



which affected his stomach and head. He indicated that he sustained stress after meetings with his supervisor in August and September 2010 regarding his alleged late arrivals to work. Appellant stopped work on September 13, 2010 and was terminated from the employing establishment for cause effective December 28, 2010.<sup>2</sup>

In an October 15, 2010 letter, OWCP requested that appellant submit additional factual and medical evidence in support of his emotional condition claim.

Appellant submitted several statements in which he further described the incidents and conditions at work which he felt contributed to his claimed emotional condition. He indicated that on June 24, 2010 he met with his supervisor, Christopher Rascoe, regarding the Aviation Compliance Work Plan for the fiscal year 2010 and noted that Mr. Rascoe advised him that his annual leave scheduled for October 2010 might have to be rescinded if he continued to be behind in his work plan. Appellant denied that he was behind in his work plan and asserted that during an August 30, 2010 meeting with Mr. Rascoe he became aware that a time and attendance sheet and an SF-71 form he used to request sick leave had been falsified. He felt that several of his requests for sick leave were improperly denied. Appellant claimed that on September 1, 2010 Mr. Rascoe and Joseph Massisak, an administrative officer, were in error when they stated that he had been late for work 75 times since March 2010. During this meeting, he was provided with an auto garage parking and elevator access report prepared by Transwestern Real Estate, but he disagreed with the substance of the report and asserted that another employing establishment official had verified that he had arrived to work on time. Appellant indicated that he was asked to write a statement as a part of an official investigation into his tardiness, but noted that he requested to take sick leave instead of completing the statement and that Mr. Rascoe denied his sick leave request.

Appellant further alleged that for several dates in September 2010 Mr. Rascoe improperly characterized his absences as being absent without leave (AWOL). He asserted that with respect to his September 14, 2010 absence his girlfriend called Mr. Rascoe and advised that he could not work due to illness. On September 28, 2010 Mr. Rascoe improperly rescinded a prior approval of leave for October 7 to November 7, 2010 and he later wrongly denied an October 2, 2010 request to use 200 hours of annual leave and 40 hours of sick leave. Appellant was advised that he did not provide administratively acceptable medical documentation to support the leave request and his leave from work was improperly coded as AWOL. On December 27, 2010 he was issued a notice of decision of removal due to several factors including failure to maintain a regular work schedule, failure to cooperate with an official investigation, failure to follow directions from a supervisor, negligent performance of duties, tardiness and failure to accurately record time and attendance. Appellant felt that the issuance of this disciplinary action was unjustified.

Appellant submitted numerous administrative documents relating to his absences and leave requests, including earning and leave statements, cardholder tracking reports, disciplinary actions issued by the employing establishment, notices of rescission of leave and documents regarding leave policies. He also submitted additional medical evidence in support of his claim.

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<sup>2</sup> Appellant submitted several reports from attending physicians which discussed his medical problems.

In a March 24, 2011 decision, OWCP denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. It found that he did not show that the employing establishment committed error or abuse in connection with various administrative matters.

### **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. 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>3</sup>

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.<sup>4</sup> This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>5</sup>

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.<sup>6</sup> 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, it must base its decision on an analysis of the medical evidence.<sup>7</sup>

### **ANALYSIS**

Appellant alleged that he sustained an emotional condition as a result of a number of incidents and conditions at work. OWCP denied his emotional condition claim on the grounds

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<sup>3</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>5</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>6</sup> *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>7</sup> *Id.*

that he did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA. The Board notes that appellant's allegations do not pertain to his regular or specially assigned duties under *Culter*.<sup>8</sup> Rather, appellant has alleged error and abuse by supervisors with respect to administrative matters.

Regarding appellant's allegations that the employing establishment wrongly denied leave, engaged in improper investigations, wrongly issued disciplinary actions and unreasonably monitored his activities at work, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of FECA.<sup>9</sup> Although the handling of disciplinary actions, investigations and leave requests and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.<sup>10</sup> However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>11</sup>

Appellant took issue with a number of leave requests that were denied or modified by his supervisor, Mr. Rascoe and claimed that the information presented by Mr. Rascoe about the number of his absences and late arrivals was incorrect. He felt that some of his absences were unfairly characterized as AWOL and that the disciplinary actions taken against him were unjust.

The Board finds that appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters. Appellant submitted numerous documents relating to his leave usage, absences from work and arrival times at work, but none of these documents clearly show that Mr. Rascoe and other employing establishment officials had used inaccurate information in justifying its disciplinary actions. He felt that numerous leave requests were unfairly denied or modified, but the Board notes that none of the submitted evidence clearly supports his claims in this regard. Appellant did not submit probative evidence, such as the findings of a grievance, to support his claim that the employing establishment committed error or abuse with respect to leave requests, investigations or disciplinary actions. Thus, he has not established a compensable employment factor under FECA with respect to these administrative matters.

For the foregoing reasons, appellant has not established any compensable employment factors under FECA and, therefore, has not met his burden of proof in establishing that he

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<sup>8</sup> See *Cutler*, *supra* note 3.

<sup>9</sup> 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).

<sup>10</sup> *Id.*

<sup>11</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

sustained an emotional condition in the performance of duty.<sup>12</sup> On appeal, he alleged that his claim was established because his attending physicians related his emotional condition to his work situation. However, OWCP denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors and it is not necessary to consider the medical evidence of record.

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.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 24, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 13, 2012  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>12</sup> As appellant has not established any compensable employment factors, the Board did not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).