

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DEAN P. MARINELLI and DEPARTMENT OF LABOR,  
BUREAU OF LABOR STATISTICS, New York, N.Y.

*Docket No. 97-889; Submitted on the Record;  
Issued October 20, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof in establishing that he sustained an aggravation of his preexisting physical and emotional conditions due to factors of his federal employment.

The Board has duly reviewed the case on appeal and finds that appellant failed to meet his burden of proof in establishing that he sustained an aggravation of his preexisting physical and emotional conditions due to factors of his federal employment.

Appellant filed a claim on April 18, 1995 alleging that he developed an aggravation of his preexisting physical and emotional conditions due to factors of his federal employment. The Office of Workers' Compensation Programs denied his claim finding that he failed to establish compensable factors of employment by decision dated October 25, 1995. Appellant requested an oral hearing and by decision dated September 27, 1996, the hearing representative affirmed the Office's decision.

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 illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment to hold a particular position.<sup>1</sup>

Appellant attributed his condition to his reassignment and change of work station in February 1994. He stated that his work station and duties changed such that he could no longer

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<sup>1</sup> *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

accommodate his preexisting conditions of hypoglycemia, irritable bowel syndrome and resultant anxiety and panic. Specifically, appellant stated that for approximately one week he was no longer allowed to eat at his desk, that he had to provide continuous telephone coverage which inhibited his ability to use the restroom as dictated by his condition and that these requirements triggered additional anxiety and panic. Appellant stated that the air conditioner was near his new work station and that the noise and cold air contributed to his conditions. The employing establishment stated that appellant was informally accommodated and allowed to eat and use the restroom when necessary. The Board has held that objections to requirements such as regular attendance and temperature essentially relate to appellant's frustration at not being permitted to work in a particular environment and do not come within the coverage of the Federal Employees' Compensation Act.<sup>2</sup>

As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>3</sup> Appellant has alleged error or abuse in several administrative matters.

Appellant stated that he was reassigned without his agreement and that shortly thereafter his job title changed from statistical clerk to that of office automation clerk which did not provide opportunity for advancement. The employing establishment responded on September 29, 1995 and stated that appellant was reassigned to his current position due to the needs of the agency. Appellant alleged that he was assigned an additional new duty of completing travel vouchers on February 1, 1995 and that this duty was not included in his job description. Although the assignment of duties is generally related to the employment, it is an administrative function of the employer, and not a duty of the employee.<sup>4</sup> Appellant has submitted no evidence establishing that the employing establishment acted unreasonably in reassigning him.

Appellant alleged that he did not receive standards or training for his new position. Matters involving the training of employees is an administrative function.<sup>5</sup> Appellant has not submitted evidence establishing that the employing establishment abused its discretion in the method of training or the standards developed for appellant's position.

Appellant filed a grievance regarding his 1995 performance appraisal. A performance appraisal is an administrative action of the employing establishment and is not compensable

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<sup>2</sup> *Vaile F. Walders*, 46 ECAB 822, 826 (1995); *Anne L. Livermore*, 46 ECAB 425, 435 (1995).

<sup>3</sup> *Martha L. Watson*, 46 ECAB 407 (1995).

<sup>4</sup> *Elizabeth W. Esnil*, 46 ECAB 606, 618 (1995).

<sup>5</sup> *Jose L. Gonzalez-Garced*, 46 ECAB 559, 564 (1995).

absent a showing of error or abuse by the employing establishment.<sup>6</sup> Appellant has not submitted evidence supporting error in his performance appraisal.

Appellant attributed his emotional condition to the denial of advance sick leave and the requirement that he use annual leave for doctor's appointments. The Board has held that allegations regarding denial of leave relate to administrative or personnel matters and that there is no coverage unless error or abuse is established.<sup>7</sup> Appellant has not submitted the necessary evidence to establish error or abuse regarding the denial of leave.

Appellant alleged that he was publicly berated, humiliated, harassed and reprimanded by his supervisor, Martin Karlin, and by Rose Aromona, the employing establishment office manager. 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. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>8</sup> Appellant has submitted no evidence in support of his allegations and failed to establish this factor of employment.

As appellant has failed to substantiate a compensable factor of employment, he has failed to meet his burden of proof in establishing that he developed an aggravation of his preexisting conditions due to factors of his federal employment.

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<sup>6</sup> *Sammy N. Cash*, 46 ECAB 419, 424 (1995).

<sup>7</sup> *Donald E. Ewals*, 45 ECAB 111, 124-25 (1993).

<sup>8</sup> *Alice M. Washington*, 46 ECAB 382 (1994).

The decision of the Office of Workers' Compensation Programs dated September 27, 1996 is hereby affirmed.

Dated, Washington, D.C.  
October 20, 1998

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member