United States Department of Labor
Employees' Compensation Appeals Board

S.M., Appellant	)	
and	)	**Docket No. 08-835**
	)	**Issued: January 5, 2009**
DEPARTMENT OF THE NAVY, NAVAL AIR WEAPONS STATION, Ridgecrest, CA Employer	)	

Appearances:
Thomas Martin, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On January 28, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated December 14, 2007, which affirmed the denial of his emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

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

FACTUAL HISTORY

On April 6, 2005 appellant, then a 45-year-old supply technician, filed an occupational disease claim alleging that he sustained post-traumatic stress in the performance of duty. He realized his condition was caused by his employment on March 14, 2005, when he stopped work.

In a March 28, 2005 statement, appellant alleged that Ruben Muro, a supervisor, harassed him daily and yelled at him, "I am going to cut you." He asserted that Mr. Muro threw a folder at him, believing that appellant "screwed up" and only said "OK" without apology when advised

that it was not his folder. Appellant alleged being blamed for mistakes Mr. Muro made in 1999, before his employment, and was told to fix them. He alleged that the employing establishment did not provide an ergonomic chair and he developed a low back condition. In May 2004, appellant was walking to his desk for lunch when he saw a video tape clip of a beheading by a terrorist group on a contractor's computer and was sent an e-mail with pictures of the beheading. In September 2004, he began seeing a psychiatrist, who suggested that he speak to Mr. Muro about his feeling of being threatened. Thereafter, Mr. Muro stopped threatening him but continued to yell at him for the mistakes of others. Appellant noted that he was required to do inventory in the sun contrary to his medical condition. He alleged that he could not complete his job duties as he was given additional responsibilities that included: supervising and training a coworker, taking extra work from another coworker, assisting contractors in correcting errors and doing inventory outside his specialty. Appellant asserted that Mr. Muro requested that he perform his duties contrary to regulations. He stated that, on March 14, 2005, Mr. Muro "jumped on me over a lot number error that I had asked him to help me to get it fixed in January of 2005." Appellant was off work for a month after he received an e-mail that contained a graphic photograph of a blasting victim. He denied having any preexisting emotional condition. Appellant also asserted that, after Mr. Muro returned from leave, others with less seniority were given better jobs and responsibilities.

The Office requested additional evidence and received a March 15, 2005 incident report indicating that appellant stated "that he wanted to kill his boss or maybe himself." The employing establishment placed appellant on sick leave for 30 days, his base access pass was retrieved and his security clearance temporarily suspended until he was reevaluated.[1] In a March 23, 2005 letter, appellant questioned the suspension of his security clearance. He repeated his allegations and noted that he overheard Mr. Muro telling Charles Warner, appellant's second line supervisor, that appellant had "'fucked up' IS-Q3." Appellant asserted that Mr. Muro had stated that "the government should cut its losses and retire [appellant] medically."

In a May 2, 2005 statement, Sharon Ramsey, a coworker, noted that she witnessed Mr. Muro make verbal threats to appellant which included "I am going to cut you." She first heard him say this on September 14, 2004 and, thereafter, he made a "habit of threatening [appellant] on a daily basis." Ms. Ramsey stated that another coworker was supposed to help appellant with inventory; however, he did not help him and his telephone calls and paperwork backed up. She alleged that Mr. Muro ignored the situation and continued to threaten appellant if he made an error by saying "I am going to cut you."

On June 7, 2005 the Office received a statement from Mr. Muro, who noted supervising appellant for about three years and explained that his work was generally fraught with errors. Mr. Muro stated that, as the errors were discovered, he counseled appellant and provided more training. He denied having thrown a folder at appellant or directing appellant to work against regulations. Mr. Muro confirmed that in 2004 a contractor and several employees viewed the beheading video tape on their computer and appellant may have walked by at the time. He stated

[1] The Office also received information regarding: the suspension of appellant's security clearance, appellant's duties, and a reprimand for actions that occurred on September 21 and October 25, 2004.

