

**United States Department of Labor
Employees' Compensation Appeals Board**

W.P., Appellant)

and)

**DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
New Orleans, LA, Employer**)

**Docket No. 09-1776
Issued: July 15, 2010**

Appearances:

Appellant, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 1, 2009 appellant timely appealed the April 8, 2009 merit decision of the Office of Workers' Compensation Programs, which denied his emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(e), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On August 13, 2007 appellant, then a 53-year-old senior associate advocate, filed a claim for an emotional condition (Form CA-2) that arose on or about March 16, 2007. He worked for the Taxpayer Advocate Service (TAS), and on February 15, 2007 a taxpayer allegedly threatened him during a telephone conversation. After reporting the incident, appellant stated that he

became stressed and anxious when having a discussion with management. He took an eight-week leave of absence from April 24 to June 15, 2007.

Appellant attributed the taxpayer threat of February 15, 2007 to an error made by Lisa W. Laurent, a supervisor. He had written the taxpayer on January 26, 2007 requesting a reply by February 9, 2007. Absent a timely response, the taxpayer's TAS case would have been closed. On January 30, 2007 the taxpayer called requesting that his TAS case be closed immediately and that certain documentation be returned to the IRS's Fresno, CA office.¹ Ms. Laurent spoke to the taxpayer at some point after his January 30, 2007 conversation with appellant. When the taxpayer called back on February 15, 2007 he asked to speak with Ms. Laurent, but she was unavailable. He was reportedly upset because he had not been contacted on February 9, 2007 as Ms. Laurent had promised. The taxpayer accused appellant of not doing anything to help and reportedly told appellant "I wish you was (sic) up here so that I could take care of you." Appellant considered this remark threatening. That day he advised a supervisor, Mary Krobart, of the taxpayer's comment. Both Ms. Krobart and Ms. Laurent had already received several messages from the taxpayer. Appellant met with Ms. Krobart and Ms. Laurent to discuss the case before they returned the taxpayer's call. After their discussion, he was asked to leave Ms. Krobart's office so that she and Ms. Laurent could contact the taxpayer. Appellant also stated that the Treasury Inspector General for Tax Administration (TIGTA) was informed of the taxpayer's comments.

Appellant updated the Taxpayer Advocate Management Information System (TAMIS) on February 16, 2007 with the facts that led to the taxpayer's comment. He explained that his TAMIS entry showed that Ms. Laurent failed to provide an estimated completion date (ECD) and that she had not updated TAMIS from follow-up status (F) to next contact date (NCD). At noon on February 16, 2007, Ms. Laurent called appellant to her office where she and Ms. Krobart directed him to remove the information in order to conceal the mistake made by Ms. Laurent. Appellant stated that he told them he was on his lunch break; but they stated that he could not leave the office until he removed the documentation from TAMIS.² As he attempted to open the office door, Ms. Krobart arose from her seat and removed appellant's hand from the door handle and closed it again. Appellant was told that the information he added on TAMIS was inappropriate because only case advocates, such as himself, provided ECD and NCD updates. He claimed that his stress level rose due to management's actions and he requested sick leave, but was denied. Appellant was told he would need a doctor's certificate for four hours of sick leave. However, after Ms. Laurent and Ms. Krobart realized appellant was under extreme stress his sick leave was approved and he was allowed to leave. Appellant characterized the February 16, 2007 meeting with Ms. Laurent and Ms. Krobart as being held hostage through verbal and physical restraints.

On March 8, 2007 Ms. Krobart issued a performance counseling memorandum based on the February 16, 2007 incident. Appellant was advised that inappropriate information was entered on TAMIS and directed to remove the information. Ms. Krobart noted that appellant

¹ Apparently the Fresno office could not take any action because appellant's TAS case remained open.

² His daughter was waiting for him in the car and she reportedly telephoned him several times while he was meeting with Ms. Laurent and Ms. Krobart.

refused to follow this directive and kept repeating that the taxpayer was not upset with him, but with the system. While she and Ms. Laurent did not disagree with appellant, their own conversation with the taxpayer revealed that he was upset with appellant's mannerism. Ms. Krobart noted that regardless of what the taxpayer was upset with, appellant had been given a direct order with which he failed to comply.

