

On the claim form, Kermit Richards, maintenance supervisor, stated that appellant came into his office stating he had been assigned work at Sea Site 3, had taken some medication and was feeling pain in his right arm. He stated that he advised appellant to see his personal physician. Appellant returned to work the next day.

By letter dated October 8, 2008, the Office informed appellant of the type evidence needed to support his claim. In an October 23, 2008 statement, appellant's wife advised that he called her from work on September 8, 2008, stating that he was coming home because he was not feeling well, and when he got home looked very red in the face and was shaky. Appellant then left to see the doctor. In a November 3, 2008 statement, he indicated that on September 8, 2008 he was working on a ladder at Sea Site 3 when approached by Mr. Fuller who startled him. Appellant stated that Mr. Fuller appeared very angry and confrontational and attacked him verbally about working on "his building." He stated that Mr. Fuller's actions stressed him, causing chest pains and right arm numbness. Appellant stated that he tried to find his supervisor, Robert Kirkpatrick, and when he could not, reported to Mr. Richards. He noted that he was worried because he had an undiagnosed heart condition and stated that he had an experience like this before when a coworker threatened his life.

The employing establishment controverted the claim and provided a statement in which Mr. Richards advised that on September 9, 2008 appellant came into his office and stated that he had taken some medication, was feeling weird and having pain in his right arm, and asked to go to the employing establishment clinic. Mr. Richards stated that, because appellant stated that his condition was from medication, he was told to go to his personal physician, and that when he asked if appellant needed someone to drive him, he stated that he was well enough to drive. He noted that appellant took sick leave for the balance of the day, returned to work the next day, and worked overtime for two days in a row. In an October 27, 2008 statement, Jerry Mather stated that on September 8, 2008 Mr. Fuller, who had been on leave, entered his office very upset, wanting to know why appellant was working at Sea Site 3. He stated that he informed Mr. Fuller that work had to be done at the site and that appellant was helping. Mr. Mather further reported appellant later entered his office and filled out a leave slip for six hours and left.

In a November 4, 2008 report, Dr. Kain Kumar, a Board-certified internist, advised that appellant was seen on September 8, 2008 with acute chest pain. An attached electrocardiogram (EKG) was interpreted as demonstrating supraventricular arrhythmia with leftward axis and was otherwise normal.

By decision dated November 7, 2008, the Office denied the claim on the grounds that the evidence submitted was insufficient to establish that appellant sustained an employment-related injury. On October 12, 2009 appellant, through his attorney, requested reconsideration, and submitted an October 17, 2008 report in which Dr. Shun K. Sunder, Board-certified in internal medicine and cardiovascular disease, advised that appellant was seen after a perfusion scan. He provided physical examination findings and advised that appellant's EKG was normal but the perfusion scan was abnormal, showing a fixed defect that was suggestive of possible small vessel disease and previous infarct in the apical area of the left ventricle. Dr. Sunder diagnosed probable diabetic heart disease with risk factors of diabetes mellitus, hypertension, hyperlipidemia, and obesity and recommended weight reduction. In an October 28, 2009 report, Dr. Kumar advised that appellant was first seen on September 8, 2008 for chest pain and right

arm numbness and reported a history of a confrontation with a coworker. He diagnosed coronary artery disease, hypertension, and chest pain, and noted that an EKG was performed. Dr. Kumar advised that appellant's symptoms could have been brought on by stress and agitation in a confrontation with a coworker and that appellant was not disabled from employment. He concluded that he had last seen appellant on October 23, 2009 in good, stable condition.¹

In a merit decision dated January 11, 2010, the Office denied modification of the prior decision, finding that appellant did not establish fact of injury because his confrontation with Mr. Fuller was not substantiated and further found the medical evidence insufficient because it did not contain a specific diagnosis caused by the claimed incident.

LEGAL PRECEDENT

To establish his claim that he sustained a stress-related condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his stress-related condition.² If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.³ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁴

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁵ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁶ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁷ When an employee experiences emotional stress in carrying out his or her employment duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the

¹ The objective physical findings portion of the report is illegible.

² *Leslie C. Moore*, 52 ECAB 132 (2000).

³ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁴ *Id.*

⁵ 28 ECAB 125 (1976).

⁶ 5 U.S.C. §§ 8101-8193.

⁷ See *Robert W. Johns*, 51 ECAB 137 (1999).

work.⁸ Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.⁹ Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.¹⁰ Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹¹

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.¹² Where 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.¹³

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that he sustained a stress-related condition in the performance of duty causally related to factors of his federal employment.

In the present case, appellant has not attributed his emotional condition to the performance of his regular duties or to any special work requirement arising from his employment duties under *Cutler*.¹⁴ His claim pertains to allegations of verbal abuse by Mr. Fuller on September 8, 2008.

There is, however, insufficient evidence to establish that the incident of September 8, 2008 occurred as alleged. The record does not contain a statement from a witness to the incident. While Mr. Mathers reported that Mr. Fuller was upset that day because appellant was working at the site, Mr. Mathers did not witness the claimed incident. Appellant's wife merely confirmed that he was upset and unwell when he arrived at home. Mr. Richards stated that appellant reported that he had taken medication and was not feeling well. A verbal altercation, when sufficiently detailed by the claimant and supported by the evidence, may constitute a compensable employment factor.¹⁵ This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.¹⁶ Moreover, the Board has generally held

⁸ *Lillian Cutler*, *supra* note 5.

⁹ *J.F.*, 59 ECAB 331 (2008).

¹⁰ *M.D.*, 59 ECAB 211 (2007).

¹¹ *Roger Williams*, 52 ECAB 468 (2001).

¹² *Charles D. Edwards*, 55 ECAB 258 (2004).

¹³ *Kim Nguyen*, 53 ECAB 127 (2001).

¹⁴ *See James E. Norris*, 52 ECAB 93 (2000).

¹⁵ *C.S.*, 58 ECAB 137 (2006).

¹⁶ *J.C.*, 58 ECAB 594 (2007).

that being spoken to in a raised or harsh voice does not of itself constitute verbal abuse or harassment.¹⁷ The evidence in this case does not contain sufficient evidence to establish that Mr. Fuller inappropriately yelled at appellant on September 8, 2008.¹⁸

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a stress-related condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the January 11, 2010 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: November 3, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁷ *T.G.*, 58 ECAB 189 (2006).

¹⁸ *C.S.*, *supra* note 15. As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Katherine A. Berg*, 54 ECAB 262 (2002).