that this incident was not directed toward appellant. Mr. Muro was unaware that appellant saw a psychiatrist in 2004 or that he had issues about statements that he made. He referred appellant to the employee assistance program on December 13, 2004 because he was "glassy eyed, displayed a lack of energy, and a lack of concentration."[2] Mr. Muro denied giving appellant additional duties. He confirmed that in October 2004, appellant was assigned to train, but not supervise, a new employee. Regarding work inventories, Mr. Muro noted that employees seeking promotion without work experience were allowed to do this work on a voluntary basis. Appellant chose to do this work in the hope of being promoted. Mr. Muro had no knowledge that anyone sent appellant a graphic e-mail. However, he noted contractors had training videos and graphic pictures regarding mishandling of weapons and stated that it was possible that appellant may have seen them if he walked by a contractor's space to smoke in the designated area. On March 14, 2005, 13 documents prepared by appellant contained errors. Mr. Muro spoke with appellant and asked for corrections, however, at lunch time, appellant informed him that he was not feeling well. Appellant went to the base dispensary for evaluation and a nurse practitioner called Mr. Muro to alert him that appellant had made statements about wanting to harm him. Mr. Muro noted that appellant was temporarily barred from the base for medical evaluation and was later allowed to return; however, his screening certification was suspended and he could not perform all of his duties.

In a June 9, 2005 statement, Mr. Muro denied having thrown folders, yelling or threatening appellant, telling him to retire or stating that he was going "cut" appellant. He explained that Ms. Ramsey would not be able to hear comments that he made to appellant since he usually spoke to employees about job performance in his office behind closed doors. Mr. Muro noted that appellant never requested accommodation for health issues and he was not aware that appellant had health issues, including sun exposure. Appellant's chairs were replaced and he was provided a new chair based on an ergonomic survey. Mr. Muro noted that appellant never spoke about his alleged treatment. He denied blaming appellant for the errors of others and indicated that he asked appellant to correct the errors of a coworker if the coworker was not available. Dr. Muro denied stating that appellant had '"Fucked-up' IS-Q3." As to overwork, he explained that the employing establishment had a system that required coworkers to help each other if one of them was out of the office. Dr. Muro noted that Ms. Ramsey stated that appellant went with another coworker to the inventory area. He explained that, if this were the case, appellant would have only been out of the office for about one hour, which would not have caused a large backlog of work. Dr. Muro noted that if appellant had brought this to his attention, he would have requested that another coworker assist with the backlog. He denied yelling at appellant on March 14, 2005. Dr. Muro indicated that, on May 19, 2005, appellant was released to return to work; however, his clearance was withdrawn and that he could not perform the full duties of his former job.

In a June 23, 2005 statement, Mr. Warner, appellant's second level supervisor since January 2005 advised that he had never observed Mr. Muro yelling, screaming or throwing folders at any of the employees. He stated that appellant had several performance issues that were discussed at weekly supervisory and contractor staff meetings. Mr. Warner noted that the

[2] At the time, Mr. Muro noted that a counselor provided him with feedback about handling appellant's medical issues in the workplace.

contractors were responsible for the maintenance, issuance and storage of ordnance, and brought most of the errors to their attention. He stated that Mr. Muro never told him that appellant had "'fucked-Up' IS-Q3." Mr. Warner confirmed that appellant was provided with the proper seating. In a June 23, 2005 statement, Mary Wedel, the injury compensation program administrator, advised that she had interviewed four contractors who denied ever sending any e-mails to appellant or anyone in the employing establishment with photographs of the terrorist beheading.

In a July 6, 2005 statement, Diane G. Leveille, a coworker, indicated that she sat in the cubicle next to appellant and had not overheard any loud or negative comments being made against him at any time. The statements of John Carroll, Joyce Hayes and Phyllis Stewart, each a coworker, indicated that they had never heard Mr. Muro say, "I am going to cut you."

On July 18, 2005 Mr. Muro responded to the allegation that be stated, "I am going to cut you." He did not recall saying this but, if he had, it was only made in jest as the employees in a joking way made references to his "ethnic background about carrying a knife as part of his culture." Mr. Muro denied being violent or ever threatening anyone. In a statement, also received on July 18, 2005, Christine Willis, an employee, noted that she had heard Mr. Muro use the term "I'm going to cut you" to appellant. However, Mr. Muro had also stated the phrase at several other coworkers. Ms. Willis had no idea what he meant by this phrase but noted that Mr. Muro was always calm and that staff often joked around.

On September 29, 2005 the Office denied appellant's claim, finding that appellant did not establish a compensable employment factor.

In a January 14, 2006 statement, Ms. Ramsey reiterated that she witnessed Mr. Muro threaten and humiliate appellant on a daily basis starting in September 2004. She alleged that appellant was made to do double, sometimes triple the work of others "plus train incoming personnel and if [appellant] made a mistake or Mr. Muro saw a mistake, and assumed it was [appellant's], he would verbally yell out … I [a]m going to cut you." Ms. Ramsey stated that Mr. Muro openly discussed personal information with other employees and favored his friends for advancement.

