

In a narrative statement received by the Office on July 28, 2003, appellant discussed a July 1, 2003 incident with Ms. Bristol. Appellant alleged that Ms. Bristol waved her finger at him and stated that a production performance from the prior day was unacceptable and asked what appellant intended to do about the situation. According to appellant, Ms. Bristol was attempting to have appellant disciplined or terminated from employment. The record indicates that, by letter dated July 17, 2003, appellant was notified that he was being placed in a nonduty status, pending investigation of allegations of unacceptable behavior on July 1, 2003. According to a July 1, 2003 statement from Ms. Bristol, appellant had spoken loudly, asked her to leave his office, and moved close to her until she asked him to back away.

In a statement dated August 18, 2003, appellant alleged that he had angered management by not agreeing with the proposed termination of a coworker, Brian Hess. Appellant submitted evidence indicating that a notice of proposed removal had been issued to Mr. Hess because of a failure to disclose certain information on his job application. An arbitration decision dated March 26, 2003 reinstated Mr. Hess. According to appellant, Ms. Bristol, as well as the manager of maintenance, had been out to get him. With respect to maintenance, appellant stated that he had been told he would never have less than three maintenance workers assigned to his tour, but was provided only one worker.

In addition to the July 17, 2003 letter placing appellant in a nonduty status, the record contains evidence of the following disciplinary actions: a letter dated February 7, 2003 placing appellant in a nonduty status for a February 3, 2003 incident; a disciplinary letter dated February 26, 2003 stating that on February 3, 2003 appellant made inappropriate comments regarding former mail handler Don Allen; a proposed reduction in grade dated March 10, 2003; and a letter of warning dated September 13, 2002. Appellant also submitted a letter dated October 23, 2002 stating that he felt his performance rating did not reflect a fair assessment of his contributions.

With respect to the medical evidence of record, a fitness-for-duty examination dated March 5, 2003 by Dr. Kenneth Robbins, a psychiatrist, provided a history and results on examination. Dr. Robbins found that appellant had difficulties with an adjustment disorder and anxiety at the time his wife had been diagnosed with cancer three years earlier, but did not have any current evidence of a current psychiatric disorder. In a report dated August 15, 2003, Dr. Erin Rhoades, a family practitioner, noted that appellant had insulin-dependent diabetes that was diagnosed in 1996. She opined that there was a medical connection between the diabetic condition and some of the recent employment difficulties. Dr. Rhoades noted that there was no diagnosed psychiatric condition. She stated that appellant had taken medication for anger outbursts and the stress of the worsening diabetes added to the stress of his job and could have worsened his anger outbursts.

The Office prepared a statement of accepted facts that made specific findings with respect to the claim. The Office found that appellant had established compensable work factors with regard to specific incidents. On March 20, 2002 Jack Severson, a union steward, had directed obscenities at appellant following an investigative meeting with an employee. On January 31, 2003 Mr. Allen threatened appellant and did not leave until the police were notified. The Office also accepted as compensable a newsletter article from October 19, 2001 that falsely accused appellant of refusing to allow an employee to seek medical treatment, and that the

employing establishment erroneously scheduled a meeting between one of appellant's employees and a plant manager. The remainder of his allegations were found to be noncompensable.

In a report dated December 16, 2003, Dr. Rhoades stated that she did not think that appellant's job caused a worsening of his chronic diabetes. Dr. Rhoades indicated that she did believe uncontrolled blood sugars could lead to emotional, physical or behavioral changes in an individual.

The Office referred the statement of accepted facts and medical records to Dr. Bernard Stevens, an endocrinologist. In a report dated February 23, 2004, Dr. Stevens provided a history and results on examination. Dr. Stevens opined that work issues played no role in appellant's diabetes. He concluded that appellant never had a work-related impairment and could return to work at any time.

In a decision dated April 7, 2004, the Office denied appellant's claim. The Office made findings with respect to compensable and noncompensable work factors, and found that the medical evidence was insufficient to establish an injury causally related to the compensable work factors in this case.

LEGAL PRECEDENT

Appellant 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.¹ To establish his claim that he sustained an emotional condition in the performance of duty, appellant 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.²

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 the Federal Employees' Compensation Act.³

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ *Lillian Cutler*, 28 ECAB 125 (1976).

