

FACTUAL HISTORY

On March 28, 2011 appellant, then a 41-year-old distribution operations manager, filed a traumatic injury claim alleging that on that date he experienced acute stress after a plant manager called him a liar during an investigative interview and charged him with two weeks of AWOL while on approved annual leave. He stopped work on the date of injury.

In an April 4, 2011 medical report, Dr. Erik C. Walker, a Board-certified family practitioner, advised that appellant developed multiple physical symptoms due to acute stress at work commencing March 28, 2011. He was incapacitated from March 28 through April 18, 2011.

By letter dated April 12, 2011, Linda J. Mungin, an acting senior distribution operations manager, controverted the claim. She stated that the March 28, 2011 investigative interview was conducted by a plant manager due to appellant's failure to submit approved documentation for annual leave. Ms. Mungin stated that he took annual leave at the end of his detail at the North Metro Processing and Distribution Center in Atlanta, Georgia prior to his return to work at the Orlando Processing and Distribution Center. She contended that appellant failed to submit a Form 3971 (request for notification of absence) prior to or during his annual leave. During the interview, appellant stated that his leave was approved, but failed to provide the documentation needed to verify his absence. He stated it was at the location of his detail position. Ms. Mungin stated that the documentation was not found at that location. Appellant was informed that he would be charged AWOL. After the interview, he went home sick and did not return to work. Ms. Mungin noted that appellant had worked at the employing establishment since 1993 and had been a supervisor for several years. She addressed the employing establishment's leave procedures and contended that he was well aware of the rules and enforced them on a daily basis as a manager. Ms. Mungin stated that appellant was charged AWOL because he failed to submit proper documentation to support his annual leave request; he took leave without prior approval or submit the documentation during his absence from work.

By letter dated April 18, 2011, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It addressed the factual and medical evidence he needed to submit to establish his claim. OWCP also requested that the employing establishment submit medical evidence in response to appellant's claim.

In an undated narrative statement, appellant contended that he was scheduled to be off work on December 14, 2011, but he was forced to report to work. He did not report to work. Appellant explained to Donna Jewett, a plant manager, that he had scheduled other managers to work on December 14, 2011. He worked the requisite number of days that week, yet he was still charged AWOL. As a result, on February 2, 2011 appellant was given a letter of warning in lieu of time off suspension for seven days for which he sought mediation. On March 7, 2011 Scott Raymond, an acting plant manager at the North Metro Plant, advised appellant that his detail would expire on March 11, 2011 and that he could request annual leave before returning to work in Orlando. Appellant stated that Mr. Raymond informed Ms. Jewett about the last day of his detail assignment and leave request. She responded "okay" and only wanted to know how much leave he would be using. On March 10, 2011 Mr. Raymond approved appellant's e-mail request for two weeks of annual leave. Appellant contended that Ms. Jewett never mentioned that he

was being charged AWOL when they met on March 25, 2011 or during their prior telephone conversation. During the March 28, 2011 interview he explained to Ms. Jewett that he was on approved annual leave and there must have been a miscommunication between her and Mr. Raymond. Appellant stated that he copied her on his e-mail to Mr. Raymond requesting annual leave. Ms. Jewett responded that she did not receive any e-mail. She accused appellant of lying and falsifying documents. Appellant asked Ms. Jewett to call Mr. Raymond to verify his leave request, but she refused to do so. Ms. Jewett informed appellant that the one week of annual leave he used in January 2011 was not charged properly. She accused him of falsifying documentation. Appellant explained to Ms. Jewett that he left off per-diem during his detail assignment and did not review the pay stub since it was mailed directly to his home address. He stated that his wife handled the bills and he did not pay attention to his pay stub. Appellant contended that Ms. Jewett accused him of lying and did not bother to listen to his response or give him an opportunity to explain the situation.

The record contained a December 16, 2011 list of questions asked of appellant by the employing establishment. Appellant stated that he did not report to work or call in on December 14, 2011 because he did not want the employing establishment to know that he was sick. He knew it would not believe him. Appellant did not return the employing establishment's telephone calls or e-mails because he was in bed and did not hear the telephone ring.

In reports dated April 22 to May 9, 2011, Dr. Walker advised that appellant had acute anxiety and depression secondary to being accused of displaying bad behavior at work. He was unable to work from April 4 through 26, 2011.