In a January 14, 2006 statement, appellant described his duties as including sitting all day to train a new employee, as well as performing his normal duties. He alleged that his job performance suffered because he was ordered to do four jobs at the same time and could not do any properly. Appellant asserted that his supervisor put pressure on him and gave him more work than a person could handle. On April 4, 2006 his representative requested reconsideration.

On June 23, 2006 Ms. Wedel, provided a description of appellant's supply technician duties and denied that his work had increased in 2005. She stated that after his security clearance was restricted on March 18, 2005, he was limited to performing one third of his normal duties and had not worked since November 2005. Ms. Wedel acknowledged that appellant was assigned to work with one of two new employees but denied that he was required to perform the work of four employees. She noted that appellant spent a total of two days training the new employee and that, thereafter, assistance from other employees was requested. Ms. Wedel advised that appellant had performance problems which, when brought to his attention, he

converted. Appellant received satisfactory performance ratings. Ms. Wedel addressed inventories, explaining that appellant sought a promotion and was given the opportunity to perform voluntarily inventory management specialist work. During this time, appellant's coworkers performed some of his duties on an as needed basis to meet deadlines. Ms. Wedel advised that, if appellant did inventory or training for a promotion, he would have only been out of the Office for an hour and a backlog would be unlikely. Regarding graphic videos, she alleged that appellant was the individual who had the videos on his computer.

On July 14, 2006 appellant's representative contended that appellant performed the work of four employees from November 2004 to March 2005 as a reduction-in-force caused additional duties, including inventory in the field for hours, training a new hire, working with contractors, and covering for a vacationing coworker. He alleged that the training took much longer than two days. The representative asserted that appellant had to do inventory, which was not a part of his job and prevented him from doing his regular job. Appellant denied seeking a promotion or volunteering for inventory work. He alleged that no other workers performed his duties, denied that appellant's workload decreased to one third of normal and defended statements of Ms. Ramsey and Ms. Hayes. The representative questioned the statement of Ms. Willis, contending that she was a friend of Mr. Muro and biased.

In an August 25, 2006 decision, the Office denied modification of the September 29, 2005 decision.

On July 12, 2007 appellant requested reconsideration and reiterated his allegation. He submitted a chart breaking down the tasks assigned to all employees. Appellant alleged that the evidence supported that he was overworked. His representative noted that appellant did not work from March 15 to April 15, 2007 due to an unwarranted suspension.

The employing establishment provided statements from J.R. Sharp, a supervisor and Lieutenant Commander (LCDR) William H. Blanchard, the Officer in charge. They addressed his work flow chart breaking down assigned tasks. They explained that the transactions took varying lengths of time and that appellant's chart did not indicate the types of transactions performed by each employee. They noted that appellant alleged that his actions were "critical" while those of other employees were "pointless and meaningless." They noted that it was difficult to assume that appellant had been assigned more responsibility based on his limited experience. Mr. Sharp and LCDR Blanchard explained that each employee had unique talents and the supervisor was best able to manage individual talents and attributes. They contended that appellant's chart was not an accurate representation of such factors as the hours of research needed in a case or determine the best way to correct mistakes. LCDR Blanchard noted that appellant did not provide evidence to support that he had a disproportionate or more complicated workload.

On November 30, 2007 appellant's representative questioned the statements from Mr. Sharp and LCDR Blanchard. In a November 27, 2007 statement, Ms. Hayes indicated that LCDR Blanchard and Mr. Sharp were not present at the time of the allegations. She indicated that she had worked at the employing establishment for 10 years, four of them under Mr. Muro's supervision. Ms. Hayes asserted that Mr. Muro deliberately sought to overload appellant to cause him to do incorrect or incomplete work. She stated that appellant was given numerous

assignments that were extra work and time consuming. As examples, Ms. Hayes listed being assigned to print P-724's and going out with inventory for several hours without showing any computer activity. She stated that appellant's work contained very few errors. In a November 28, 2007 statement, appellant reiterated his allegations.[3]

In a December 14, 2007 decision, the Office denied modification of its August 25, 2006 decision.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every 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 concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[4] 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.[5]

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.[6] This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions, for which compensation is claimed.[7]

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 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 the physician when providing an opinion on causal relationship and, which working conditions are not deemed factors of employment and may not be considered.[8] If a claimant does implicate a factor of

[3] Appellant alleged that in addition to his normal duties, he had to cover the front desk and manually enter data for up to five hours daily. He noted that he had to find and print manuals that took hours to locate and that he was required to do inventory in the magazine. Appellant alleged that in "May," the duties were switched and he was assigned a new duty in "July" of creating a new log. He noted that took lunches, breaks and leave as others did by eating lunch at his desk and while working with customers. Appellant noted that on one occasion it took him five hours to complete a receipt involving 97 missiles and another one with 45 items took four hours to complete.

