

disorder and advised that appellant could not work. In reports dated December 27, 2004, Dr. Calderoni checked the “yes” box, indicating that appellant’s diagnosed stress condition was employment related. He advised that appellant was overburdened at work. Gilberto Aldaco, Jr., acting facilities manager, provided an undated statement noting that on December 22, 2004 when daily work assignments were being discussed, appellant stated that he was taking off on sick leave.

By letter dated January 7, 2005, the Office informed appellant of the evidence needed to support his claim. Appellant submitted additional reports from Dr. Calderoni. In a January 21, 2005 statement, he advised that he took satisfaction in his workmanship and was very gratified when a project was completed. Appellant stated that the mechanics did projects beyond their job description which took a lot of manpower and time to complete. At times, they would fall behind general maintenance and that on many occasions he felt depressed that his time preparing for a project was not taken seriously. Appellant also complained that he would have to stop work on one project because another more important assignment came along. In turn, he would have to stop the second assignment to begin a third priority project, which made it “impossible for me to dedicate the time needed to accomplish my task successfully and it disappoints me that some projects are not being completed.” Appellant stated that he did not realize the seriousness of his worrying until December 22, 2004 when he had started one project but was told on that day that he was being assigned to another priority project and was unable to control the stress.¹ On February 1, 2005 appellant stated that he was adequately supplied with the tools, equipment and training needed to perform his employment duties. Appellant noted that when he began employment in 1996 the employing establishment had the manpower to tackle any big construction project to completion without having to hold off and start another priority project but that gradually manpower declined while work orders increased. He stated that he started feeling upset, angry and depressed “because of all the work that was n[o]t getting completed,” which led to worry that he was failing to fulfill “my expectations.” Appellant stated that management demanded that he carry out major construction projects when his job description called for only maintenance work.

In an undated statement, Eloy Morales, maintenance supervisor, advised that appellant’s work and attendance were excellent. James Estrada, facility manager, stated that appellant performed jack-of-all-trades duties and was an asset to the department, noting that he had received many awards for outstanding performance. He stated that the facility was responsible for maintaining all the agency buildings, roads and fences in New Mexico and West Texas with 12 outstations, 7 checkpoints and 17 repeater sites which required constant repairs and maintenance. Mr. Estrada noted that a safety meeting was held each month and employees were encouraged to request any training and tools needed to make their jobs easier.

By decision dated February 11, 2005, the Office denied the claim finding that appellant failed to establish a compensable factor of employment.

On February 19, 2005 and January 28, 2006 appellant requested reconsideration. He submitted reports from Dr. Calderoni and an April 6, 2005 report in which Carol Andrews, R.N.,

¹ Appellant submitted a duplicate copy of this statement on January 28, 2005.

advised that appellant had been a patient at the Alternative Center for Behavioral Health from March 21 to April 6, 2005. In a May 4, 2005 report, Dr. Angel Rodriguez-Chevres, a Board-certified psychiatrist, noted appellant's history that he became depressed on December 22, 2004 "when he felt he was under a lot of stress at work." This led to appellant's incapacity to continue work and his worsening condition led to his hospitalization. Dr. Rodriguez-Chevres diagnosed adjustment disorder with mixed emotional features and work-related stress and concluded that appellant's condition was the "direct result of the stressors that occurred at work."

In a statement dated April 29, 2006, appellant advised that months would go by without a safety meeting, that the two teams of mechanics did not communicate and that air conditioner repairs were falling behind schedule. He reiterated that emergency work orders led to stress and that there was poor communication. Appellant added that recently work leaders became part of the decision-making process. He also submitted statements from coworkers Kenny Ware, Ricardo Munoz, Victor Gaytan, Jr., Antonio Escarsega, Alfredo Gonzalez and Joe M. Baldonado who generally complained about a stressful work environment, stating that the maintenance mechanics did not keep to a regular program or schedule and would not be able to complete a job before being assigned to another, which left them without a sense of completion. They also generally stated that they were understaffed and overworked and that communication between supervisors and work leaders was poor, which led to poor morale.