In e-mails dated December 1, 2010 to March 29, 2011, appellant, Ms. Jewett, Mr. Raymond, Fred Blyden and Juan L. Byrd addressed appellant's failure to report to work on December 14, 2010, to submit leave slips, AWOL charges and the investigative interview. In a December 1, 2011 email, Ms. Jewett stated that effective December 4, 2011 all distribution operations managers had to work six days a week. In a May 2, 2011 e-mail, she related that appellant told her that his manager had approved his request for one week of leave in January 2011. He did not submit a leave slip and was paid for this time period. Appellant stated that he did not notice that he had not been charged leave because he never looked at his pay check. Ms. Jewett found this hard to believe because she had signed a pay adjustment for him during the same month. Appellant stated that he did not remember submitting the pay adjustment. Ms. Jewett noted that following his return to work, he changed his work schedule without approval. Appellant failed to submit a leave slip for two weeks of annual leave he used following the end of his detail assignment as requested on several occasions by Mr. Raymond. Ms. Jewett denied receiving appellant's e-mail regarding a request. She noted that Mr. Raymond copied her on his e-mail instructing appellant to submit a leave slip for his request. Ms. Jewett contended that on March 24, 2011 Mr. Blyden, an acting distribution operations manager, informed appellant that he was being charged AWOL. He instructed Mr. Blyden to change it to annual leave. In e-mails dated March 25, 2011, Mr. Blyden explained to Ms. Jewett that he changed the time she had input for appellant's two-week absence from AWOL to annual leave based on appellant's request. She informed Mr. Blyden that she changed the leave status back to AWOL. In e-mails dated March 29, 2011, Mr. Raymond and Juan L. Byrd, an employee, stated that appellant did not provide them any leave slip for two weeks of annual leave. Mr. Raymond instructed Mr. Byrd to get the leave slip that he supposedly signed from appellant.

In a May 23, 2011 decision, OWCP denied appellant's emotional condition claim on the grounds that he failed to establish any compensable employment factors.

On June 15, 2011 appellant requested a review of the written record by an OWCP hearing representative.

In reports dated May 23 and June 13, 2011, Dr. Walker advised that appellant sustained a compensable emotional condition as his acute stress was directly related to a supervisor who called him a liar, wrote him up for offenses and generally disrespected his skill and talent.

In a September 29, 2011 decision, an OWCP hearing representative affirmed the May 23, 2011 decision, finding that being charged AWOL and the investigative interview were administrative matters. The hearing representative found no evidence of agency error or abuse in handling these matters.

By letter dated April 15, 2012, appellant requested reconsideration. He contended that on December 1, 2011 the plant manager sent an e-mail regarding schedule changes for all managers of distribution operations within the plant for the month, but no specific day off was assigned individually. According to TACS and the work schedule, he worked his sixth day that week and was asked to work a seventh day the night prior to his only day off work. Appellant planned to work the seventh day, but he became sick. He was not aware of a call-in policy for the seventh day of work. Appellant stated that the AWOL charge was subsequently removed and an adjustment was made to correct his pay. He contended that he did not change the work schedule and reported to work as scheduled. Appellant further contended that the plant manager was aware of his leave request because an e-mail from him and Mr. Raymond regarding his request clearly indicated that she was on the distribution list.

In a May 24, 2012 decision, OWCP denied modification of the September 29, 2011 decision. It found that appellant failed to establish agency error or abuse in charging him AWOL and conducting the investigative interview. OWCP stated that his emotional condition appeared to have been self-generated.

LEGAL PRECEDENT

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.² To establish that she sustained an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.³

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

³ *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

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 or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁴ 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 or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁵

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 FECA⁶ 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.⁷ 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.⁸

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.⁹ 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.¹⁰

ANALYSIS

Although appellant initially filed a traumatic injury claim for an incident at work on March 28, 2011, he subsequently alleged that he sustained an emotional condition as a result of

⁴ 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁶ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 556 (1991).

⁷ See *William H. Fortner*, 49 ECAB 324 (1998).

⁸ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁹ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁰ *Id.*

multiple work incidents and conditions leading up to the March 28, 2011 incident. OWCP denied his emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must initially review whether the alleged incidents and conditions of employment are established as compensable employment factors under the terms of FECA.

Appellant alleged that he was improperly charged with AWOL by his supervisor, Ms. Jewett, for not reporting to work or calling in on December 14, 2011 and an unexcused two-week absence in March 2011 following the end of his detail assignment. Regarding the December 14, 2011 incident, he stated that he worked the requisite six days and although he was entitled to be off work on the seventh day and had scheduled managers to work on that date he planned to work, but he became sick. Appellant stated that he was in bed and did not hear the telephone ring when the employing establishment tried to reach him on that date. He related that he was not aware of a call-in policy for not working on the seventh day. Regarding the March 2011 incident, appellant submitted a leave slip to Mr. Raymond, an acting plant manager who, on March 10, 2011, approved his request. Mr. Raymond advised appellant that Ms. Jewett was okay with his request and she just wanted to know how much leave he planned to use during his absence. Appellant contended that he copied her on his e-mail leave request to Mr. Raymond. He further contended that Ms. Jewett called him a liar and accused him of falsifying documentation during the March 28, 2011 investigative interview which pertained to his two-week absence from work. Appellant stated that she did not believe that he copied her on his e-mail to Mr. Raymond and denied his request that she call Mr. Raymond to verify his leave request. He contended that Ms. Jewett accused him of lying and falsifying documentation when his use of annual leave for one week in January 2011 during his detail assignment was not properly charged to him. Ms. Jewett did not believe appellant's statement that he did not discover this mistake on his pay stub because he did not review it since it was mailed to his home address. He stated that on February 2, 2011 he was given a letter of warning in lieu of time off suspension for seven days regarding this matter.