[4] *See Lillian Cutler,* 28 ECAB 126 (1976). *See also* 5 U.S.C. §§ 8101-8193.

[5] *See Thomas D. McEuen,* 41 ECAB 387 (1990), *reaff'd on recon.,* 42 ECAB 566 (1991); *Lillian Cutler, id.*

[6] *Pamela R. Rice,* 38 ECAB 838, 841 (1987).

[7] *Effie O. Morris,* 44 ECAB 470, 473-74 (1993).

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

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 the matter establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[9]

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of incidents and conditions in his employment. The Office denied the claim on the grounds that he did not establish any compensable employment factors. The Board must initially review whether the alleged incidents and conditions of employment are compensable employment factors under the terms of the Act.

Allegations that the employing establishment improperly assigned work duties relate to administrative or personnel matters, unrelated to appellant's regular or specially assigned work duties. Although the assignment of work duties, are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[10] However, the Board has also found that 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 employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[11] The Board notes that appellant's allegations regarding the assignment of duties included that he was given more work and more complicated tasks than his coworkers, and that he was given additional duties to train a new employee. The Board has held that emotional reactions to situations in which an employee is trying to meet his position requirements are compensable.[12]

The employing establishment denied that appellant was given more work or was improperly assigned duties. It also denied that appellant was asked to perform work in a manner contrary to regulations. The employing establishment denied appellant's allegations and noted that he performed approximately one third of his required duties after his clearance was restricted on March 18, 2005. Ms. Wedel indicated that appellant only trained a new employee for two days before the new employee was assisted by others. She advised that inventory work was voluntary and, while appellant was doing inventory, his coworkers performed some of his duties as needed to meet deadlines. Ms. Wedel indicated that, if appellant did inventory or training for a promotion, a backlog would be unlikely as he would only be away for about an hour.

---

[9] *Id.*

[10] *V.W.*, 58 ECAB ___ (Docket No. 07-234, issued March 22, 2007); *see Janet I. Jones*, 47 ECAB 345, 347 (1996).

[11] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[12] *See Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983). In *Antal*, a tax examiner filed a claim alleging that his emotional condition was caused by the pressures of trying to meet the production standards of his job and the Board, citing the principles of *Cutler*, found that the claimant was entitled to compensation. In *Kennedy*, the Board, also citing the principles of *Cutler*, listed employment factors which would be covered under the Act, including an unusually heavy work load and imposition of unreasonable deadlines.

Mr. Muro also denied the allegations and advised that assistance was available to prevent work backlogs. Furthermore, Mr. Sharp and LCDR Blanchard, the Officer in charge, reviewed appellant's work flow chart and concluded that it did not accurately support that appellant did more work or more critical work than other coworkers. While appellant denied that he requested a promotion or voluntarily asked to do inventory work, the evidence from the employing establishment supports that this work was voluntary and that assistance was available if backlogs developed. While he questioned the veracity of statements from the employing establishment; he did not provide any evidence to support they were not correct. Ms. Hayes, on November 27, 2007, alleged that Mr. Muro tried to overload appellant with work but her statement is not specific with regard to any job assignments on specific dates and conflicts with the numerous statements provided by the employing establishment regarding the quantity and quality of appellant's work.

While the evidence supports that appellant was dissatisfied with Mr. Muro's supervision, the Board has held that dissatisfaction with perceived poor management 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.[13] The evidence does not establish that the employing establishment acted unreasonably in assigning work to appellant such that he has not established a compensable employment factor regarding work assignments. Likewise, appellant's concerns about improper seating are essentially administrative in nature. They also relate to frustration from not being permitted to work in a particular environment which is not compensable. In any event, the record indicates that he was given an ergonomic chair after an ergonomic assessment. The Board finds that the employing establishment acted reasonably in this regard.

