



the injury was caused by appellant's misconduct and advised that he was "acting inappropriately by verbally accosting his team leader in the middle of the work area resulting in several employees having to stop working." Mr. Wallace noted that appellant stopped work on July 30, 2008.

An August 1, 2008 treatment note from Dr. Don Parazo, a family practitioner, advised that appellant was off work since July 31, 2008 and could return to work after cardiac testing was completed.

An August 6, 2008 e-mail correspondence from Donna Vasseur, a human resources specialist, noted that appellant would not return to work before September 1, 2008 and that he had initiated a request for retirement.

In an August 7, 2008 statement, Mr. Wallace controverted the claim alleging that appellant's condition "was caused by his willful misconduct." He noted that appellant did not complain of chest pains until he learned "he would be facing disciplinary action for his disrespectful conduct/creating a disturbance (verbally accosting his team lead in the middle of the work area)." Mr. Wallace advised that appellant's "conduct issues are so disruptive to the workforce that just about everyone in my organization is unwilling to work with him. His coworkers would rather take on additional work themselves rather than be forced to have to deal with his frequent outbursts and negative attitude." Mr. Wallace indicated that he had forwarded supporting witness statements concerning appellant's latest outburst.

By letter dated August 21, 2008, the Office informed appellant of the evidence needed to support his claim and requested that he submit such evidence within 30 days.

In an August 21, 2008 attending physician's report, Dr. Roy B. del Rosario, a Board-certified psychiatrist, diagnosed major depression, panic disorder and "anxiety triggered by work stress." He checked the box "yes" in response to whether he believed that appellant's condition was caused or aggravated by an employment activity.

In an August 26, 2008 statement, appellant noted that at the time of his cardiac condition, he was consulting with a human resources counselor. He alleged that management had been aware of the hostile relationships but refused to move him to another position despite several requests. Appellant indicated that after several hours of "severe anxiety" he had chest pain that traveled down his left arm and left lower back that resulted in his being transported to an emergency room. He had been on medication for depression and anxiety since 2004.

In reports dated August 22 and 27, 2008, Dr. Parazo noted that appellant had chest pain that was not cardiac related and was totally disabled from July 30 to August 25, 2008. In a September 17, 2008 treatment note, Dr. del Rosario reiterated that appellant was unable to work.

By decision dated September 24, 2008, the Office denied the claim on the basis that the events were not established as having occurred in the performance of duty.

In a September 26, 2008 report, Dr. del Rosario diagnosed major depression recurrent and severe and panic disorder and that appellant was totally disabled until October 27, 2008, at which time he could return to work under different supervisors.

On October 15, 2008 appellant's representative requested a telephonic hearing, which was held on February 9, 2009. At the hearing, appellant alleged on July 29, 2008 he sent an e-mail to Thomas Grindle, an upper management supervisor, asking for more work assignments with a copy to his supervisor, Mr. Wallace. On July 29, 2009 Mr. Wallace informed him that no one wanted to work with him as his demeanor dissuaded potential customers. Appellant described an incident involving a coworker, whom he refused to help and who was subsequently murdered. He alleged that Mr. Wallace's negative comments in the e-mail were upsetting and requested an immediate meeting with Mr. Grindle and Mr. Wallace. The next day, appellant was informed that he was being disciplined for the events of July 29, 2008. He stopped work at that time.

Appellant also described an incident involving Karen Estes, a group leader, in April 2008 for which he was charged with insubordination. He alleged that because he said "NO" that was insubordinate. Appellant was informed three weeks later that he was being disciplined and suspended without pay for five days. He noted that he also tried to get a transfer from his present supervisor.

In a July 29, 2008 e-mail to Mr. Grindle and Mr. Wallace, appellant stated that he had "ZERO work on a daily basis. You told me that Alan has stated that everyone in this shop has work, well I stating that I have nothing and have had nothing for 2 months." In a July 29, 2008 e-mail Mr. Wallace advised appellant that "there are numerous opportunities for you to take the initiative to ask someone in your group if they need assistance.... The work that has come your way you have either refused to do or complained that it isn't your job. Frankly, your demeanor frequently dissuades any potential customers from coming to you for assistance. For example, a couple of months ago the ESD Coordinator came to you to ask for assistance in dealing with nonESD compliance soldering irons. You told him that it wasn't your job and you don't work for him so he would have to get your group leaders approval before you could do anything. While it was true that he would need to get concurrence from your group lead in order for you perform the work you did not have to be so unprofessional in your response."

