

instructed to participate in a prohibited job action.² He claimed that he suffered an exacerbation of a preexisting emotional condition and stated that he had an “emotional reaction to on-going error and abuse.”³ Appellant stopped work on May 29, 2010.

In a July 9, 2010 statement, appellant asserted that on May 29, 2010 he was instructed by his supervisor, Veshunn Sanxton, to clock in under code 604, sit in the break room and do not work until further notice. He alleged that all modified duties at the Elmwood Station were withheld, despite the fact that OWCP had determined that his duties had been suitable since 2001. Appellant claimed that the May 29, 2010 instruction put him in a Catch-22 situation requiring him to accept compensation for time not worked. He indicated that a coworker was removed from the employing establishment in February 2008 for accepting compensation for time not worked. Appellant asserted that error and abuse on the part of the employing establishment caused aggravation of his emotional condition accepted in a prior claim. He felt that the withholding of all of his duties violated a prior grievance settlement, the Rehabilitation Act of 1973 and Title VII of the Civil Rights Act of 1964.⁴ Appellant stated, “This along with the instruction to clock in and do no work corroborates agency error and abuse.”

Appellant submitted several reports of Dr. Henry A. Cartozzo, an attending clinical psychologist. In a July 7, 2010 report, Dr. Cartozzo stated that appellant began seeing him in January 2006 and was diagnosed with adjustment disorder with mixed anxiety and depressed mood because he was experiencing severe agitated depression, anxiety, obsessive ruminations and sleep disturbances. He indicated that, after a period of time off and supportive, cognitive-behavioral therapy, appellant returned to modified work at the employing establishment. On June 3, 2010 appellant sought treatment and advised him that, upon arriving to work on May 29, 2010, he was told to go to the break room by his supervisor and to do no work until further notice. Dr. Cartozzo stated that this triggered a recurrence of severe anxiety and agitated depression as appellant perceived that he was being placed in a position which would lead to his removal from the employing establishment. Appellant reported that he was unable to work and signed out sick. He experienced severe sleep disturbances and ruminated about his job security. Dr. Cartozzo stated that appellant received supportive treatment interventions as well as cognitive-behavioral therapy to facilitate management of his symptoms and was cleared to return to work on June 24, 2010. Appellant had since reported that he continued to be placed in the break room and had his usual work duties withheld, but indicated that he was coping more effectively with this situation. Dr. Cartozzo stated, “[Appellant] reports and presents as able to return to his previous position and his prognosis appears to be good, however, continued anxiety will likely affect [him] as he continues to fear being manipulated and frustrated in an attempt [to] cause him to quit or retire or that he will be terminated unjustly.”

² Appellant stated, “Stealing is grounds for termination.”

³ Appellant previously filed traumatic injury claims for incidents which occurred on March 24, 2007 and June 29, 2009. OWCP accepted both claims for adjustment disorder with mixed emotional features. An occupational disease claim for extended harassment and psychological harm since March 24, 2007 was denied by OWCP. These claims are not the subject of the present appeal.

⁴ Appellant submitted copies of documents relating to a grievance that was filed prior to May 29, 2010. He also submitted documents regarding his work duties.

In a July 21, 2010 decision, OWCP denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. It indicated that he had not shown error or abuse in administrative matters.

Appellant requested a hearing before an OWCP hearing representative. At the hearing held on November 4, 2010 he testified that on May 29, 2010 he was instructed to clock in as a nonproductive occupational standby. Appellant indicated that he was directed to sit in the break room and do no work until further notice. He asserted that employing establishment policies dictated that failure to work was a ground for termination. Appellant felt that he was placed in an untenable position if he followed the instructions he was given because doing so would put him in violation of employer regulations. He indicated that this incident and his fear of termination triggered his emotional response. Appellant referred to his preexisting emotional condition (adjustment disorder caused by two previous work-related incidents) and acknowledged that condition was related to different work factors. He asserted that he was subjected to illegal harassment abuse by management due to their constant violation of regulations. Appellant testified that he filed several grievances, including one in response to the May 29, 2010 incident. He indicated that he had not been terminated from the employing establishment, but asserted that he had been illegally separated. Appellant stated that he had not worked since August 24, 2010 and acknowledged that he was receiving OWCP benefits under another claim.

Appellant submitted copies of the employing establishment regulations, information regarding a class action claim against the employing establishment stemming from application of the National Reassessment Process (NRP) and a statement from a coworker, Grady McGrew, detailing his duties before and after the impact of the NRP.⁵

In an April 12, 2011 decision, an OWCP hearing representative affirmed OWCP's July 21, 2010 decision. She indicated that appellant had not shown error or abuse in administrative matters and that his emotional condition appeared to be related to nonwork factors such as dislike of the NRP and fear of losing his job.