Appellant has also alleged that harassment and discrimination by Mr. Muro contributed to his claimed condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[14] However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[15]

Appellant alleged that Mr. Muro threw a folder at him and did not apologize; blamed him for mistakes of others and asked him to fix others mistakes, stated that the government should cut their losses and retire him medically, told Mr. Warner that he had "fucked up;" and "jumped" on him about a lot number error in March 2005. Mr. Muro denied throwing a folder at appellant, "jumping" on him about an error, making any statement that appellant "fucked up" to Mr. Warner or indicating that appellant should retire. Mr. Warner also confirmed that Mr. Muro had not made any such statements. Furthermore, Mr. Muro indicated that while he did not blame appellant for the mistakes of others, he might ask appellant to correct mistakes of other coworkers if they were not there. Appellant also alleged that he was sent out to do inventory in

[13] *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

[14] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[15] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

the sun contrary to his medical restriction. Mr. Muro stated that he was unaware that appellant had any sun exposure issues and noted that he would accommodate such matters. There is no other evidence substantiating that these incidents occurred. There is insufficient evidence to establish these allegations of harassment.

Appellant also alleged that Mr. Muro threatened him by stating, "I am going to cut you."[16] Mr. Muro indicated that he may have used the term only in "jest" as the employees in a joking way made references to his "ethnic background about carrying a knife as part of his culture." He denied making any threat of harm or violence to anyone. The employing establishment submitted statements from coworkers, Mr. Carroll, Ms. Stewart, Ms. Hayes, and Mr. Warner, a second level supervisor, who indicated that they never heard Mr. Muro make any threats. Ms. Stewart noted that Mr. Muro had angered her on one occasion and that he had apologized. She was not aware of any such statement directed toward appellant. Ms. Willis, another coworker, indicated that Mr. Muro had used the term but that "she had no idea what he meant noting that employees joked around." Ms. Leveille indicated that she sat next to appellant and had not heard any loud negative comments directed to appellant at any time. Although Ms. Ramsey stated that she overheard Mr. Muro yell "I am going to cut you" to appellant, her account differs from the coworkers who stated they did not hear Mr. Muro direct any threat toward appellant. Appellant confirmed that, after he spoke with Mr. Muro, he no longer made such comments. The evidence regarding Mr. Muro's comment supports that appellant may have perceived it as a threat. The evidence does not support that Mr. Muro ever threatened appellant as alleged. Appellant has not shown how such comments would rise to the level of verbal abuse or otherwise fall within the coverage of the Act.[17]

To the extent that appellant is alleging retaliation; there must be evidence that establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable.[18] Appellant alleged that he was retaliated against when his supervisor switched his positions and responsibilities were given to people who were less senior. Furthermore, the record establishes that appellant was only able to perform a third of his duties because his security clearance was restricted. Appellant has not provided any evidence in this regard. As the record lacks probative evidence supporting that he was retaliated against by the employing establishment, the Board finds that appellant has not established a compensable employment factor with respect to the claimed retaliation.

[16] *See Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991) (the Board has recognized the compensability of physical threats or verbal abuse in certain circumstances; this does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act).

[17] *See, e.g., Alfred Arts*, 45 ECAB 530, 543-44 (1994) and cases cited therein (finding that the employee's reaction to coworkers' comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction). *Compare Abe E. Scott*, 45 ECAB 164, 173 (1993) and cases cited therein (finding that a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

[18] *James E. Norris*, 52 ECAB 93 (2000); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd* on recon., 42 ECAB 566 (1991).

Regarding appellant's claim that he saw a graphic video and was sent graphic e-mails, Mr. Muro stated that employees viewing such material was not appropriate but noted that it was not directed towards appellant or related to his job requirements. He also noted that there were training materials which contained graphic information; however, these were not part of appellant's job requirements or duties.[19] The employing establishment confirmed that no one sent appellant any e-mails of a graphic nature. Thus, the evidence is insufficient to establish that appellant viewed graphic videos as part of his employment duties.[20]

As appellant has not established a compensable employment factor, it is not necessary to address the medical evidence.[21]

CONCLUSION

For the foregoing reasons, as appellant has not established any compensable employment factors under the Act, he has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.

[19] The Board notes that administrative and personnel matters include matters involving the training of employees. *See James E. Norris*, 52 ECAB 93 (2000).

[20] *See Lillian Cutler*, *supra* note 4.

[21] *Garry M. Carlo*, 47 ECAB 299 (1996). *See Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 14, 2007 is affirmed.

Issued: January 5, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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