

By decision dated April 7, 2008, the Office denied the claim for compensation. With respect to compensable work factors, it did accept that certain disciplinary actions, including a May 1, 2005 emergency suspension, a seven-day suspension in March 2005, and disciplinary actions resulting in appellant's removal from employment in January 2006, were compensable work factors. The Office determined the medical evidence was insufficient to establish an injury in the performance of duty.

Appellant requested reconsideration on October 10, 2008. He submitted a July 21, 2008 report from Dr. Barry Fisher, a psychiatrist, who indicated that appellant had been treated for anxiety and depression since 1999. Dr. Fisher stated that on reviewing his records there seemed to be "a clear correlation between increasing work[-]related stress and worsening glucose metabolism and increasing blood pressure." He concluded that given appellant's anxiety and irritability, appellant should be considered fully disabled on the basis of his psychiatric condition. In a September 25, 2008 report, Dr. Fisher reiterated that appellant was disabled for work.

By decision dated January 8, 2009, the Office denied modification. It found that appellant had not established a condition causally related to compensable work factors.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment.² This burden includes the submission of detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.³ A claimant must also submit rationalized medical opinion evidence establishing a causal relationship between the claimed condition and the established, compensable work factors.⁴

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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his 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.⁵

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

⁴ *See Bonnie Goodman*, 50 ECAB 139, 141 (1998).

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.⁶ Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.⁷

ANALYSIS

In this case appellant's statements regarding the factors of employment he believed contributed to a diagnosed injury have not been particularly detailed. He stated, for example, "On June 9, 1998 due to constant harassment of Postal Management, stressors aggravated my gout and began a stressful workplace environment." The record contains little evidence regarding actions of the employing establishment in 1998. Appellant also refers to a November 1999 incident where he was falsely accused of violating a zero tolerance policy, but notes a prior claim for compensation. It may be that these incidents were considered in the prior claim. In any case, no probative evidence regarding a compensable work factor in 1998 or 1999 was presented in this case.

Appellant further alleged, "From November 2004 through May 2005 stressors such as an acting supervisor and certain employees caused my mental condition to be further complicated with such actions as threats, finger pointing, swearing, removals and suspensions all of which were eventually resolved in my favor. This tremendously worsened my mental condition." Appellant also noted that he was removed from employment in January 2006 and then reinstated. With respect to certain incidents in 2005 and 2006, the Board notes that evidence does establish, and the Office accepted, certain compensable work factors. As noted above, error or abuse in an administrative matter is a compensable work factor. An emergency suspension given on May 1, 2005 was found to be improper by an arbitrator in a February 21, 2006 decision. In addition, an arbitrator in a June 21, 2006 decision found that actions of the employing establishment regarding appellant's removal from employment in January 2006 were improper. Since appellant was purportedly subject to an emergency suspension, he could not be held to have violated attendance requirements. Therefore disciplinary actions regarding the removal, such as an October 28, 2005 letter of warning, notices of removal dated December 5 and 7, 2005, a January 9, 2006 removal decision, and the removal from employment itself, were erroneous and are compensable work factors.

The Board notes that the Office found two other disciplinary actions as compensable. A seven-day suspension was issued on March 14, 2005 for a March 3, 2005 incident. A brief "prearbitration settlement agreement" dated January 27, 2006 stated the suspension was rescinded. In another January 27, 2006 settlement agreement, a suspension issued for actions on April 29, 2005 was reduced to a letter of warning. It is well established that the mere reduction

⁶ See *Brian H. Derrick*, 51 ECAB 417, 421 (2000).

⁷ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

or rescission of a disciplinary action does not itself establish error or abuse.⁸ In the absence of additional evidence, the record does not establish a compensable work factor regarding these disciplinary actions.

The record contains a number of additional disciplinary actions taken against appellant, with no probative evidence of error or abuse presented. There is a July 13, 2007 settlement agreement addressing an October 20, 2006 letter of warning, a November 29, 2006 notice of proposed removal and a December 21, 2006 letter of decision. According to the settlement agreement, these actions were rescinded. The agreement explicitly stated that it did not constitute an admission of error by any party. As noted, the rescission of a disciplinary action does not necessarily make it erroneous.

As to appellant's general allegations of threats and finger pointing, he did not provide any detail or evidence to establish compensable work factors in this regard. The Board accordingly finds the compensable work factors are limited to the May 1, 2005 emergency suspension and the actions of the employing establishment regarding the removal from employment for failure to meet attendance requirements, culminating in appellant's removal in January 2006.

Since there are compensable work factors, the medical evidence must be considered on the issue of causal relationship. In this case appellant has not submitted any probative medical evidence establishing an injury causally related to the compensable work factors. In a report dated May 25, 2005, Dr. Joseph Fetchko, a psychiatrist, noted that appellant found it very stressful at work, but the only incident noted is a supervisor calling appellant into his office regarding work performance. He does not provide a rationalized medical opinion regarding a diagnosed condition and the accepted work factors. In a July 20, 2005 report, Dr. Fetchko noted that appellant was under stress due to being "involuntarily unemployed" without providing further detail. Dr. Fisher referred generally to "work[-]related stress" but did not discuss the specific compensable factors or provide a rationalized medical opinion on causal relationship between a diagnosed condition and the compensable work factors.

The Board accordingly finds that appellant did not meet his burden of proof in this case. Appellant did not submit probative medical evidence establishing a diagnosed emotional or physical condition causally related to the compensable work factors.

CONCLUSION

The Board finds appellant did not establish an injury causally related to compensable factors of his federal employment.

⁸ See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Richard J. Dube*, 42 ECAB 916 (1991) (reduction of a disciplinary letter to an official discussion did not constitute abusive or erroneous action by the employing establishment).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 8, 2009 is affirmed.

Issued: February 26, 2010
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