Appellant was also admonished for poor workplace interaction. Ms. Krobart noted that he did not interact with management in a professional manner and was uncooperative. Several times during the February 16, 2007 meeting appellant was told to calm down and go to lunch, but he stated that he had to go home. Ms. Krobart noted that appellant still had several contacts due that day, but he was unwilling to stay. She characterized the incident as not fostering a good relationship with management and that appellant became very loud by stating how stressed he was and then asking Ms. Laurent if she felt his pain. Appellant's behavior was inappropriate and appellant was expected to communicate in a professional and courteous manner and to foster good working relationships by treating everyone with respect and controlling his feelings. Ms. Krobart advised appellant that immediate improvement was expected in the area of following through with direct orders and being able to communicate in a pleasant and professional manner.

In his statement to the Office, appellant indicated that Ms. Krobart issued a March 8, 2007 memorandum stating his behavior was inappropriate during the period he was held hostage. He explained that he became very loud in order to be freed from the situation.

Appellant alleged that on March 13, 2007 he spoke with Carolyn Lewis, a supervisor, about reducing his case inventory due to the February 16, 2007 incident. Ms. Lewis raised her voice causing him to experience stress. After his meeting with Ms. Lewis, all three management officials accused him of threatening them.

On March 16, 2007 appellant was reportedly preparing an incident timeline for TIGTA when Ms. Krobart and Ms. Lewis interrupted what he was doing and told him to resume working on his cases. He again experienced stress while talking to management and called TIGTA to intervene on his behalf. According to appellant, TIGTA advised him that management's threat accusation was determined to have been a communication problem. He indicated that TIGTA was able to secure time for him to complete the report.

On March 26, 2007 Dr. Mark H. Townsend, a Board-certified psychiatrist, recommended that appellant return to work, but with a reduced inventory. Appellant alleged that Ms. Krobart made a "medical determination" that his period of reduced inventory would end on April 23, 2007. On April 13, 2007 Ms. Krobart responded to appellant's request for a reduced workload due to his medical condition. She explained that a federal occupational physician contacted appellant's doctor, who had suggested a reduced workload for a temporary period of time. Ms. Krobart noted that appellant had not been assigned any new cases since March 15, 2007 and, as a result, his caseload had been reduced from 49 cases to a current inventory of 28 cases. Ms. Krobart stated that because appellant had already been permitted to work a lighter caseload for approximately four weeks, he would begin to receive new cases on April 23, 2007. When appellant saw Dr. Townsend on April 23, 2007, he recommended an eight-week leave of absence. Appellant was off work from April 24 to June 15, 2007.

After resuming work, appellant received a mid-year evaluation which covered the period October 1, 2006 through July 13, 2007. The evaluation was delayed due to appellant's leave beginning April 24, 2007. Appellant took exception to the mid-year evaluation because it covered a 10-month period and included events beyond the typical 6-month period. Appellant alleged that these later events were used to reduce his rating. He noted that the mid-year evaluation included reference to a July 9, 2007 incident where he refused to come to Ms. Krobart's office.³ Appellant explained that he was paranoid and instead requested that they talk *via* the telephone.

On July 20, 2007 appellant provided management with his doctor's recommendation that he work only four hours a day. The employing establishment allowed him four hours leave without pay (LWOP) from August 6 to 10, 2007. On August 13, 2007 Ms. Laurent advised appellant that the medical evidence was not sufficient to support his request for additional LWOP.

On October 30, 2007 appellant reiterated that his stress was aggravated by the February 16, 2007 incident, thus causing him to raise his voice in order to be released from the office. Since then, he received a series of memorandum because of his fear of closed-door meetings with the same management officials. Appellant reiterated his concerns about his mid-year review, which cited an April 10, 2007 meeting that he walked out of and a July 9, 2007 incident where he failed to attend a meeting. He stated that his job performance decreased because of post-traumatic stress caused by the incident.

Ms. Laurent provided a December 12, 2007 statement. She explained that she had received a voicemail message from the taxpayer on January 30, 2007 and when she returned the call, the taxpayer was upset about a conversation he had with appellant. The taxpayer did not like the way appellant had spoken to him. Ms. Laurent apologized and explained the status of the case and what actions needed to be taken. She also informed the taxpayer that he would be contacted by February 9, 2007. Ms. Laurent stated that she returned the case to appellant with instructions to send an operation assist request by February 2, 2007. She also stated that a copy of the TAMIS case history was attached to the file she returned to appellant.

