

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MIGUEL A. CRISPIN and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, San Juan, PR

*Docket No. 99-2293; Submitted on the Record;  
Issued December 15, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

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 an 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 regular or specially assigned duties or to a requirement imposed by the employment, the disability is covered under the Federal Employees' Compensation Act.<sup>1</sup> 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.<sup>2</sup>

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.<sup>3</sup> This burden includes the submission of a detailed description of the employment factors which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>4</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office of Workers' Compensation Programs, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>4</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

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.<sup>5</sup> 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.<sup>6</sup>

On June 6, 1997 appellant, then a 42-year-old licensed practical nurse, filed an occupational disease claim alleging that his emotional condition was due to stress and harassment at work. He stopped work on July 18, 1996 and returned to work from October 8 to November 4, 1996, when he stopped work again.

In a decision dated January 17, 1998, the Office denied the claim, finding that appellant failed to establish that he sustained an injury in the performance of duty. On December 4, 1998 appellant requested reconsideration and submitted additional evidence. In a decision dated March 3, 1999, the Office denied modification of its prior decision. The Board must, therefore, initially review whether the alleged incidents and factors of employment are covered under the terms of the Act.

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

Appellant principally alleges that his work as a nurse in a psychiatric ward caused or contributed to his development of severe disabling depression, characterized by changes in his sleep patterns, loss of appetite, melancholy, persistent sadness, irritability, frequent thoughts of death, difficulty in socializing, loss of pleasure, insomnia and changes in his physical being.

In an incident report dated September 26, 1995 and in a narrative statement dated September 15, 1998, appellant alleged that, on September 20, 1995, after administering orientation to new patients of the ward, he was approached by a coworker, Domingo Perez, who expressed anger over something appellant had told a new patient, and threatened appellant with his fist close to appellant's face, in a karate style. He stated that he did not respond to Mr. Perez, because he felt Mr. Perez's aggression would prevent a rational exchange. Appellant alleged that, on September 22, 1995, he tried to discuss the matter with Mr. Perez, but he again became aggressive and could not understand what appellant was trying to get across to him. Instead, Mr. Perez invited him outside to settle the matter with a fight. Appellant stated that he went out of a different doorway to avoid being attacked by Mr. Perez. He alleged that Mr. Perez's behavior was in retaliation for appellant's failure to sign a document in support of Mr. Perez's grievance against another party.

Appellant stated that, ever since that day, Mr. Perez had subjected him to a barrage of harassment, including ridiculing his religious beliefs, giving him nicknames and acting in an explosive and aggressive manner. Appellant stated that he felt threatened by Mr. Perez because in addition to his aggressive manner, he was trained in martial arts and possessed a handgun. Appellant stated that he filed a complaint against Mr. Perez and submitted several requests to be

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<sup>5</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>6</sup> *Id.*

transferred to another ward, but his requests were denied because the psychiatric ward was going to be shut down.

Appellant has also attributed his emotional condition in part to his having been physically attacked, by patients, on several occasions and submitted emergency room records in support of his allegations.

The Board has recognized the compensability of physical threats or verbal abuse in certain circumstances. However, not every statement uttered in the workplace will give rise to coverage under the Act.<sup>7</sup> An altercation between coworkers which arose out of a claimant's regular or specially assigned duties would be considered an employment factor, but an altercation which arose out of nonemployment factors, such as a purely personal dispute, would not be considered an employment factor.<sup>8</sup>

In this case, Elaine Gonzalez stated on February 26, 1999 that appellant's immediate supervisor in 1995 had confirmed that on many occasions appellant had expressed that he felt threatened by Mr. Perez's aggressive attitude. Appellant's supervisor had referred the matter to the Administrative Coordinator of Psychiatric Services, but that no administrative action was taken. Ms. Gonzalez added that Mr. Perez himself had told a labor relations representative that he felt "bothered" by appellant. Ms. Gonzalez confirmed that appellant had been attacked and bitten by a patient, and had sustained at least three additional physical injuries while attempting to deal with aggressive patients.