Appellant requested reconsideration of his claim and submitted a March 7, 2011 arbitration award which determined that a grievance filed by his union on the issue of his duty status had been sustained. It was determined that the employer violated the National Agreement when appellant was directed to sit in the break room in pay status under code 604 beginning in May 2010. The employer was directed to make appellant whole if he suffered any loss of pay or benefits because of this assignment. It was found that there was no evidence that appellant was not capable of performing productive work during this period and he bore no responsibility for the failure of the employing establishment, in violation of the National Agreement, to give him a productive assignment.

In a September 2, 2011 decision, OWCP denied appellant's emotional condition finding that he had established one employment factor but that the medical evidence did not show a medical condition was sustained due to the factor. It found that the employment factor was

⁵ Mr. McGrew indicated that appellant had duties to perform but these were performed by other employees or left unattended while he was in the occupational stand-by position due to his limited-duty status.

established by the March 7, 2011 decision, which determined that the employer violated the National Agreement when appellant was directed to sit in the break room in pay status under code 604 beginning in May 2010. OWCP further found, however, that Dr. Cartozzo related appellant's emotional condition to the nonwork factor of his fear of losing his job.

LEGAL PRECEDENT

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 an 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 specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁶ 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.⁷ The Board has held that a claimant's job insecurity is not a compensable factor of employment under FECA.⁸

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 FECA.⁹ However, the Board has held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.¹⁰ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.¹¹

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 employment factors.¹² This burden includes the submission of a detailed description of the employment factors or conditions, which he believes caused or adversely

⁶ *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁸ *See Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

⁹ *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹⁰ *William H. Fortner*, 49 ECAB 324 (1998).

¹¹ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹² *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.¹³

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, 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 a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.¹⁴ If a claimant does implicate a factor of employment, OWCP 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 record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.¹⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete and accurate factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁶

ANALYSIS

Appellant alleged that he sustained an emotional condition on May 29, 2010 when he was instructed by his supervisor to clock in under code 604, sit in the break room and do no work until further notice. He asserted that the employing establishment's withholding of all of his duties violated the National Agreement and therefore the employing establishment committed error and abuse.

The Board finds that OWCP properly determined that appellant established an employment factor with respect to the fact that the employing establishment committed error and abuse regarding an administrative matter (*i.e.*, the assignment or taking away of work duties) when it instructed him to clock in under code 604 and sit in the break room without performing

¹³ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹⁴ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁵ *Id.*

¹⁶ *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

any duties.¹⁷ This error and abuse was established by a March 7, 2011 decision, which determined that a grievance filed by appellant's union had been sustained. The decision explicitly stated that the employing establishment violated the National Agreement when appellant was directed to sit in the break room in pay status under code 604 beginning in May 2010.¹⁸ Appellant has not established any other employment factors with respect to the present claim.

The Board further finds that OWCP properly determined that appellant did not submit medical evidence relating his claimed emotional condition to the one established employment factor. In a July 7, 2010 report, Dr. Cartozzo, an attending clinical psychologist, discussed his treatment of appellant since January 2006 and noted that, on June 3, 2010, appellant sought treatment and advised that, upon arriving to work on May 29, 2010, he was told to go to the break room by his supervisor and to do no work until further notice. Dr. Cartozzo stated that this triggered a recurrence of severe anxiety and agitated depression as appellant perceived that he was being placed in a position which would lead to his removal from the employing establishment.¹⁹ Therefore, he related appellant's emotional condition to a nonwork factor, *i.e.*, his fear of being terminated from the employing establishment.²⁰ Dr. Cartozzo did not relate appellant's emotional condition to the fact that the employing establishment acted improperly in its administrative functions when it instructed him to clock in under code 604 and sit in the break room without performing any duties.

The record does not contain any medical report containing a rationalized medical opinion that appellant sustained an emotional condition due to the accepted employment factor in this case. For these reasons, OWCP properly denied his emotional condition claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

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

¹⁷ See *supra* notes 9 through 11. See also *R.K.*, Docket No. 10-1989 (issued June 8, 2011) (error established by grievance decision finding that management violated the National Agreement by improperly changing work schedule); *Judy A. Frankforter*, Docket No. 04-294 (issued April 14, 2004) (error or abuse established by grievance decision finding that management violated the National Agreement by issuing job announcement).

¹⁸ It was found that there was no evidence that appellant was not capable of performing productive work during this period and he bore no responsibility for the failure of the employing establishment, in violation of the National Agreement, to give him a productive assignment.

¹⁹ Dr. Cartozzo indicated that, after treatment, appellant returned to work on June 24, 2010.

²⁰ See *supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the September 2, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 23, 2012
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