

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRENT G. POLL and DEPARTMENT OF DEFENSE, DEFENSE LOGISTICS
AGENCY, DEFENSE REUTILIZATION & MARKETING REGION,
Ogden, Utah

*Docket No. 96-1358; Submitted on the Record;
Issued February 2, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish an emotional condition due to compensable factors of his employment.

This case has been on appeal previously.¹ By decision and order dated March 16, 1994, the Board found that appellant had not established any compensable factors of employment or error or abuse with respect to the employing establishment's decision to relocate him from Ogden, Utah to Colorado Springs, Colorado. Appellant submitted a petition for reconsideration by the Board at the same time he requested the Office of Workers' Compensation Programs to reconsider the denial of his claim of the August 25, 1992 decision. Appellant submitted evidence to the Office to support his claim that he was not considered an excess employee at the time of his directed reassignment, and thus, his directed reassignment was improper. The Office reviewed the merits of appellant's claim and denied modification of the prior decision in an August 2, 1994 decision. The Board ruled on appellant's pending petition for request for reconsideration in an Order Denying the Petition for Reconsideration issued on August 10, 1994. In a subsequent appeal, docketed as 95-2744, the Board ruled that the Office improperly issued its August 2, 1994 decision during a time period when the Board had exclusive jurisdiction over the case.² Thus, the Office reviewed the merits of appellant's claim and issued a new decision dated December 26, 1995, by which it found the evidence insufficient to establish an emotional condition due to compensatory factors of employment.

¹ Docket No. 93-335 (issued March 16, 1994) (Order Denying Petition for Reconsideration, issued August 10, 1994); Docket No. 94-2477 (Order Dismissing Appeal, issued September 23, 1994); Docket No. 95-2744 (Order Dismissing Appeal, issued November 13, 1995). The history of the case is contained in the prior decision and order issued March 16, 1994 and is hereby incorporated by reference.

² See *Russell E. Lerman*, 43 ECAB 770 (1992) (finding that the Board retains exclusive jurisdiction over the issues on appeal until it rules on a pending petition for reconsideration).

The Board finds that the letters from a representative of the Office of Personnel Management and a representative of the Position Management Board are insufficient to establish error or abuse on the part of the employing establishment in its decision to reassign appellant from Utah to Colorado.³ Appellant has submitted evidence to show that upon a permanent reassignment, he was no longer considered an employee with “excess” status, and thus, could not be expected to relocate. The letter from the representative of the Office of Personnel Management does not speak specifically to appellant’s case, but only indicates that once an employee is permanently reassigned to a position, that employee is no longer in an excess status. The letter from the representative of the Position Management Board indicates that appellant was assigned to a permanent position “in the office of DRMR-000” and listed a date which was unclear. Prior evidence of record indicates that appellant was detailed to a position in the Environment Division but that when the extension on the detail was not approved by the Office of Personnel Management, appellant was reassigned to a different location without any loss of pay. Appellant has provided insufficient evidence to establish error or abuse in the employing establishment’s decision to reassign him to a different location, and has therefore failed to establish a factual basis for his claim for an emotional condition.⁴

The decision of the Office of Workers’ Compensation Programs dated December 26, 1995 is hereby affirmed.

Dated, Washington, D.C.
February 2, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

³ Where the evidence demonstrates that the employing establishment has neither erred nor acted abusively in the administration of personnel matters, coverage under the Federal Employees’ Compensation Act will not be afforded; *see Sharon R. Bowman*, 45 ECAB 187 (1993).

⁴ Where an employee has asserted a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the medical evidence then becomes relevant in whether or not appellant has sustained his or her burden of proof to establish an employment-related emotional condition); *see Gregory J. Meisenberg*, 44 ECAB 527 (1993).