On February 15, 2007 Ms. Laurent was in training most of the day. When she returned to her office around 3:00 p.m., she retrieved at least seven voicemail messages from the taxpayer, who was reportedly upset with how appellant was handling his case. Ms. Laurent immediately went to see Ms. Krobart, appellant's manager, to advise her to call the taxpayer as soon as possible. Ms. Krobart informed Ms. Laurent that she too had received several messages from the taxpayer. At that time, Ms. Laurent learned from Ms. Krobart about the taxpayer's alleged threat against appellant. Ms. Laurent stated that she told Ms. Krobart to first talk to appellant to find

³ The record included only the first page of appellant's July 17, 2007 mid-year evaluation. The evaluation referenced the March 8, 2007 memorandum appellant received for unprofessional behavior, as well as an April 10, 2007 incident where he reportedly walked out of a meeting. It also noted that he received three memoranda on July 9, 2007, one of which was for refusing to come to Ms. Krobart's office. After receiving the memoranda, appellant reportedly taped them on the front of the drop file cabinet in public view. He was subsequently admonished by Director Melvin Ware for disrespectful and unprofessional conduct exhibited in the work area, particularly in regard to interactions with management. Mr. Ware's August 10, 2007 disciplinary memorandum also noted that appellant inappropriately displayed a counseling memorandum in a common area.

out what happened and then call the taxpayer. Ms. Laurent stated that appellant insisted that they call the taxpayer in his presence so that he could address the alleged threat. When Ms. Krobart refused, appellant became upset. Ms. Laurent stated that they asked him to leave the office, but he refused. After several requests, appellant finally left the office, but he was very upset with their decision to call the taxpayer before reporting the alleged incident to TIGTA. According to Ms. Laurent, he did not like the fact that he was not permitted to confront the taxpayer.

When Ms. Krobart called the taxpayer on February 15, 2007, he reportedly told her that he did not like the way appellant had spoken to him and was displeased with appellant's handling of his case. Ms. Laurent stated that she and Ms. Krobart asked the taxpayer what he stated that could have made appellant feel threatened. The taxpayer reportedly told appellant that he wished he could be there to show him. The taxpayer further explained that he wished he could show appellant what was going on so that appellant could understand the problem he was having with his tax return. Ms. Krobart documented the conversation with the taxpayer in the case file and reported the alleged threat to TIGTA. Ms. Laurent stated that Ms. Krobart provided TIGTA with the taxpayer's information and requested that TIGTA contact appellant before the end of the day to let him know that the alleged threat had been reported.

On February 16, 2007 Ms. Krobart informed Ms. Laurent that appellant read the TAMIS history she documented the previous day and he became upset. Ms. Laurent stated that appellant had gone behind Ms. Krobart's history and entered his own comments, which were not relevant to resolving the taxpayer's problem. Ms. Krobart advised Ms. Laurent that she had already called appellant and advised him to remove the history in the case, but he had not done so. Due to this failure, she proposed that she and Ms. Laurent meet with appellant. Ms. Krobart wanted Ms. Laurent present during the meeting because she was acting on behalf of the Local Taxpayer Advocate.

Ms. Laurent called appellant to her office around 11:45 a.m. Appellant came to the office and they discussed what had transpired in the case. Ms. Laurent stated that it was a closed-door meeting for privacy and so as not to disturb others in the office. During the meeting, Ms. Krobart told appellant to remove his personal comments from the TAMIS history because the information was not relevant to resolving the taxpayer's problem. Appellant stated that he was not going to remove the history. As the conversation continued, appellant stated that he was stressed and had to leave. Appellant informed Ms. Laurent that he was on his way out to lunch when he received her call. Ms. Laurent told appellant that had she known about his lunch plans they could have met when he returned. Ms. Laurent stated that appellant became belligerent and she and Ms. Krobart advised him several times to calm down, go to lunch and relax. At first, appellant refused to leave and told them that they did not understand how stressed he had become. Ms. Krobart told appellant that if he left the office he would need to provide documentation. Although the office door was initially closed, at some point during the meeting appellant opened the door and Ms. Krobart closed it again. Ms. Laurent explained that appellant had become loud and they did not want to disturb other employees. She stated that appellant claimed that Ms. Krobart assaulted him after she brushed his arm as she tried to close the door.

