

depression and a feeling of apprehension at work. He stated on the claim form that he had recurring nightmares of an old incident at work and a physical assault that happened a few years ago. Appellant also indicated that he became aware of his condition on May 1, 2008. By letter dated November 27, 2009, OWCP requested additional information from appellant.

On January 6, 2010 appellant submitted a statement indicating that he had been hired at the employing establishment in 1985. He referred to a November 1986 incident in which a coworker was angry with him for performing work without waiting for the coworker. Appellant stated that the coworker was “cussing and posturing” and he was afraid the coworker was going to strike him. He indicated that he had recurring nightmares regarding the incident. According to appellant there were incidents in 1987 when he was told he was “unsafe” working on the jets that a supervisor told him that he was disappointed in him and his binder and notes were taken away. The supervisor stated that if he did not straighten up he would be fired. Appellant stated that he felt he was “blamed for everything” and was denied a promotion in 1989. In 2000, he was detailed to a position in the Advance Warfare Lab. Appellant stated that two years later there was an incident involving a supervisor, Bob Forrest. He stated that one day Mr. Forrest brought a customer who inquired as to whether some wires could be attached to an air borne computer. Appellant stated that he took a “break out box” to show the customer when he felt a hard hit on his arm, with Mr. Forrest stating “Get that out of my face.” According to appellant, he knew it was Mr. Forrest and for a moment he was mad, the box went flying through the air and he told the supervisor, “OK, it’s out of your face.” Appellant indicated that there was an investigation of the incident by the employing establishment. He stated that, at first he was the “bad guy,” but later another supervisor told him that Mr. Forrest had “done this before,” that the customer’s explanation was very close to appellant’s statement and he was “completely vindicated.” According to appellant, he often had nightmares of the “assault.”

By decision dated August 26, 2010, OWCP denied the claim for compensation. It stated that none of the allegations were sufficiently detailed or accompanied by witness statements or grievance findings to establish appellant’s claim.

Appellant requested a telephonic hearing, which was held on December 15, 2010. At the hearing he stated that he was disciplined after the incident with Mr. Forrest. Appellant testified that he “did not have any work, per say, for a year. I just sat and my job was to look for work.” On December 16, 2010 he submitted treatment notes from Dr. Rajenda Patel.

By decision dated March 15, 2011, the hearing representative affirmed the August 26, 2010 decision. The hearing representative stated that the evidence of record was not sufficient “to establish managerial harassment, wrongdoing or inappropriate action(s) nor has there been a formal finding addressing managerial harassment, abuse or otherwise wrongful action on the part of a specific supervisor, management or the agency in general.”

LEGAL PRECEDENT

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 factors of his federal employment.² This burden includes the submission of detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.³ A claimant must also submit rationalized medical opinion evidence establishing a causal relationship between the claimed condition and the established, compensable work factors.⁴

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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁵

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.⁶ Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.⁷

ANALYSIS

The issue is whether there are compensable work factors alleged and established as factual. If a compensable work factor is established, then the medical evidence is reviewed to determine if it establishes a diagnosed condition casually related to the compensable factor or factors.

With respect to allegations of incident in November 1986 when a coworker became angry with appellant and cursed at him, there is no evidence of a compensable work factor. Even if the coworker yelled or raised his voice, the Board has held that the raising of a voice during the course of a conversation does not warrant a finding of verbal abuse.⁸ The brief description of the incident does not establish verbal abuse. Appellant also stated that a supervisor got mad over

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

³ *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

⁴ *See Bonnie Goodman*, 50 ECAB 139, 141 (1998).

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

⁷ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

⁸ *Carolyn S. Philpott*, 51 ECAB 175, 179 (1999).

some missing parts and he was told that he was unsafe working on the jets and was told that if he did not improve he would be fired. There was no allegation or evidence of any abusive actions by the supervisor. Administrative decisions such as denial of promotions or change in job duties will not be compensable work factors unless there is probative evidence of error or abuse.⁹

A remaining allegation was a 2002 incident involving another supervisor, Mr. Forrest. According to appellant, he was struck hard by the supervisor while attempting to show a box to a customer. It is clear from his allegation that the employing establishment performed some kind of investigation of the incident, including taking a statement from the customer. Yet OWCP made no attempt to secure any evidence from the employing establishment regarding this incident. In addition, it failed to make adequate findings on the incident. In the March 25, 2011 and August 26, 2010 decisions, OWCP notes the allegation in the factual summary of the case, but makes no specific reference to the incident in its findings as to compensable work factors.

Since the allegation indicated that the employing establishment would have relevant evidence on the issue, OWCP should have requested that the employing establishment provide a response to the allegation of an assault in 2002 and submit any relevant evidence.¹⁰ As part of its adjudicatory function, OWCP must make proper 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.¹¹

The case will accordingly be remanded to OWCP for further development of the evidence regarding the alleged 2002 incident. The employing establishment should be asked to provide a response and any relevant evidence regarding the allegation. After such further development as OWCP deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that the case is not in posture for decision and is remanded for further development of the factual evidence.

⁹ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁰ 20 C.F.R. § 10.117(a) (an employer who has reason to disagree with any aspect of the claimant's report shall submit a statement describing the allegation and provide evidence or argument to support its position). *See also Alice F. Harrell*, 53 ECAB 713 (2002). OWCP has a responsibility to develop the factual evidence, particularly when such evidence is of the character normally obtained from the employing establishment. *Victor D. Timian*, 43 ECAB 249 (1991); *Willie James Clark*, 39 ECAB 1311 (1988).

¹¹ 20 C.F.R. § 10.126. *See Norma L. Blank*, 43 ECAB 389-90 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 15, 2011 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: February 10, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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