

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES H. NELSON, JR. and DEPARTMENT OF VETERANS AFFAIRS,
REGIONAL OFFICE, Buffalo, N.Y.

*Docket No. 97-1080; Submitted on the Record;
Issued May 20, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs acted properly in rescinding its acceptance of appellant's claim for an emotional condition.

Once the Office accepts a claim, it has the burden of justifying the termination or modification of compensation benefits. This holds true where, as here, the Office later decides that it erroneously accepted a claim.¹ To satisfy its burden, the Office cannot merely second-guess the initial set of adjudicating officials but must establish through new evidence, legal arguments or rationale, that its acceptance was erroneous.²

In the present case, the Office, by letter dated March 12, 1996, notified appellant that it had accepted his occupational disease claim for "[d]epression (single episode)." On June 27, 1996 the Office issued appellant a notice of proposed termination of compensation on the basis that the original decision revealed a clear error in application of the law. By decision dated August 6, 1996, the Office rescinded its acceptance of appellant's claim for an emotional condition on the basis that appellant had not identified any compensable work factors.

The Board finds that the Office properly rescinded its acceptance of appellant's claim for an emotional condition.

The Office, in its August 6, 1996 decision, was correct in finding that appellant's reactions to performance appraisals and personnel actions, including a reduction in grade, were not compensable under the Federal Employees' Compensation Act in the absence of a showing of error or abuse by the employing establishment.³ The Office also was correct in finding that an

¹ *Alfonso Martinisi*, 33 ECAB 841 (1982); *Jack W. West*, 30 ECAB 909 (1979).

² *Alfonso Walker*, 42 ECAB 129 (1990).

³ *Michael Thomas Plante*, 44 ECAB 510 (1993).

emotional reaction to separation from one's friends and family does not arise in the performance of duty.⁴

The remainder of appellant's allegations are of harassment and discrimination, or of error or abuse by the employing establishment in administrative or personnel matters. The Board finds that appellant has not substantiated his allegations in either of these areas. Appellant has alleged a hostile work environment, but has not submitted any evidence to substantiate such a hostile environment in fact existed at the employing establishment.⁵ He also has not substantiated that a coworker made a disparaging comment about appellant in the presence of a parking lot attendant or that an individual not selected for the position appellant obtained engaged in a conspiracy to remove him.

Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.⁶ While appellant alleged that the employing establishment's affairs were not conducted according to regulations and that the staff got upset when he changed the procedures to comply with the regulations, his supervisor alleged that appellant did not comply with proper procedures and that the staff complained when appellant ordered them to proceed with projects or assignments the staff knew were incorrect or improper. Appellant has also alleged, but not substantiated, that he properly reported statistics that had been improperly reported in the past or that subordinate employees bypassed him by going to his supervisor. He also has not shown that the employing establishment erred in its treatment of a secretary by transferring her. As appellant has not implicated a compensable factor of employment substantiated by the record, the Office, in its initial decision, could have properly denied his claim.⁷ As the absence of substantiated compensable work factors was a new legal argument, the Office properly rescinded its acceptance of appellant's claim.

⁴ *Brenda Getz*, 39 ECAB 245 (1987).

⁵ *See Merriett J. Kauffman*, 45 ECAB 696 (1994) (the Board found that the employee's perception of a hostile work environment was not sufficient.)

⁶ *Michael Thomas Plante*, *supra* note 3.

⁷ *Sharon R. Bowman*, 45 ECAB 187 (1993).

The decision of the Office of Workers' Compensation Programs dated August 6, 1996 is affirmed.

Dated, Washington, D.C.
May 20, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member