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors causing a condition or disability, the Office, 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.⁴ If a claimant does implicate a factor of employment, the Office 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, the Office must base its decision on an analysis of the medical evidence.⁵

ANALYSIS

In the present case, appellant submitted factual evidence regarding his claim, although his narrative statements do not clearly explain the relevance of all the evidence submitted. In the initial filing of the claim, appellant primarily addressed a July 1, 2003 incident involving a plant manager, Ms. Bristol. The incident involved a discussion of work performance, which is an administrative function of the employer.⁶ The Board has found that an administrative or personnel matter may be a factor of employment only where the evidence discloses error or abuse by the employing establishment.⁷ In determining whether the employing establishment erred or acted abusively, the Board had examined whether the employing establishment acted reasonably.⁸ There is no evidence of error or abuse with respect to the July 1, 2003 incident. Appellant stated that he felt Ms. Bristol was rude and unprofessional, but there is no evidence that Ms. Bristol was abusive or unreasonable in her actions towards appellant.

The record contains evidence regarding disciplinary actions taken against appellant, such as a letter of warning, a proposed reduction in grade, and placement in a nonduty status. Disciplinary matters are also considered administrative functions of the employer,⁹ and therefore are not compensable factors absent evidence of error or abuse. The record contains a settlement of the March 10, 2003 proposed reduction in grade, but this settlement specifically stated that the employing establishment did not admit any wrongdoing, liability or discrimination against appellant. The September 13, 2002 letter of warning was removed from appellant's files on December 18, 2002, without any specific evidence that the letter of warning was issued in error. The modification or rescission of a disciplinary action does not, in and of itself, establish error or abuse.¹⁰ Appellant also submitted evidence that he contested a 2002 performance evaluation,

⁴ See *Norma L. Blank*, 43 ECAB 389-90 (1992).

⁵ *Id.*

⁶ See *Harriet J. Landry*, 47 ECAB 543, 547 (1996).

⁷ See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁸ *Richard J. Dube*, 42 ECAB 916, 920 (1991).

⁹ See *Janet I. Jones*, 47 ECAB 345, 347 (1996).

¹⁰ See *Michael Thomas Plante*, *supra* note 7; *Richard J. Dube*, *supra* note 8 (reduction of a disciplinary letter to an official discussion did not constitute abusive or erroneous action by the employing establishment).

but, as noted above, performance evaluation issues are administrative functions of the employer. No evidence of error or abuse was presented with respect to a performance evaluation was presented.

Appellant has generally alleged a hostile work environment, and also has alleged retaliation for his role in proposed disciplinary actions against another employee, Mr. Hess. The record does not, however, contain any probative evidence with respect to a claim based on harassment or retaliation. Appellant indicated that an Equal Employment Opportunity (EEO) Commission claim had been filed, but the specifics of the claim and supporting evidence are not in the record. There is no evidence to support a claim based on harassment, discrimination, or retaliation in this case.

The Board finds no evidence to support compensable factors other than those accepted by the Office. As noted above, it is not entirely clear how some of the evidence submitted related to appellant's claim. For example, there is evidence of a mail handler bulletin board posting referring to appellant and other managers, but it is not clear whether appellant was concerned about the content of the posting or his attempts to have it removed. The incident does not appear to be related to appellant's job duties nor is there evidence of error by the employing establishment.

The record establishes that the Office accepted as compensable a March 20, 2002 incident during which a union steward used obscenities and verbally abused appellant, a January 3, 2003 incident in which appellant was threatened and the police were called, a newsletter article that falsely accused appellant of preventing an employee from leaving work to obtain medical treatment, and an error in scheduling a meeting with a plant manager and an employee. Since compensable work factors were established, the medical evidence must be considered.

With respect to an emotional condition, the Board notes that the record does not contain any medical evidence of a diagnosed emotional condition. The March 5, 2003 fitness-for-duty report indicated that appellant did not have a psychiatric disorder. Appellant did not submit any medical evidence with respect to a diagnosed emotional condition. In the absence of any medical evidence on causal relationship between a diagnosed emotional condition and work factors, appellant has not established an employment-related emotional condition.

The medical evidence did indicate that appellant has a diabetes condition. The Office further developed the evidence on the issue of whether his diabetes was causally related to compensable work factors. In a February 23, 2004 report, Dr. Stevens opined that there was no causal relationship between the diabetes and work issues. The attending family practitioner, Dr. Rhoades, also found no causal relationship in her December 16, 2003 report. She had previously noted a "medical connection" without providing a clear explanation, and the December 16, 2003 report stated that she did not believe appellant's job worsened the diabetes condition. The Board finds no probative evidence of record establishing that appellant's diabetes was caused or aggravated by compensable work factors in this case.

CONCLUSION

The Board accordingly finds that the record does not establish that appellant sustained an emotional condition or diabetes causally related to compensable factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 7, 2004 is affirmed.

Issued: September 7, 2005
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member