Ms. Laurent was unable to make appellant understand that the taxpayer was upset by his conversation with appellant. Appellant claimed that the taxpayer's anger had nothing to do with him and blamed management for keeping the taxpayer's case open. Ms. Laurent stated that

appellant again stated that he needed to leave. She could see by that point that he was very stressed by the conversation. Ms. Krobart asked appellant if he had any more telephone contacts left for the day. Appellant confirmed that he still had work to complete and asked her if she wanted him to talk to taxpayers. Ms. Krobart advised appellant to send a letter instead. Ms. Laurent noted that he became progressively louder and leaned forward in an aggressive manner, stating: "Do I need to show you how stressed I am?" Ms. Krobart replied no. Appellant then asked Ms. Krobart if she could feel his pain. Ms. Krobart again replied no. Ms. Laurent and Ms. Krobart realized it was in everyone's best interest if appellant left, so Ms. Krobart approved leave for the remainder of the day.

Appellant submitted medical evidence in support of the claim from Dr. Townsend. On March 26, 2007 Dr. Townsend released appellant to return to work effective March 27, 2007. He did not provide a diagnosis, but noted that appellant required a reduced inventory. On April 23, 2007 Dr. Townsend advised that appellant was incapacitated due to medication from April 18 to 20, 2007 and remained incapacitated. He recommended that appellant be released from his duties for eight weeks through June 15, 2007. On July 12, 2007 Dr. Townsend stated that appellant should work part time, four hours per day, beginning August 6, 2007. He advised that the restriction would remain in effect until further notice.

In a September 18, 2007 attending physician's report, Dr. Townsend diagnosed post-traumatic stress disorder (PTSD). He identified February 16, 2007 as the date of injury and also noted a "past history of depression." Dr. Townsend stated that appellant's condition was caused by a supervisor assaulting him on February 16, 2007. Dr. Townsend advised that appellant would return to full-time employment when he was able but was totally disabled as of August 14, 2007.

The record includes medical records dating back to 1993 for treatment of anxiety, job-related stress, depression, adjustment disorder, situational disturbance and insomnia. Dr. Townsend previously treated appellant on March 28, 2006 for adjustment issues related to Hurricane Katrina.

Upon receipt of Dr. Townsend's recommendation of a reduced work inventory in March 2007, the employing establishment referred the matter to the Department of Health & Human Services, FOH Service. In a March 28, 2007 report, Dr. Christopher S. Holland, an occupational medicine consultant, stated that appellant's depression, as diagnosed by Dr. Townsend, did not appear to meet the criteria for a disability under the Rehabilitation Act. Although the employer was not obligated to provide accommodation, Dr. Townsend's recommendation for a temporary reduction in appellant's work inventory made good medical sense.

By decision dated February 19, 2008, the Office denied appellant's emotional condition claim finding that he failed to establish a compensable employment factor.

Appellant requested an oral hearing, which was held on July 22, 2008. At the hearing, he claimed that an increased workload contributed to his stress. In October 2005, the employing establishment implemented a nationwide inventory balancing program whereby they tried to assign every taxpayer advocate the same number of cases. Appellant testified that his office in

Louisiana normally had a low inventory, but the workload increased with cases from outside the Louisiana area. The taxpayer who allegedly threatened appellant on February 15, 2007 was an inventory balancing case from Minnesota.⁴

Following the hearing, appellant submitted evidence pertaining to a grievance over the increased caseloads. It was noted that the average caseload increased from 20.3 to 86.1 cases and there were almost 300 fewer case advocates employed in December 2007 than in October 2003.

In a March 13, 2008 report, Dr. Mark Frank, a Board-certified internist and FOH occupational medicine consultant, addressed appellant's February 22, 2008 request for reasonable accommodation by a detail or reassignment to a new manager. Dr. Frank spoke to Dr. Townsend and noted that appellant's request was not related to a substantial limitation in a major life activity. On March 28, 2008 Dr. Frank reiterated that appellant did not appear to be qualified for his current position as he was unable to function well behaviorally and cognitively during periods of significant stress resulting from a high work demand, monitoring of his work, high expectations and adversarial interactions with coworkers and clients. Dr. Frank explained that appellant had unsuccessful behavioral and cognitive functioning around supervisors, managers, coworkers and taxpayers.

