

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GREGORY K. MARCZWESKI and DEPARTMENT OF THE ARMY,  
OFFICE OF THE PROVOST MARSHAL, Fort McCoy, WI

*Docket No. 98-2200; Submitted on the Record;  
Issued December 28, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition arising in the performance of duty.

On February 5, 1996 appellant, then a 49-year-old supervisory police officer, filed a claim alleging depression, anxiety, headaches, muscle spasms, back pain and tremors due to his federal employment. He noted that a new supervisor, Jeffrey A. Zanolli, arrived at the employing establishment in July 1995, who changed his job assignments and threatened his dismissal from work. Appellant stopped working on October 2, 1995.

Appellant submitted statements in which he noted working with the Provost's office for 18 years. He alleged that Mr. Zanolli would constantly change his mind on work projects and was critical of the work employees had performed. He noted that, prior to Mr. Zanolli's arrival, he was assigned responsibility for the inventory of equipment and given discretion to work as many hours as necessary to complete this work. Appellant alleged that Mr. Zanolli yelled at employees and threatened them. He also indicated that Mr. Zanolli accused him of abusing overtime, would regard any work done as incorrect and would criticize employees for what they had done. Appellant alleged Mr. Zanolli would become angry and threaten to reassign or terminate employees and that if Mr. Zanolli asked a question and received a response with which he disagreed, he would reword the question several times to get the response he wanted.

Appellant alleged that approximately one month after Mr. Zanolli arrived, he was instructed to find what type of position Dennis Zubinsky, an employee, could fill. Mr. Zanolli noted that Mr. Zubinsky had been detailed as a supply clerk for four years, which was not an authorized position. He indicated that Mr. Zubinsky had helped the organization when needed and should not have to return to road patrol. Mr. Zanolli instructed appellant to find out what type of duty Mr. Zubinsky wanted to perform and suggested a position in which he would work with supply and perform other duties. Appellant noted that, at the time of this conversation, Mr. Zubinsky was on annual leave. When he returned, appellant sent him to talk to the employees on road patrol to see who had new equipment and to issue equipment to those who

did not have it. Appellant alleged that, shortly thereafter, Mr. Zanotti came into his office very upset and ordered that Mr. Zubinsky be placed on road patrol because he had seen him talking to the road patrol employees. He stated that he tried to explain the situation to Mr. Zanotti but he refused to listen.

Appellant stated that in August 1995, Mr. Zanotti voiced criticism of the way two detectives dressed and asked whether they could wear uniforms. Mr. Zanotti inquired as to why the detectives were at GS-7 while road patrol employees were at GS-5. Appellant responded that he could not recall when or why the detectives were upgraded. He alleged that this response angered Mr. Zanotti. Mr. Zanotti inquired why appellant had allowed the detectives to be upgraded, blamed appellant for the upgrade and indicated detective personnel and road patrol employees should be at GS-6 in order that the employees could trade jobs. He responded, contending he did not assign duties or rate job duties.

Appellant was instructed not to gather or prepare information on equipment purchases, as the personnel responsible for the equipment would be assigned this duty. He contended that a fax machine for the police desk was needed. Mr. Zanotti instructed appellant not to do the paperwork for purchasing the fax machine, indicating that the desk sergeant would be responsible for it. Appellant alleged that, several days later, Mr. Zanotti asked him if he had done the paperwork for purchase of the fax machine. He reminded him of his earlier instruction. Appellant alleged that Mr. Zanotti became upset and threatened appellant with reassignment or termination if he could not handle the job. Mr. Zanotti returned two hours later, noting that he had expected the desk sergeants to prepare the paperwork because they were supervisors but he had found out that the sergeants were not supervisory personnel. Appellant indicated that he subsequently ordered a fax machine to Mr. Zanotti's specifications.

Appellant indicated that he prepared memoranda on various topics for Mr. Zanotti's signature. He noted that Mr. Zanotti asked why a secretary typed the memoranda and then instructed appellant to do the final typing of all memoranda before they were issued. Appellant indicated that this assignment increased his workload. He commented that he informed Mr. Zanotti that the additional duty would be time consuming but noted that the supervisor did not show concern.