In an August 22, 2008 report, Dr. Parazo advised that appellant had noncardiac chest pain and that it was "unknown" whether such was work related.

In a November 26, 2008 decision, Lawrence R. Davis, the director of flight operations, finalized a proposal to remove appellant. He found that on June 6, 2008, appellant conducted himself disrespectfully. On that date, Ms. Estes, appellant's group leader, asked him to de-pin some connectors with the help of a coworker, Nick Halabi. Appellant advised her that he did not need any help. Ms. Estes told him that the work would get done quicker with help. He "sarcastically responded, 'why do I get all the shit work' or words to that effect ... 'No one is giving me work, except shit work,' or words to that effect. You then grabbed the box of connectors went into the lab and proceeded to slam things around, causing a loud noise and disrupting the employees working in the shop." Mr. Davis further found that appellant engaged in disruptive behavior on July 29, 2008, when he sent an e-mail to Mr. Grindle and Mr. Wallace stating he had "zero" work to do. Mr. Wallace responded that appellant's group had a very high

workload and there were numerous opportunities for him to take initiative and to assist in work demands and that his demeanor frequently dissuaded potential customers. Mr. Davis noted:

“[Shortly after reading this e-mail on July 29, 2008, appellant] upon hearing Karen Estes, your Group Lead, and Don Griffith, your coworker, who were having a discussion nearby, you darted out of your office cubicle in a charging manner, became angry and very red in the face, and pointed your finger and yelled at Ms. Estes. You acted in a belligerent manner and accused Ms. Estes of misinterpreting a remark you made several months before concerning the same incident and customer in the example provided by Mr. Wallace. Ms. Estes felt very threatened and intimidated.... Your demeanor was so aggressive that Mr. Griffith felt it necessary to prepare himself to restrain you in case you became physically violent towards Ms. Estes.”

Mr. Davis found that appellant made statements that caused anxiety and disruption in the workplace on September 25, 2008. On that date, appellant called Mr. Grindle and told him that it “would not be safe for you to come back to work ‘because it would be a safety hazard for [your]self and others,’ or words to that effect.” On September 25, 2008 appellant told a human resources employee, “in a state of rage, that you could not be responsible for your actions and what you might do if you were required to return to work under your immediate supervisor, Alan Wallace.” Based on these incidents and appellant’s prior history of misconduct and behavioral problems, both Mr. Grindle and Mr. Wallace took appellant’s threatening statements very seriously. Mr. Davis noted that this was appellant’s fifth disciplinary action in the past seven years for offenses of a similar nature, including a February 2008 seven-day suspension for disrespectful conduct and failure to carry out an order given by his supervisor.

In an undated statement received by the Office on March 17, 2009, appellant replied to the notice of removal. He denied any issues with Ms. Estes on June 6, 2008. Concerning the July 29, 2008 incident, appellant alleged that Mr. Wallace’s e-mail was inaccurate and a “very degrading, unquantified, demeaning, disrespectful, fabricated statement of the lowest level.” He noted that on July 29, 2008 Ms. Estes did not seem to be in a defensive mood or give any clue that appellant accosted her. Appellant noted that he worked the rest of the day with Ms. Estes. He stated that on July 30, 2008 Mr. Wallace came to his desk and asked to speak with him. He indicated that it was not proper to speak alone together. Mr. Wallace then stated he wanted appellant to know that he was going to be disciplined due to the confrontation with Ms. Estes on July 29, 2008 about the e-mail. Appellant alleged that after the July 30, 2008 conversation with Mr. Wallace, he went to see Ms. Campbell in human resources and while speaking with her, he felt uncontrollable anxiety and Ms. Campbell called Dr. Christian. Concerning the September 25, 2008 incident, he denied contacting human resources on September 25, 2008 in a “state of rage.”

In an April 27, 2009 decision, the Office denied modification of the September 24, 2008 decision.

## LEGAL PRECEDENT

Workers' compensation law does not apply to each and every 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 concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>1</sup> On the other hand the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>2</sup>

To establish a claim for an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he or she has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.<sup>3</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office as part of its adjudicatory function, must make findings of fact regarding, which working conditions are deemed compensable factors of employment and are to be considered by the physician when providing an opinion on causal relationship and, which working conditions are not deemed factors of employment and may not be considered.<sup>4</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of the matter establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>5</sup>

## ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 126 (1976).

<sup>3</sup> *K.W.*, 59 ECAB \_\_\_\_ (Docket No. 07-1669, issued December 13, 2007).