In an April 12, 2006 statement, Mr. Estrada advised that safety meetings were held monthly. He stated that theirs was a typical maintenance department servicing a law enforcement agency such that when something broke, it had to be fixed. Mr. Estrada noted that appellant had performed outstanding work, and that overtime was mostly voluntary. On April 12, 2006 Mr. Aldaco advised that sometimes projects were not completed because emergencies came up and that the employing establishment tried to assign the best person for the job. He stated that communication worked both ways and that sometimes the mechanics did not relate job progress to management. Mr. Morales also provided an April 12, 2006 statement, advising that the work flow could be interrupted due to priority needs of the agency and that weather could also be a factor. He reiterated that appellant did outstanding work. Jose G. Cruz, acting assistant chief patrol agent, provided an April 13, 2006 statement in which he advised that appellant was not singled out, and noted that appellant volunteered for overtime, which was offered but not imposed. The employing establishment provided a list of overtime sign-up sheets dating from September 11, 2003 to September 25, 2004. Both appellant and the employing establishment submitted lists of the awards he had received.

By decision dated May 26, 2006, the Office denied modification of the February 11, 2005 decision.

LEGAL PRECEDENT

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally

related to his stress-related condition.² If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.³ 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.⁴

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁵ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁶ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁷ When an employee experiences emotional stress in carrying out his or her employment duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁸ A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.⁹

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.¹⁰ Where 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.¹¹

² *Leslie C. Moore*, 52 ECAB 132 (2000).

³ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁴ *Id.*

⁵ 28 ECAB 125 (1976).

⁶ 5 U.S.C. §§ 8101-8193.

⁷ See *Robert W. Johns*, 51 ECAB 137 (1999).

⁸ *Lillian Cutler*, *supra* note 5.

⁹ *Roger Williams*, 52 ECAB 468 (2001).

¹⁰ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹¹ *Kim Nguyen*, 53 ECAB 127 (2001).

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that he sustained an employment-related emotional condition. Appellant did not contend that performing his actual job duties as a maintenance mechanic work leader caused his stress. Rather, the focus of his claim was that the maintenance mechanics were not able to finish one task before being assigned to another. He submitted a number of statements from coworkers who supported this opinion. The assignment of a work schedule or tour of duty is recognized as an administrative function of the employing establishment and, absent error or abuse, does not constitute a compensable employment factor.¹² Appellant left work on December 22, 2004 and Mr. Aldaco advised that this occurred during a meeting when work assignments were being discussed. Dissatisfaction with the type of work assigned or the desire to perform different duties does not come within coverage of the Act.¹³ The employing establishment explained that it was responsible for maintaining all the agency buildings, roads and fences in New Mexico and West Texas with 12 outstations, 7 checkpoints and 17 repeater sites. Several managers noted that, based on employing establishment priorities and the weather, work schedules would be changed. Mere disagreement or dislike of a supervisory or management action will not be compensable without a showing through supporting evidence that the incidents or actions complained of were unreasonable.¹⁴ In this case, the Board finds that it was reasonable for the employing establishment to have flexibility to change the mechanics' job assignments, based on its priority requirements, and appellant's reaction must be considered self-generated.¹⁵

Appellant also generally alleged that overwork and understaffing caused his stress. The employing establishment advised that overtime was generally voluntary and provided sign-up sheets containing appellant's signature. Appellant provided no evidence to document either overwork or understaffing. The Board therefore finds that this allegation was not established by the evidence.¹⁶

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an emotional condition causally related to his federal employment.

¹² *Penelope C. Owens*, 54 ECAB 684 (2003).

¹³ *Katherine A. Berg*, 54 ECAB 262 (2002).

¹⁴ *Id.*

¹⁵ *See Dennis J. Balogh*, *supra* note 3.

¹⁶ *Bonnie Goodman*, 50 ECAB 139 (1998).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 26, 2006 be affirmed.

Issued: December 29, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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