In a July 22, 2008 report, Dr. Townsend explained that he was writing to clarify the relationship between appellant's work and his elevated and pathological level of stress. Appellant fulfilled the diagnostic criteria for PTSD "as a result of an interaction with his supervisor which he perceived as dangerous and harmful." Dr. Townsend noted that appellant suffered from intrusive recollections of the event, avoidance of situations in which this could occur again and generally increased anxiety. He explained that the avoidance associated with appellant's PTSD negatively affected his ability to perform his customary and usual job because he would have had to interact with the supervisor who had caused the trauma. Appellant also found it particularly difficult to efficiently resolve conflicts with taxpayers.

In an October 3, 2008 decision, the Office hearing representative found that appellant's increased workload beginning in 2006 was a compensable factor. However, the claim was denied because the medical evidence was not sufficient to relate his medical condition to his increased workload.

Appellant requested reconsideration. In a report dated October 31, 2008, Dr. Townsend stated that appellant's workload had increased in early 2006, causing the symptoms previously described and documented. Appellant was also required to work cases for other employees who were out of the office. According to appellant, his increased workload was causally related to the development of his condition, which in turn contributed to the negative encounters he experienced with both taxpayers and managers. Dr. Townsend reiterated that appellant first experienced significant symptoms in 2006.

By decision dated April 8, 2009, the Office denied modification of the October 3, 2008 decision.

⁴ As to the alleged threat, appellant testified that he "may have misunderstood what [the taxpayer] stated...."

LEGAL PRECEDENT

To establish that he sustained an emotional condition causally related to factors of his federal employment, appellant 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.⁵

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.⁶ 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 hold a particular position.⁷ 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.⁸ 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.⁹

ANALYSIS

When he initially filed his claim appellant alleged that his psychiatric condition arose as a result of meetings and discussions with management on or after February 16, 2007. However, when the case was subsequently pending before the Branch of Hearings and Review, appellant claimed that the increased workload contributed to his stress. He provided evidence indicating that over a four-and-half-year period ending in May 2008, the average workload increased from 20.3 to 86.1 cases. Most of the increase occurred between December 2007 and May 27, 2008 when the national average rose from 38.9 to 86.1 cases. According to Ms. Krobart, appellant had an inventory of 49 cases as of March 15, 2007, which was higher than the national average at that time. An emotional reaction to a situation in which an employee is trying to meet his position requirements is compensable.¹⁰ Additionally, employment factors such as an unusually heavy workload and the imposition of unreasonable deadlines are covered under the Federal Employees' Compensation Act.¹¹ The hearing representative found that appellant's increased

⁵ See *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁶ *Pamela D. Casey*, 57 ECAB 260, 263 (2005).

⁷ *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁸ *Kathleen D. Walker*, *supra* note 5.

⁹ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁰ *Robert Breeden*, 57 ECAB 622, 627 (2006).

¹¹ *Id.*

workload represented a compensable employment factor. However, appellant's other allegations were either unsubstantiated or did not represent compensable employment factors.

Appellant characterized his February 16, 2007 meeting with Ms. Laurent and Ms. Krobart as being "held hostage through verbal and physical restraints...." Verbal altercations and difficult relationships with supervisors, when sufficiently detailed and supported by the record, may constitute compensable factors of employment.¹² For appellant to prevail on his claim, he must support his allegations with probative and reliable evidence.¹³

There is nothing in the record to substantiate appellant's claim that he was held hostage by either Ms. Laurent or Ms. Krobart. The three had a closed-door meeting on February 16, 2007 to discuss comments appellant placed in TAMIS. During the meeting he received instructions to remove certain information, but refused to comply. The office door was closed to insure privacy and not for purposes of physically restraining appellant. Both Ms. Laurent and appellant indicated that Ms. Krobart closed the office door after appellant attempted to open it, and in the process she touched or brushed against appellant's hand or arm. There is no indication that Ms. Krobart intended to harm appellant or that she was even physically capable of restraining him. Her actions were apparently intended to maintain the privacy of their ongoing discussion. Ms. Laurent indicated that during the February 16, 2007 meeting appellant became very belligerent and she and Ms. Krobart advised him several times to calm down, go to lunch and relax. Ms. Laurent stated that at first appellant refused to leave. She also noted that, during a conversation the previous day, appellant similarly refused to leave the office when requested.