Appellant's allegations regarding leave,¹¹ investigations and issuance of a disciplinary letter¹² are administrative matters and not compensable absent a showing of error or abuse on the part of the employing establishment. Although he has alleged error by management, he did not submit any probative evidence establishing error or abuse regarding the above-noted administrative matters. Contrary to appellant's statement that he gave Mr. Raymond a leave slip for two weeks of annual leave, Mr. Raymond, Ms. Mungin, an acting senior distribution operations manager, Ms. Jewett and Mr. Byrd, an employee, stated that he did not submit any leave slip for his absence from work in January and March 2011. Mr. Raymond stated that he did not have appellant's leave slip for two weeks of annual leave and instructed Mr. Byrd to obtain it from him. Ms. Mungin stated that she tried to obtain his leave slip, but it was not found. Because appellant failed to submit proper documentation for his leave request and took the leave without prior approval, he was charged AWOL. Ms. Jewett stated that she did not receive

¹¹ See *C.S.*, 58 ECAB 137 (2006); *Lori A. Facey*, 55 ECAB 217 (2004).

¹² *C.F.*, Docket No. 08-1102 (issued October 10, 2008); See *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

appellant's e-mail requesting two weeks of annual leave. Instead, Mr. Raymond copied her on his e-mail response to appellant instructing him to submit a leave slip for this period. Ms. Jewett disputed appellant's assertion that he did not notice that he was not charged for one week of leave in January 2011 because he did not look at his pay check because she had signed a pay adjustment for him during the same month. While appellant stated that the January 2011 AWOL charge was removed from his record and his pay was correctly adjusted, there is no evidence that the employing establishment either erred or acted abusively. The mere fact that a personnel action is subsequently modified or rescinded does not, by itself, establish error or abuse on the part of the employing establishment.¹³ The Board finds that based on the statements of Mr. Raymond, Ms. Mungin, Ms. Jewett and Mr. Byrd appellant has not established that the employing establishment committed error or abuse in the above-stated administrative matters and he has not established a compensable work factor.

Appellant alleged that during the March 28, 2011 investigative interview, Ms. Jewett accused him of falsifying documents and called him a liar regarding his submission of leave slips for time off work in January and March 2011. The Board has recognized the compensability of verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.¹⁴ The Board finds that the facts of the case do not support any specific incidents of verbal abuse. Appellant provided no corroborating evidence, or witness statements to establish the interaction alleged on March 28, 2011.¹⁵ There is no corroborating evidence to support that any verbal interaction with appellant by Ms. Jewett rises to the level of a compensable employment factor.¹⁶ While the medical evidence, such as reports from Dr. Walker, found that appellant's incidents of being accused of bad behavior and lying, written up for offenses, and having his skill and talent generally disrespected by a supervisor caused his emotional conditions, the physician did not witness these incidents. He merely provided a history of injury as presented by appellant. However, assuming *arguendo* that the alleged statements were made, the Board finds that they do not constitute verbal abuse or harassment. While the statements may have engendered offensive feelings, they did not sufficiently affect the conditions of employment to constitute a compensable factor.¹⁷ Consequently, the Board finds that appellant has not established a compensable employment factor under FECA with respect to the claimed verbal abuse.

Since appellant has not established a compensable work factor, the Board will not address the medical evidence on the issue of causal relationship.¹⁸

¹³ *Paul L. Stewart*, 54 ECAB 824, 829 (2003).

¹⁴ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁵ *See William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

¹⁶ *See Judy L. Kahn*, 53 ECAB 321 (2002) (the fact that a supervisor was angry and raised her voice does not, by itself, support a finding of verbal abuse).

¹⁷ *See Denis M. Dupor*, 51 ECAB 482, 486 (2000).

¹⁸ *Karen K. Levene*, 54 ECAB 671 (2003).

On appeal, appellant contended that the evidence of record establishes that he sustained an emotional condition due to being charged AWOL and subjected to the March 28, 2011 investigative interview which occurred in the performance of duty. For reasons noted, the Board finds that appellant did not establish a compensable factor of his employment.

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 has failed to establish that he sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the May 24, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 28, 2012
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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