

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WAYNE D. ALAMEDA and DEPARTMENT OF THE NAVY,
HUMAN RESOURCE OFFICE, San Diego, Calif.

*Docket No. 97-1651; Submitted on the Record;
Issued February 24, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition in the performance of duty, as alleged.

The Board has duly reviewed the case record and finds that appellant has failed to establish that he sustained an emotional condition in the performance of duty, as alleged.

On September 12, 1996 appellant, then a 44-year-old fire protection inspector, filed an occupational claim, Form CA-2, alleging that he sustained a gastrointestinal ulcer from stress at work. Appellant missed work for three weeks.

Appellant stated that he was reassigned to the "NAS Miramar" division on July 23, 1995 and began to have problems in October 1995 with the fire inspectors Mr. Kuklinski and Mr. Bower whom he supervised. Appellant stated that Mr. Kuklinski and Mr. Bower had a hard time following instructions and verbal orders and completing their work. He stated that management supported the two individuals, not him. When there were problems with management, "the first reply" was what was appellant's problem. Appellant stated that the two individuals were not supervised properly in the past and he was supervising them "on track to get their work done according to regulations." He stated that the two inspectors "always bypass[ed] [him] and call[ed] [his] supervisor [Gerard A. Powell, the Fire Prevention Chief] concerning battalion situations and/or problems." Appellant stated that they did not give him the chance to correct any problems. He stated that he had to do his work the two inspectors' work and some of his supervisor's work.

In another statement, appellant stated that Mr. Kuklinski and Mr. Bower made false statements about him and that his supervisor agreed with them. He stated that before he gave his side of the story, he was at fault. Appellant stated that "apparently, these individuals ha[d] something over [his] supervisor and [he was] the bad guy for trying to correct the problems." He stated that he informed Mr. Kuklinski and Mr. Bower that there were requirements concerning building requirements and that his supervisor told them they do not have to inspect all the buildings on the base. Appellant stated that whenever he gave a command or order to the two inspectors, Mr. Kuklinski called Mr. Powell to override his order or command. Appellant

stated that Mr. Powell and Mr. Kuklinski were not charged annual leave when Mr. Kuklinski swore in Mr. Powell, who had just joined the Air Force Reserve, during working hours.

By letter dated November 18, 1996, Mr. Powell responded, stating that appellant encountered problems after his reassignment because he lacked the ability to communicate effectively without threatening and degrading the employees, and the inspectors “felt that they had no choice” but to notify him of their work conditions. Mr. Powell stated that he tried to listen to both sides of an argument. He stated that the inspectors could not possibly inspect the whole base, over two million square feet a month, and advised them to do the best they could and keep a consistent monthly average. Mr. Powell stated that Mr. Kuklinski had no problem following instructions, directions or verbal orders. He indicated that it was proper for him to be sworn in by Mr. Kuklinski during the lunch hour. He stated that he did not recall appellant complaining to him of stress but it was the employee’s responsibility to inform the supervisor of his problem or seek professional help.

By letters dated December 27, 1996, the Office of Workers’ Compensation Programs requested additional information from appellant and the employing establishment. By letter dated January 29, 1997, the employing establishment, through the deputy fire chief, David K. Martineau, responded, stating that appellant had been reassigned to another division because of irreconcilable differences between him and his two subordinate employees and had received supervisory training. Mr. Martineau stated that there had been numerous complaints regarding the supervisory style of appellant but no complaints of threatening or degrading employees until this incident. He stated that Mr. Powell had been disciplined for not using the resources available to him to resolve the conflicts in his division and in failing to inform his chain of command of them. Mr. Martineau stated that appellant sometimes had to do Mr. Powell’s work but when Mr. Powell was away, he rotated his duties among all assistant fire prevention chiefs.

By decision dated February 26, 1997, the Office denied the claim, stating that appellant had failed to establish that a psychiatric condition had arisen from his federal employment.

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 her regular or specially-assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees’ Compensation Act.¹ 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.²

¹ *Dinna M. Ramirez*, 48 ECAB ____ (Docket No. 94-2062, issued January 17, 1997); see *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991).

² *Michael Ewanichak*, 48 ECAB ____ (Docket No. 95-451, issued February 26, 1997); *Lillian Cutler*, 28 ECAB 125 (1976).

Appellant has not established any compensable factors of employment. His allegation that the inspectors he supervised bypassed him to communicate with his supervisor was addressed by management, stating that appellant had a threatening and degrading manner of supervising. Further, Mr. Powell stated Mr. Kuklinski and Mr. Bower could follow directions and verbal orders but nonetheless due to the conflict between them and appellant, appellant was reassigned to another division. Mr. Martineau indicated that it was standard procedure for Mr. Powell's employees to perform his duties in his absence. Further, Mr. Powell indicated that it was not reasonable for appellant to require the two fire inspectors to inspect all the bases. Appellant has also not established that Mr. Powell and Mr. Kuklinski improperly took a lunch hour for Mr. Powell's swearing-in ceremony as Mr. Powell denied appellant's allegation that it was improper. Appellant's allegations of the stressful incidents at work as in Mr. Powell's resolving conflicts among the staff, the use of leave by the appellant's supervisor and coworker, and the supervisor's distribution of work and setting limits on the scope of the work involve administrative functions of the employing establishment and as such do not constitute compensable factors of employment unless appellant has shown that management acted unreasonably.³ Appellant has not made this showing. Appellant has therefore failed to establish that he sustained an emotional condition in the performance of duty, as alleged. Since no compensable factors of employment have been established, it is not necessary to address the medical evidence.⁴

The decision of the Office of Workers' Compensation Programs dated February 26, 1997 is hereby affirmed.

Dated, Washington, D.C.

February 24, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

³ See *Elizabeth W. Esnil*, 46 ECAB 606, 618-19 (1995); *Abe E. Scott*, 45 ECAB 164, 171-72 (1993); *Purvis Nettles*, 44 ECAB 623 (1993).

⁴ See *Diane C. Bernard*, 45 ECAB 223, 228 (1993).