The Board finds that the evidence of record establishes that appellant was attacked and bitten as a result of dealing with patients. Therefore, appellant has established these incidents as compensable factors of employment. However, the Board notes that appellant's allegations pertaining to Mr. Perez were not supported by sufficient evidence supporting his allegations of harassment.

Appellant further alleged that in 1996, after he finally received a transfer to another unit, his supervisor, Manuel Reimundi, did not orient him sufficiently so that appellant could be rotated to different shifts. He further alleged that Mr. Reimundi acted abusively towards him and refused his medical excuse certificates or lost the submitted certificates and then claimed that they had never been submitted. In addition, appellant stated that poor communication between Mr. Reimundi and the other supervisors, resulting in confusion over whether proper leave absence certificates had been submitted by appellant, provoked additional anxiety and stress.

Regarding appellant's allegations that Mr. Reimundi wrongly denied leave and failed to orient appellant properly after his transfer to another ward, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.<sup>9</sup> An administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the

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<sup>7</sup> See *Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991).

<sup>8</sup> See *Irene Bouldin*, 41 ECAB 506, 514 (1990); *Lester O. Rich*, 32 ECAB 1178, 1180 (1981).

<sup>9</sup> See *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>10</sup> Appellant has provided no corroborative evidence that the employing establishment did not act reasonably with regard to the approval of leave or orientation procedures, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Regarding appellant's allegation that his requests for a transfer to another ward were improperly denied, the Board has previously held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform his regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.<sup>11</sup> Thus, appellant has not established a compensable employment factor under the Act in this respect.

Similarly, with respect to appellant's assertion that poor communication between his supervisors resulted in additional stress and anxiety, the Board has held that an employee's dissatisfaction with perceived poor management also constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.<sup>12</sup>

Appellant also asserted that he was wrongly accused of behavior that the employing establishment deemed a "conflict of interest," which resulted in the issuance of a 14-day suspension. Although the handling of disciplinary actions is generally related to the employment, it is an administrative function of the employer, and will be considered to be an employment factor only where the evidence discloses error or abuse on the part of the employing establishment.<sup>13</sup>

The record contains a letter of proposed removal, dated December 4, 1996, in which the employing establishment noted that, in addition to his employment as a nurse, appellant also administered a private foster home. The letter explained that, on November 5, 1996, appellant brought a patient from his foster home to the Veterans Administration Hospital for admission, but the patient did not meet the admission criteria. Appellant then abandoned the patient at the hospital and later refused to allow the patient's readmission into the foster home, in violation of several rules and regulations and codes of ethics and conduct.

In addition, appellant was found to have engaged in unlawful solicitation of patients for his private home, while on duty with the employing establishment. On March 10, 1997 the employing establishment, while finding all the charges sustained, reduced appellant's penalty from removal from employment to a 14-day suspension, in light of mitigating circumstances.

As the evidence of record establishes that the employing establishment acted reasonably in disciplining appellant for his infractions, appellant has not established a compensable

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<sup>10</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>11</sup> *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

<sup>12</sup> See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

<sup>13</sup> See *Richard J. Dube*, *supra* note 10.

employment factor under the Act with respect to these administrative matters. The mere fact that the employing establishment, in its administrative discretion, choose to lessen the disciplinary action does not establish that the employing establishment acted in an abusive manner towards appellant.<sup>14</sup>

In sum, appellant has established a compensable employment factor with respect to being physically attacked by patients while in the performance of duty. As appellant has established a compensable employment factor, the Office must base its decision on an analysis of the medical evidence. The case will be remanded to the Office for this purpose.<sup>15</sup> After such further development as deemed necessary, the Office should issue an appropriate decision on this matter.

The decision of the Office of Workers' Compensation Programs dated March 3, 1999 is hereby set aside, and the case is remanded for further development consistent with this decision of the Board.

Dated, Washington, DC  
December 15, 2000

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>14</sup> *Id.*

<sup>15</sup> See *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).