Appellant was troubled by what he perceived to be an improper order from Ms. Krobart to remove his comments from TAMIS. He essentially blamed Ms. Laurent for the taxpayer's dissatisfaction. Appellant added this information in TAMIS and was subsequently told to remove it because the information was not relevant to resolving the taxpayer's problem. Far from being held hostage, appellant's February 16, 2007 conversation with Ms. Krobart and Ms. Laurent was prolonged in large part because he refused to comply with Ms. Krobart's request and continued to press the matter as to why his actions were appropriate. Appellant's objection to Ms. Krobart's directive to remove the information from TAMIS is not compensable. Work assignments are administrative in nature, and absent evidence of error or abuse, such assignments are noncompensable.¹⁴ Appellant has not demonstrated error or abuse with respect to Ms. Krobart's February 16, 2007 directive.

Appellant also took exception to a counseling memorandum he received on March 8, 2007. This memorandum pertained to his behavior on February 16, 2007, and particularly his refusal to obey Ms. Krobart's directive to remove inappropriate information from

¹² *Marguerite J. Toland*, 52 ECAB 294, 298 (2001).

¹³ See *Kathleen D. Walker*, *supra* note 5.

¹⁴ *Jeral R. Gray*, 57 ECAB 611, 616 (2006). An employee's emotional reaction to administrative or personnel matters generally falls outside the scope of the Act. *Andrew J. Sheppard*, 53 ECAB 170, 173 (2001). 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. *Id.*

TAMIS. Disciplinary actions are administrative in nature.¹⁵ Again, appellant has not demonstrated any error or abuse on Ms. Krobart's part in issuing the March 8, 2007 counseling memorandum.¹⁶

On March 13, 2007 Ms. Lewis, a supervisor, allegedly raised her voice while speaking with appellant. As previously noted, verbal altercations and difficult relationships with supervisors, when sufficiently detailed and supported by the record, may constitute compensable factors of employment.¹⁷ In this instance, however, appellant has not provided sufficient detail regarding the alleged March 13, 2007 incident with Ms. Lewis.

Appellant identified two other incidents that fall within the category of work assignments. On March 16, 2007 Ms. Krobart and Ms. Lewis reportedly told him to stop working on his TIGTA timeline and resume working his regular cases. Appellant also challenged Ms. Krobart's decision to assign him additional cases beginning April 23, 2007. His inventory had been reduced to 28 cases as of April 13, 2007 and Ms. Krobart advised that she would begin assigning additional cases on April 23, 2007. Again, work assignments are administrative in nature, and absent evidence of error or abuse, such assignments are noncompensable.¹⁸ Assuming *arguendo* that the March 16, 2007 incident occurred as alleged, appellant has not demonstrated that the directive to resume his regular work was erroneous or abusive. With respect to the proposed case assignment, it appears not to have been fully implemented because appellant took an eight-week leave of absence beginning April 24, 2007. Moreover, appellant has not demonstrated that the proposed increase was either erroneous or abusive.

Appellant also noted dissatisfaction with the mid-year performance appraisal he received. Performance ratings are administrative matters and not compensable absent a showing of error or abuse on the part of the employing establishment.¹⁹ Appellant's mid-year appraisal was delayed because of his eight-week leave of absence, which ended on June 15, 2007. Because of his prolonged absence, the July 17, 2007 mid-year appraisal included information beyond the normal six-month period it would have otherwise covered. Appellant has not demonstrated error or abuse in this instance. Consequently, any emotional reaction to the July 17, 2007 mid-year appraisal would not be compensable.

On August 13, 2007 Ms. Laurent advised appellant that additional LWOP would not be approved until he submitted appropriate medical documentation. Although time and attendance issues are generally related to the employment, they are administrative functions of the employer

¹⁵ *Charles D. Edwards*, 55 ECAB 258, 266 (2004).

¹⁶ Appellant also received an August 10, 2007 letter of admonishment for disrespectful and unprofessional conduct. Although he did not identify this specific letter as a contributing factor to his psychiatric condition, it too constitutes a noncompensable disciplinary action.

¹⁷ *Marguerite J. Toland*, *supra* note 12.

¹⁸ *Jeral R. Gray*, *supra* note 14.

