

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE FITHEN and DEPARTMENT OF THE ARMY,
Fort Leavenworth, KS

*Docket No. 98-179; Submitted on the Record;
Issued November 12, 1999*

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 developed an emotional condition due to factors of his federal employment.

The Board has duly reviewed the case on appeal and finds that appellant failed to establish that he developed an emotional condition due to factors of his federal employment.

Appellant filed a claim on June 20, 1996 alleging that job stress had contributed to his hypertension and depression. The Office of Workers' Compensation Programs denied appellant's claim by decision dated February 26, 1997, finding that he failed to establish a compensable factor of 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 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 or to hold a particular position.¹

Appellant stated that his emotional condition was due to stress caused by conflict between coworkers and reorganization of the employing establishment. Appellant's supervisor, Vicky L.H. Scherberger, stated that she had no comment on the perceived conflicts. The Board has held that the reorganization of an employing establishment, in itself, does not constitute a compensable factor of employment as it is unrelated to appellant's assigned job duties.² The

¹ *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

² *Mary Margaret Grant*, 48 ECAB ____ (Docket No. 95-3043, issued September 25, 1997).

Board has noted that reorganization constitutes an administrative or institutional matter.³ As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation 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.⁴ There is no evidence of error or abuse in this case.

Appellant alleged that he was harassed as his desk was rifled on three occasions. He stated that his supervisor spoke to him regarding a "memorandum for record" that he had written to which she should not have had access. Appellant alleged that his supervisor also obtained an email regarding his retirement. He alleged that everything he said or wrote was funneled to his supervisor. Ms. Scherberger stated that she was not aware of appellant's difficulty with his desk and that she did speak to appellant regarding the memorandum. Ms. Scherberger further stated that she had access to the email in question.

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.⁵ Appellant has submitted no evidence in support of his claim that his desk was rifled. Furthermore, he has submitted no evidence that Ms. Scherberger's discussion regarding the memorandum or knowledge of the email were harassing.

Appellant filed an Equal Employment Opportunity complaint alleging that he was discriminated against on the basis of gender when his class was rewritten without his input, effectively demoting him, and those who rewrote the class were female. Ms. Scherberger responded to appellant's complaint and indicated that appellant's class was not meeting the needs of the college. She instituted a revised course with a team concept to lessen appellant's uneven work load. Appellant's allegations do not relate to his regular or specially assigned duties. The Board has held that promotions and demotions are administrative actions of the employing establishment rather than related to the regular duties of the employee.⁶ The Board has further held that the removal of certain duties is an administrative function.⁷ In this case, appellant has not submitted any evidence of error or abuse on the part of the employing establishment in these actions. Furthermore, appellant has not alleged that he was unable to

³ *Donald E. Ewals*, 45 ECAB 111 (1993).

⁴ *Martha L. Watson*, 46 ECAB 407 (1995).

⁵ *Alice M. Washington*, 46 ECAB 382 (1994).

⁶ *Martha L. Watson*, 46 ECAB 407, 417 (1995).

⁷ *Elizabeth W. Ensil*, 46 ECAB 606, 618 (1995).

perform the duties assigned to him, but rather that he felt that the changes in the course resulted in a constructive demotion. Therefore, he has not established a factor of employment.

Appellant alleged that he had inadequate time to prepare for the new course. While this allegation relates to appellant's regular and specially assigned duty, he has submitted no evidence in support of the allegation that the preparation time was inadequate. Without supporting factual evidence, this allegation is not sufficient to establish a compensable factor of employment.⁸

As appellant has failed to substantiate a compensable factor of employment, he has failed to meet his burden of proof in establishing an emotional condition.

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

Dated, Washington, D.C.
November 12, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁸ *Robert W. Wisenberger*, 47 ECAB 406-08 (1996).