

resulting from stress created by his management. Appellant stopped work and returned on April 21, 2014.

In a letter dated July 2, 2014, OWCP advised appellant that no evidence had been submitted to establish his claim. It requested additional evidence to demonstrate that the April 18, 2014 incident occurred as described and to establish that he sustained a diagnosed emotional condition as a result of the incident.

In an April 21, 2014 report, Dr. Mitchel A. Kling, a Board-certified psychiatrist and neurologist, stated that he examined appellant in the emergency room after appellant experienced acute symptoms after arriving at work. He recommended that appellant not work for the next three days. Dr. Kling advised appellant to report to the employee health unit on April 24, 2014 so that he could determine whether appellant could return to work. He also provided discharge instructions.

Appellant also sought medical treatment from Dr. K. Ryan Connolly, a Board-certified psychiatrist and neurologist, on April 24, 2014. Dr. Connolly stated that he examined appellant in urgent care for an exacerbation of his service-connected illness. He recommended that appellant stay off work until April 28, 2014 and recommended he see a private provider as soon as possible.

In a decision dated August 8, 2014, OWCP denied appellant's claim finding insufficient evidence to establish fact of injury. It found that the April 18, 2014 incident was not proved and that he had not shown he sustained a diagnosed condition as a result of any incident.

On September 25, 2014 OWCP received appellant's request for reconsideration. Appellant stated that on April 18, 2014 around 2:00 p.m. he was confronted by his supervisor and general foreman about changing his shift to seven days rotating. He explained that this shift change would cause him excessive anxiety and he was extremely unhappy about it.

Appellant reported that he had tried for three years to have his shift changed from a 7:30 a.m. to 5:00 p.m. schedule to a 5:30 a.m. to 3:00 p.m. compressed schedule (every other Tuesday off), but his requests were repeatedly turned down. He explained that his commute to the employing establishment during peak rush hour was taking up to two hours each way and that his psychiatrist had provided several letters to support his reasonable requests for a shift change accommodation. Appellant stated that when he was ordered to go to seven days rotating he had an anxiety attack and was extremely agitated. He left work. Appellant stated that when he returned to work on Monday morning he was locked out of his office and his computer was gone. He then experienced an extreme panic attack and became very ill.

Appellant went to the employee health department which referred him to the emergency room. He related that after a heart attack was ruled out he was sent home and ordered not to return to work until April 28, 2014. Appellant reported that he was charged with five sick days even though his absence had been caused by a work-related issue. He argued that he should not be charged for the time missed.

Appellant also provided a September 19, 2014 report by Dr. Connolly who reported that on April 21, 2014 appellant experienced an exacerbation of a traumatic brain disease-related

anxiety while at work. Dr. Connolly related that appellant was subjected to an unfair confrontation with his supervisor at work which led to a verbal altercation. He opined that the “events of [April 21, 2014] while at work led to symptoms of panic, irritability, agitation, and increased intensity of his service-connected symptoms to such a degree that he felt he was unable to work safely.” Dr. Connolly noted that he had recommended that appellant take time off from work until his medications could be adjusted.

In a decision dated October 30, 2014, OWCP affirmed the August 8, 2014 denial decision, as modified. It found that while appellant had established that the alleged incident occurred as alleged, he had not established that it occurred in the performance of duty or that a medical condition was diagnosed in connection with the incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence³ including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁴ To establish that he or 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 his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.⁵

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 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.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 or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁷

Administrative and personnel matters, although generally related to the employee’s employment, are administrative functions of the employer rather than the regular or specially

² *Id.*

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁴ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

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

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

assigned work duties of the employee and are not covered under FECA.⁸ 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.⁹ 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.¹⁰

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 conditions are not deemed factors of employment and may not be considered.¹¹ 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.¹²

ANALYSIS

Appellant alleged that he suffered an anxiety attack due to stress from management. The initial question presented is whether the alleged injury occurred in the performance of duty.¹³ The Board notes that appellant's allegations do not pertain to his regularly or specially assigned duties under *Cutler*.¹⁴ Instead, appellant has alleged unfair treatment or error by his supervisors in administrative matters. He reported that on April 18, 2014 his supervisor and general foreman informed him that his shift would change to seven days rotating. Appellant stated that after he was ordered to change his shift he had an anxiety attack and was extremely agitated. He also stated that his requests to have his shift changed to a compressed schedule were repeatedly turned down. The Board must decide whether these incidents are employment factors under FECA.

Appellant's contentions that his supervisor's actions caused him stress and mental anxiety are administrative matters. The Board has found that the manner in which a supervisor

⁸ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 556 (1991).

⁹ See *William H. Fortner*, 49 ECAB 324 (1998).

¹⁰ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹¹ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹² *Id.*

¹³ See *M.J.*, Docket No. 12-1189 (issued December 14, 2012).

¹⁴ *Supra* note 6.

exercises his or her discretion falls outside of FECA's coverage.¹⁵ 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.¹⁶ In determining whether the employing establishment has erred or acted abusively, the Board must examine the factual evidence of record to determine whether the employing establishment acted reasonably.¹⁷

Appellant alleged that for several years he requested to have his shift changed from a 7:30 a.m. to 5:00 p.m. schedule to a 5:30 a.m. to 3:00 p.m. compressed schedule, but his supervisors repeatedly denied his requests. He further contended that on April 18, 2014 he suffered mental stress and anxiety when his supervisor and foreman advised him that his shift would be changed to seven days rotating. The Board has found that matters involving reasonable accommodation¹⁸ and shift time changes¹⁹ are generally related to the employment and considered administrative functions of the employing establishment, and not a duty of the employee. The Board notes that a supervisor must be allowed to manage and at times employees will disagree with their supervisor's actions.²⁰ Mere disagreement or dislike of a supervisory or managerial action will not be compensable absent evidence of error or abuse.²¹ The Board notes that appellant did not shown any error or abuse by the employing establishment. Because appellant has not established that his supervisors acted unreasonably or that there was error or abuse by the employing establishment in denying his shift change requests or changing his shift schedule, he has failed to identify a compensable work factor with regard to these administrative matters.²²

On appeal, appellant contends that he was given specific instructions by the physician in the emergency room not to work for one week due to the work-related injury. He noted that he provided documentation that he was charged sick leave. The Board finds that appellant has not established such a compensable factor of employment in this case and the Board need not address the medical evidence.²³

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.

¹⁵ *C.O.*, Docket No. 14-516 (issued June 5, 2014).

¹⁶ *See William H. Fortner*, 49 ECAB 324 (1998).

¹⁷ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁸ *Lori A. Facey*, 55 ECAB 217 (2004); *James P. Guinan*, 51 ECAB 604 (2000).

¹⁹ *See D.P.*, Docket No. 13-769 (issued September 10, 2014).

²⁰ *Linda Edwards-Delgado*, 55 ECAB 401 (2004).

²¹ *A.K.*, Docket No. 14-437 (issued June 9, 2014).

²² *Supra* note 5.

²³ *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

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.

ORDER

IT IS HEREBY ORDERED THAT the October 30, 2014 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 13, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

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