Appellant stated that he was helping an assistant from the physical security office with determining how much money remained in the current budget for authorized travel after Mr. Zanotti asked for the amount. He indicated that at one point, he went over to the assistant's office to help her. When appellant returned, Mr. Zanotti allegedly yelled at him for leaving his office and not working. He commented that he had learned not to offer any explanation because Mr. Zanotti would refuse to hear any explanation. Two hours later, Mr. Zanotti told appellant that he had learned about the assistance appellant was giving to the physical security assistant and instructed him not to provide such assistance. He instructed the assistant to obtain the budget figures on her own. Appellant indicated that Mr. Zanotti repeated his instructions not to help the assistant and, for the next two days, kept asking the assistant for the budget figures. On the third day appellant gave the assistant help when she asked for it. He noted that the next day, the assistant was arrested for drunken driving, which she attributed to three days of stress from Mr. Zanotti.

Appellant noted that Mr. Zanotti discussed the job description of an employee who had been doing an increasing amount of computer work and who was the point of contact in the employing establishment for computer problems. Mr. Zanotti wanted to increase the employee's responsibilities and decision-making authority and indicated that the position should be a GS-7 with the potential of rising to a GS-11. Appellant indicated that the computer employee informed him that she had a disagreement with Mr. Zanotti, who subsequently instructed appellant to raised the description only to a GS-5 position.

Appellant indicated that he was responsible for coordinating with subinstallations of the employing establishment. He attempted to brief Mr. Zanotti on this issue several times but Mr. Zanotti allegedly refused to listen. Appellant stated that whenever a subinstallation called the employing establishment, he would try to brief Mr. Zanotti on the telephone call. He alleged that Mr. Zanotti became upset because the officials at the subinstallations called appellant and not him. Mr. Zanotti instructed appellant to prepare a memorandum any time he attended a meeting or talked to other parts of the installation.

Appellant stated that he had previously signed authorizations for employees to draw equipment or training aids from the Theater Army Replacement Command (TARC). He indicated that he had three authorization cards prepared that Mr. Zanotti refused to sign. Appellant noted that when he attempted to explain the matter to Mr. Zanotti, he was cut off. He indicated that the patrol section or physical security should come to him if they need authorization cards signed.

Appellant alleged that, almost daily, Mr. Zanotti attempted to do something he was not allowed to do or yelled and screamed at people. He noted that he attempted to brief Mr. Zanotti several times on employing establishment practices but Mr. Zanotti would not allow him to continue. Appellant testified that he began having symptoms in July 1995, including loss of sleep and diarrhea. He stated that he tried to do his normal duties and keep on working but, toward the end of his work at the employing establishment, would close the door to his office and sit there as he had no idea what he was suppose to do or could do. Appellant related that Mr. Zanotti would then blame him for not performing any tasks the way he wanted.

On April 30, 1996 Mr. Zanotti, the Chief of Police, responded to appellant's allegations. He noted that in 1995 changes were made at Fort McCoy where it went from an active duty to a reserve installation. In turn, changes were made from having active duty police to a civilian police force. Mr. Zanotti commented that this greatly impacted appellant's position, in that various supervisory functions he had performed were consolidated into the new chief and assistant chief of police positions. He stated that, upon his appointment on June 25, 1995, conflicts arose concerning position descriptions and function responsibilities. Mr. Zanotti noted that he found appellant's support services branch was in disarray. He noted performance ratings were missing, people were assigned on unofficial details, weapons qualification materials were missing and funds were spent on an office credit card without invoices to back up the purchases. Mr. Zanotti stated that he addressed these concerns with appellant and initially relied on appellant's advice for institutional background. He noted, however, that appellant was reluctant to share his knowledge, which required an "in-depth" inquiry into various established processes and procedures. Based on the change to civilian personnel, a significant portion of appellant's position description changed. Mr. Zanotti attempted to clarify work expectations with appellant

and author a revised position description. He offered appellant a new position as many of his former supervisory responsibilities had been reassigned; however, appellant indicated that he wanted to stay in the law enforcement series. Mr. Zanotti noted that appellant did not raise any issues pertaining to the allegations made and noted that, at the time appellant stopped work and went on sick leave, an inquiry had arisen into use of the office credit card. He enclosed a report from the Directorate of Contracting pertaining to improper fund expenditures by credit card. Mr. Zanotti suggested that appellant's stress was due to the administrative changes at the employing establishment, his failure to obtain a satisfactory job assignment and to his responsibility for missing items in the inventory and potential improper misuse of the employing establishment credit card.