¹⁹ *David C. Lindsey, Jr.*, 56 ECAB 263, 271-72 (2005).

and not duties of the employee.²⁰ Appellant received LWOP from August 6 to 10, 2007. Ms. Laurent explained that the documentation appellant provided did not indicate a diagnosis, prognosis, or include any information regarding a possible return-to-work date. After the employing establishment's efforts to obtain clarification proved unsuccessful, Ms. Laurent informed appellant that further LWOP would not be approved until additional medical documentation was received. She also advised appellant that he would be placed on absent without leave for any and all unapproved absences. Appellant has not demonstrated that Ms. Laurent's handling of his leave request was either erroneous or abusive. Although Dr. Townsend advised appellant to work part time beginning August 6, 2007, his July 12, 2007 note provided very little information regarding appellant's medical condition. Accordingly, Ms. Laurent's refusal to approve additional LWOP is not compensable.

Appellant established a compensable employment factor -- his increased workload. However, he must also submit rationalized medical opinion evidence to establish that his emotional condition is causally related to the compensable employment factor.²¹ Between March and July 2007 appellant's psychiatrist, Dr. Townsend, provided three form reports regarding appellant's ability to work. Effective March 27, 2007, he released appellant to return to work with a reduced inventory. On April 23, 2007 Dr. Townsend indicated that appellant had been incapacitated since April 18, 2007 and recommended that appellant be released from his duties for eight weeks through June 15, 2007. After returning from an eight-week leave of absence, Dr. Townsend recommended that appellant work four hours a day effective August 6, 2007. None of these form reports provided a factual history of the accepted factor, a specific diagnosis or any other relevant findings regarding the basis for Dr. Townsend's recommended work restrictions. Consequently, this evidence is insufficient to establish that appellant's increased workload caused or contributed to his claimed emotional condition.

Dr. Townsend's September 18, 2007 attending physician's report is also insufficient to establish the claim. It provided a diagnosis of PTSD with a past history of depression. However, Dr. Townsend made no mention of any increased workload as the cause of the reported February 16, 2007 injury. Rather, he stated that appellant's condition was caused by a supervisor assaulting him on February 16, 2007. Dr. Townsend provided similar rationale in a July 22, 2008 report, noting that appellant fulfilled the diagnostic criteria for PTSD "as a result of an interaction with his supervisor which he perceived as dangerous and harmful." Dr. Townsend advised that appellant had intrusive recollections of the event, avoidance of situations in which this could occur again, and generally increased anxiety which negatively affected his ability to perform his usual job. Dr. Townsend did not attribute appellant's PTSD and reported avoidance behavior to an increased workload.

²⁰ *Joe M. Hagewood*, 56 ECAB 479, 488 (2005).

²¹ *Charles D. Gregory*, 57 ECAB 322, 328 (2006). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

In an October 31, 2008 report, Dr. Townsend clarified that appellant's condition had developed earlier in 2006 when his workload increased causing the symptoms previously described and documented. He also stated that appellant was required to work cases for other absent employees. Dr. Townsend stated that the increased workload was causally related to the development of appellant's emotional condition, which in turn contributed to the negative encounters he experienced with both taxpayers and managers. As noted by the Office, the October 31, 2008 report did not include a diagnosis of PTSD or other psychiatric condition or symptoms. This report is not sufficient to establish appellant's claim as Dr. Townsend did not adequately explain his opinion on causal relation with reference to his prior reports of record.

Even assuming that Dr. Townsend was referring to his prior diagnosis of PTSD, his October 31, 2008 report does not explain how an increased workload factored into such a diagnosis. When he saw appellant on March 28, 2006, he recommended a two-month leave of absence for treatment of a stress reaction which he attributed to "adjustment issues related to Hurricane Katrina." At that time, appellant did not mention any increased workload as a cause of his condition. The Board finds that Dr. Townsend has not provided a fully rationalized medical opinion addressing how appellant's psychiatric condition relates to his accepted employment factor. The reports from the two FOH consultants, Dr. Holland and Dr. Frank, are also insufficient to establish appellant's claim. Dr. Holland did not address the cause of appellant's diagnosed depression and Dr. Frank did not provide a diagnosis. Appellant failed to meet his burden to establish that his emotional condition is causally related to the accepted employment factor.

CONCLUSION

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

ORDER

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

Issued: July 15, 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