 and June 19, 2009. Dr. Karlsson cleared him to return to work from a psychological standpoint effective November 17, 2008. She continued to attribute appellant's major depressive disorder and panic disorder to the employing establishment's delay in returning him to work.

By decision dated September 10, 2009, the hearing representative affirmed the November 10, 2008 decision.

### **LEGAL PRECEDENT**

To establish that appellant sustained an emotional condition causally related to factors of his federal employment, he must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.<sup>5</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.<sup>6</sup> Disability is not compensable, however, when it results from factors such as 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>7</sup>

Administrative and personnel matters, although generally related to the employment, are administrative functions of the employer unrelated to the regular or specially assigned duties of

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<sup>5</sup> See *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>6</sup> *Pamela D. Casey*, 57 ECAB 260, 263 (2005).

<sup>7</sup> *Lillian Cutler*, 28 ECAB 125, 129 (1976).

the employee.<sup>8</sup> Moreover, the processing of compensation claims bears no relation to the day-to-day or specially assigned duties of the employee. Although handling of a compensation claim is generally related to the employment, it is an administrative function of the employer and not a duty of the employee and not compensable absent evidence of error or abuse.<sup>9</sup>

Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.<sup>10</sup> When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter, the Office must base its decision on an analysis of the medical evidence.<sup>11</sup>

### ANALYSIS

Appellant did not attribute his emotional condition to any specially assigned job requirement or duty arising from his status as an employee under *Cutler*. The record clearly establishes that appellant was not at work or engaged in any job requirements arising in the course of his federal employment.

Rather, appellant attributed his major depressive disorder and panic disorder to the employing establishment's delay in returning him to work. He contended that his treating physician had released him to resume work in October 2007. The employer advised that it had processed appellant's return-to-work documents in a timely fashion. It attributed the delay in returning him to work to inconsistencies in the recommended limitations pertaining to his various orthopedic and emotional conditions. This necessitated multiple fitness-for-duty examinations, several of which were rescheduled at appellant's request. Appellant contends that the employer should have first allowed him to return to work and then afterwards scheduled the fitness-for-duty examinations.

Assessing whether an employee is both physically and emotionally capable of returning to work is an administrative matter. An employee's emotional reaction to administrative or personnel matters generally falls outside the Act.<sup>12</sup> However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.<sup>13</sup>

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<sup>8</sup> *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>9</sup> *David C. Lindsey*, 56 ECAB 263 (2005); *George A. Ross*, 43 ECAB 346 (1991).

<sup>10</sup> *Kathleen D. Walker*, *supra* note 5.

<sup>11</sup> *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

<sup>12</sup> *Andrew J. Sheppard*, 53 ECAB 170, 173 (2001).

<sup>13</sup> *Id.*

The record documents that appellant's recommended return to the workplace was monitored by the employer's medical director. The employing establishment noted that his review of various medical reports revealed medical restrictions pertaining to the various orthopedic and psychological conditions that were not consistent with his anticipated job duties or adequately explained in the medical records. The evidence of record does not establish that the employer's requests for clarification regarding appellant's physical and psychological conditions were either erroneous or abusive. Appellant has failed to demonstrate that, in ordering various fitness-for-duty examinations by medical specialists, the employer committed error or abuse. His allegations do not question the necessity of these examinations, but he suggests that the timing and location of the examinations were a nuisance or inconvenience. While the medical appointments may have posed some inconvenience for appellant, this does not establish error or abuse on the part of his employer. It is also noteworthy that on more than one occasion the employing establishment accommodated his request to reschedule certain fitness-for-duty examinations.

Under certain circumstances, an employee's mandatory participation in a fitness-for-duty examination may represent a compensable employment factor when considered a "requirement imposed by the employment." When a fitness-for-duty examination is required as a condition of ongoing employment or is otherwise directly related to the work for which the employee was hired, then the required participation is compensable.<sup>14</sup> There must be an "important link" between the employee's specific duties and the need for a fitness-for-duty examination.<sup>15</sup> Appellant's claim is not premised on the requirement that he participate in the fitness-for-duty examinations; as noted, he largely questioned their convenience due to timing and location. In this regard, his claim is similar to that in *Margaret M. Boyle*.<sup>16</sup> The employee based her claim for compensation on the contention that she experienced mental anguish due to her separation from employment.

Appellant also attributed his emotional condition to his separation from employment, his desire to return to the workplace and the delay encountered in securing the appropriate work restrictions for his various physical and emotional conditions. This is supported by the medical record. Dr. Karlsson did not attribute appellant's emotional reaction to the requirement that he attend the fitness-for-duty examinations as directed. Rather, she noted that he had been released by his attending physician and the employer failed to honor his medical restrictions by failing to reinstate his employment. Dr. Karlsson explained that the employer had discriminated against appellant by delaying his return to duty after she provided a medical release. As noted, the employer countered that the restrictions initially recommended by appellant's treating physician and his psychologist required clarification and necessitated examination by other appropriate medical specialists. Following the fitness-for-duty examinations, additional medical restrictions were recommended, to which appellant's physicians agreed.

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<sup>14</sup> *Charles D. Edwards*, 55 ECAB 258, 268-70 (2004).

<sup>15</sup> *Id.* at 268.

<sup>16</sup> 13 ECAB 172 (1961).

At the June 30, 2009 hearing, appellant testified that he filed an EEO complaint and a judge reportedly directed the employing establishment to place him back to work; however, he did not submit any evidence to substantiate this allegation. The fact that an employee filed an EEO complaint does not establish error or abuse on the part of his or her employer.<sup>17</sup> There is no compelling evidence on which to find that the employer's assessment of whether he was fit to return to work was either abusive or erroneous. Consequently, this administrative matter is not compensable under the Act. It is well established that an employee's frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable.<sup>18</sup>

Appellant's December 2006 work stoppage was reportedly related to his July 20, 1985 employment injury. Therefore, the delay in his return to work is tangentially related to his previous workers' compensation claim. Although appellant did not attribute his current complaints to his 1985 injury claim, the Board notes that an employee's emotional reaction from pursuing a workers' compensation claim is not compensable.<sup>19</sup> Because appellant failed to establish a compensable factor of employment, he did not meet his burden of proof.<sup>20</sup>

### CONCLUSION

The Board finds that appellant did not establish an emotional condition causally related to his federal employment.

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<sup>17</sup> Grievances and EEO complaints do not establish that workplace harassment or unfair treatment occurred. *Id.* at 266. Furthermore, absent an admission of fault, a settlement agreement does not establish error or abuse on the part of the employing establishment. *Kim Nguyen*, 53 ECAB 127, 128 (2001).

<sup>18</sup> *Lillian Cutler*, *supra* note 7.

<sup>19</sup> *John D. Jackson*, 55 ECAB 465, 474 n.19 (2004).

<sup>20</sup> Under the circumstances, the Office was not required to evaluate Dr. Karlsson's various reports concerning appellant's psychological condition. *Garry M. Carlo*, *supra* note 11.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 10, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 7, 2010  
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