By decision dated July 22, 1996, the Office of Workers' Compensation Programs denied appellant's claim, finding that fact of injury was not established.

Appellant, through his attorney, requested a hearing before an Office hearing representative, which was held on June 17, 1997.

In an April 30, 1998 decision, the Office hearing representative affirmed the July 22, 1996 decision, finding that appellant failed to establish his claim for an employment-related emotional condition.

The Board finds that the case is not in posture for decision.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the types of situations giving rise to an emotional condition and will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. 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. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.<sup>1</sup> When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.<sup>2</sup> In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any

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<sup>1</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>2</sup> *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.<sup>3</sup>

The Board has also held that mere perceptions or feelings do not constitute compensable factors of employment. To establish a compensable factor, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>4</sup>

The record on appeal reveals that in 1995 the employing establishment underwent an internal reorganization whereby active duty police personnel were relieved of their positions and replaced by civilian personnel. Many of appellant's allegations pertain to his stated disagreements with the reorganization and operational decisions made by the new Chief of Police, Mr. Zanotti. In this regard, appellant has not submitted evidence of error or abuse on the part of the new supervisor in reviewing the services branch position descriptions, personnel assigned to work details, grade classifications of employees, police uniforms and equipment, or in not always responding to the stated opinions or preferences of employees at the agency. With regard to these matters, the Board finds that appellant's emotional reaction arising from changes at the employing establishment reorganization and the reassignment of duties for which he was formerly responsible or had exercised discretion, result from his own desire to work within a particular environment and from frustration arising from his failure to hold a particular position or effect desired changes within the workplace.<sup>5</sup> These organizational changes do not relate to any requirement of appellant's regular or specially assigned duties and do not arise as compensable factors of employment.

Appellant made allegations of verbal abuse in his relationship with Mr. Zanotti, alleging that the supervisor would "almost daily" yell, scream and threaten employees. It is well established that verbal altercations, when sufficiently detailed and supported by the evidence of record, may constitute a compensable factor of employment.<sup>6</sup> This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.<sup>7</sup> A claimant's own feeling or perception that a form of criticism or disagreement is unjustified, inconvenient or embarrassing is self-generated and will not give rise to coverage under the Act absent evidence that the interaction was, in fact, abusive.<sup>8</sup> 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.<sup>9</sup> The Board finds that appellant has not substantiated his allegations of verbal abuse or threats by Mr. Zanotti with sufficient, probative evidence of specific instances regarding the time, place, manner or the parties

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<sup>3</sup> *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>4</sup> *See Anthony A. Zarcone*, 44 ECAB 751 (1993).

<sup>5</sup> *See Donald E. Ewals*, 45 ECAB 111, 123 (1993).

<sup>6</sup> *See Garry M. Carlo*, 47 ECAB 299 (1995).

<sup>7</sup> *See Harriet J. Landry*, 47 ECAB 543 (1996).

<sup>8</sup> *See Constance I. Galbreath*, 49 ECAB 401 (1998).

<sup>9</sup> *Id.*

involved.<sup>10</sup> His contention that Mr. Zanotti would ask questions until he received a response with which he agreed does not establish verbal abuse on the part of the supervisor. The evidence does not establish abuse on the part of the supervisor in directing that an employee be placed on road patrol, in directing appellant not to assist another employee made responsible for obtaining budget information, directing the grading of a position for computer work or the ordering of a fax machine.

The Board finds that several of appellant's allegations pertain to his regular or specially assigned job duties, including responsibility for additional work assignments by typing memoranda for Mr. Zanotti, ordering the fax machine, preparing position descriptions, and working on job placement of certain employees. These matters reflect the duties to which appellant was assigned following the reorganization at the employing establishment and are sufficient to rise to a compensable factor under *Cutler*. For this reason, the case will be remanded to the Office for the preparation of a statement of accepted facts delineating appellant's employment duties as compensable factors of employment. Thereafter, the Office should develop the medical evidence as it may find necessary, to be followed by a *de novo* decision.

The April 30, 1998 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action in conformance with this decision.

Dated, Washington, DC  
December 28, 2000

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>10</sup> The Board notes that the statements submitted by several of appellant's coworkers are also deficient with regard to appellant's allegations of verbal abuse as they lack sufficient detail as to time, place, parties involved and what comments were made.