# United States Department of Labor
# Employees' Compensation Appeals Board

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| **RICHARD S. PRICE, Appellant** | ) | |
| **and** | ) | **Docket No. 05-689** |
| | ) | **Issued: April 13, 2006** |
| **DEPARTMENT OF THE ARMY, CIVILIAN PERSONNEL ADVISORY CENTER, Fort Riley, KS, Employer** | ) | |

*Appearances:*
*Richard S. Price, pro se*
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge

### ***JURISDICTION***

On January 26, 2005 appellant filed a timely appeal of the July 12, 2004 merit decision of the Office of Workers' Compensation Programs, which denied his occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

### ***ISSUE***

The issue is whether appellant sustained a cardiac condition in the performance of duty.

### ***FACTUAL HISTORY***

On January 10, 2003 appellant, then a 52-year-old public affairs specialist, filed an occupational disease claim for a stress-related cardiac condition. He identified May 29, 1997 as the date he first became aware of his condition and August 6, 2001 as the date he initially realized his condition was caused or aggravated by his federal employment. Between May 29, 1997 and November 11, 2002 appellant suffered five heart attacks. He alleged that, since an attack in 2001, his physicians reportedly told him they were stress related due to his occupation.

Appellant claimed he requested reassignment to a less stressful job in December 2001, but the employing establishment denied his request.

Appellant's cardiologist, Dr. O. Warren Meyer, a Board-certified internist, provided reports dated from April 25, 2001 to February 9, 2003 addressing appellant's cardiac history, which included several myocardial infarctions. He believed that appellant's "extremely stressful work condition" contributed to his coronary disease. Dr. Meyer indicated that the most recent myocardial infarction occurred on November 11, 2002 and appellant was completely disabled as a result.

In a report dated December 18, 2002, Dr. Scott J. Ketcher, a family practitioner, advised that appellant had severe coronary artery disease with three myocardial infarctions over the past few years. He explained that appellant had undergone multiple coronary angioplasties to help alleviate his problem. Dr. Ketcher also noted that appellant had a vasospastic component that was "very much affected by stress." He stated that appellant "absolutely [needed] to leave his current occupation and look into another less stressful occupation."

The Office asked appellant to provide additional information regarding employment incidents that allegedly caused or contributed to his claimed condition. When he did not submit the requested information, the Office denied the claim by decision dated March 7, 2003.

Appellant requested an oral hearing, which was held January 28, 2004. He alleged that a heavy workload and an acrimonious relationship with his supervisor, Lt. Col. Todd S. Livick, contributed to his coronary disease. Appellant identified numerous incidents where Mr. Livick was critical of his work and counseled him regarding his performance, which included a performance improvement plan. He characterized Mr. Livick's oversight as micromanaging and harassment. Appellant also claimed that his personnel records regarding counseling and his 2002 performance improvement plan were made available for anyone to read on the employing establishment's intranet.[1]

A coworker, Lillian I. Flegle, attested to the difficulties appellant had in managing his workload while confronted with "unrealistic demands and deadlines." She noted that appellant came to work early, stayed late and took work home on the weekends. Ms. Flegle also indicated that there was a "personality conflict" between appellant and Mr. Livick. Additionally, she stated that appellant's personnel records were available on the employing establishment's intranet on more than one occasion.

Mr. Livick reviewed the January 28, 2004 hearing transcript and submitted a March 5, 2004 response. He acknowledged that appellant's personnel records had been placed on the employing establishment's intranet; however, he claimed that access was limited to only eight staff members. Mr. Livick also provided a chronology of the numerous counseling sessions he had with appellant regarding his job performance between October 27, 2000 to October 31, 2002.

[1] Mr. Livick placed appellant on a performance improvement plan on August 29, 2002, which he failed after a 60-day period.

Fiona Price, appellant's spouse and coworker, and three union officials, including union president, Bob Leister, submitted statements indicating that they were able to access appellant's personnel records through the employing establishment's intranet.

In a report dated April 29, 2004, Dr. Larry M. Peak, a psychologist, advised that he had treated appellant for symptoms of depression and anxiety, which were primarily related to emotional stress at work. He also indicated that appellant's November 7, 2002 heart attack was immediately preceded by a "'counseling'" session with Mr. Livick. Dr. Peak believed that this "'counseling'" caused such emotional stress that it precipitated appellant's heart attack.

By decision dated July 12, 2004, the Office hearing representative found that appellant established two compensable employment factors that he had been overworked and that his privacy was violated by placing his confidential personnel records on the intranet. However, the hearing representative denied appellant's claim because the medical evidence did not established that appellant's claimed condition was due to either of the two compensable employment factors.

## ***LEGAL PRECEDENT***

To establish that he sustained an emotional condition causally related to factors of his federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.[2]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.[3] Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.[4] 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]

[2] *See Kathleen D. Walker*, 42 ECAB 603 (1991).

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

[4] *Ruthie M. Evans*, 41 ECAB 416 (1990).

[5] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

## ***ANALYSIS***

The majority of appellant's allegations pertain to numerous incidents where he and Mr. Livick disagreed about appellant's job performance. The record is replete with correspondence, including numerous email exchanges between appellant and his supervisor. But the mere fact that appellant and his immediate supervisor did not get along does not, of itself, establish a compensable employment factor. Complaints about the manner in which a supervisor performs his duties or exercises his discretion fall, as a rule, outside the scope of coverage provided by the Federal Employees' Compensation Act.[6] This principle recognizes that a supervisor or manager in general must be allowed to perform his duties and employees will, at times, dislike the actions taken, but mere disagreement or dislike of a supervisory or managerial action will not be actionable, absent evidence of error or abuse.[7] In this instance, appellant has not established error or abuse on the part of Mr. Livick in discharging his supervisory responsibilities with respect to reviewing appellant's job performance and taking actions to correct deficiencies.

An emotional reaction to a situation in which an employee is trying to meet his position requirements is compensable.[8] Additionally, employment factors such as an unusually heavy workload and the imposition of unreasonable deadlines, if established, are covered under the Act. In the instant case, the hearing representative found that the record supported that appellant was subjected to frequent deadlines, long hours and a heavy workload. Accordingly, the hearing representative properly found that appellant's attempt to meet the demands of his regularly assigned work constituted a compensable employment factor.

The hearing representative also found that the employing establishment violated appellant's privacy by posting his personnel records in a shared file on its intranet that was accessible by other employees. As a general rule, an employee's reaction to administrative or personnel matters falls outside the scope of the Act.[9] However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.[10] The employing establishment's failure to ensure that appellant's personnel records remained private constitutes administrative error, which is a compensable factor.

Appellant established at least two compensable employment factors. However, he must also submit rationalized medical opinion evidence establishing that his claimed condition is causally related to the identified compensable employment factors.[11] While the medical evidence,

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[6] *Id.*

[7] *Id.*

[8] *See Lillian Cutler, supra* note 3.

[9] *Andrew J. Sheppard*, 53 ECAB 170, 173 (2001).

[10] *Id.*

[11] *Kathleen D. Walker*, *supra* note 2.

particularly the reports of Drs. Peak, Meyer and Ketcher, identify an occupational stress-related component to appellant's coronary artery disease, the evidence does not specifically attribute appellant's condition to either of the two established compensable employment factors. Appellant, therefore, failed to meet his burden of establishing that his claimed condition is causally related to the identified compensable employment factors. As such, the Office properly denied his claim.

## ***CONCLUSION***

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the July 12, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 13, 2006
Washington, DC

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

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