<sup>4</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>5</sup> *Id.*

Appellant has not attributed his emotional condition to the regular or specially assigned duties of his position as an electronics technician. Therefore, he has not alleged a compensable factor under *Cutler*.<sup>6</sup>

Appellant's allegations primarily relate to administrative and personnel actions. In *Thomas D. McEuen*,<sup>7</sup> the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>8</sup>

Appellant alleged that on July 30, 2008, he met with Mr. Wallace regarding a disciplinary action. Mr. Wallace noted that appellant did not complain of chest pains until he learned that he would be facing disciplinary action. He noted appellant had created a disturbance, including verbally accosting his team leader in the middle of the work area. Mr. Wallace found that appellant's conduct was so disruptive that hardly anyone wanted to work with him. While appellant alleged that in April 2008 he was disciplined for saying "no" to his group leader, the record contains evidence from Mr. Grindle and Mr. Wallace who explained that his behavior was disruptive and unprofessional in refusing to assist another with work. Appellant did not submit any persuasive evidence supporting his allegations and the employer provided evidence explaining the reasons for its actions. The Board finds that this matter does not rise to the level of a compensable work factor as the evidence does not show that the employing establishment acted unreasonably.

Appellant disputed the employer's decision to remove him but the Board finds that he has not established error or abuse by his managers in this administrative matter.<sup>9</sup> Mr. Davis' decision recounted incidents supporting the action in which appellant was disruptive and unprofessional. These included being disrespectful to his group leader on June 6, 2008 regarding whether he needed assistance and his July 29, 2008 complaints about a lack of work when the record supported that there was plenty of work but appellant either refused to work as requested or became so disruptive that it interrupted the employing establishment's workflow. Mr. Davis also noted that appellant had a prior history of disciplinary actions for offenses of a similar nature related. Although appellant disputed the employing establishment's allegations, he presented insufficient evidence to corroborate his assertions and show that the employer erred or acted abusively in its administrative capacity.

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<sup>6</sup> See *supra* note 2.

<sup>7</sup> See *Thomas D. McEuen*, *supra* note 2.

<sup>8</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>9</sup> See *Robert Breeden*, 57 ECAB 622 (2006) (error not shown in the employer's termination of the claimant).

Appellant also alleged that management was aware of a hostile relationship with his supervisor and refused to move him to another position. Denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment absent a showing of error or abuse as they do not involve the employee's ability to perform his or her regular or specially assigned work duties but rather constitute his or her desire to work in a different position.<sup>10</sup> Appellant has not shown how the employing establishment acted unreasonably in this matter. Thus, this would not be a compensable employment factor.

Appellant also made allegations about the assignment of work. The assignment of work is an administrative function of the employer and not a duty of the employee.<sup>11</sup> An employee's dissatisfaction with working in an environment which is considered tedious, monotonous, boring or otherwise undesirable constitutes frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable.<sup>12</sup> At his hearing, he alleged that he wanted more assignments. He also submitted an e-mail from July 29, 2008 complaining about the amount and kind of work. However, Mr. Wallace informed him that no one wanted to work for him due to his demeanor and provided examples of appellant's disruptive behavior. There are no findings to support the allegations that the employer acted unreasonably in assigning work to appellant. The employing establishment has denied appellant's allegations and appellant has not submitted sufficient evidence to support that the employing establishment acted unreasonably in assigning work. Thus, this would not be a compensable employment factor.

On appeal, appellant argued that his condition was caused by management's conduct on July 29 and 30, 2008. As noted, the evidence submitted by appellant does not establish error or abuse by his employer. Appellant has not established a compensable employment factor with regard to these administrative matters as the evidence does not show that the employing establishment erred or acted abusively. Appellant also requested that the Board review the medical record. Since appellant has not established a compensable employment factor, it is not necessary for the Board to address the medical evidence.<sup>13</sup>

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

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<sup>10</sup> *Hasty P. Foreman*, 54 ECAB 427 (2003).

<sup>11</sup> *See Lori A. Facey*, 55 ECAB 217 (2004).

<sup>12</sup> *Ray E. Shotwell, Jr.*, 51 ECAB 656 (2000).

<sup>13</sup> *Garry M. Carlo*, 47 ECAB 299 (1996). *See Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 27, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 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