U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ABDUL RAUF and DEPARTMENT OF THE NAVY,
SEA SYSTEMS COMMAND, Port Hueneme, CA

Docket No. 00-1378; Submitted on the Record;
Issued June 22, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant has met his burden of proof in establishing that his cerebrovascular condition was caused or aggravated by factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration of its April 22, 1999 decision.

On July 18, 1998 appellant, a 59-year-old electrical engineer, filed a claim alleging that his right cerebrovascular accident was caused or aggravated by extreme pressure and difficulties at work. The Office denied his claim by decision dated December 28, 1998 finding that he failed to establish fact of injury. The Office specifically noted that no information had been provided about specific work events that preceded appellant's stroke.

Appellant, through his attorney, requested reconsideration. By decision dated April 22, 1999, the Office modified its prior decision, finding that appellant established fact of injury, but failed to establish that he sustained an injury in the performance of duty. Appellant again requested reconsideration and by decision dated December 30, 1999, the Office denied appellant's request for a merit review. The Office found that the newly submitted evidence was irrelevant and immaterial.

The Board finds that appellant failed to meet his burden of proof in establishing that his cerebrovascular condition was caused or aggravated by factors of 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 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]

As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation Act.[2] 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.[3]

In this case, appellant has alleged that the employing establishment and his supervisor, Edward Armester acted unreasonably in performing supervisory functions, administering discipline and carrying out administrative or personnel functions. The employing establishment denied abusive actions and appellant has submitted insufficient evidence to substantiate his allegations that the actions taken by the employing establishment were unreasonable. Therefore, appellant has not established that these events constitute factors of employment.

Appellant attributed his stressful work environment, which ultimately resulted in a stroke on April 3, 1998, to actions by Mr. Armester. Appellant provided details of work-related situations that contributed to his condition. However, no corroborating evidence to substantiate his allegations was submitted.

First, appellant was moved to Code 5A42 in March 1995 as a result of a reorganization, but was instead assigned to Code 5A41 under Mr. Armester because 42 lacked funding and work. He did not want to leave 42. Appellant asserted that on March 31, 1995 he was placed on a job fair list while the other three drawing engineers/specialists were not.

In a September 26, 1996 statement, Walter Terry, department manger, related that, although appellant was originally assigned to Code 5A42 as a result of the reorganization, the assignment was challenged because appellant had not been working on the projects in Code 5A42 and, in previous years when appellant had worked on a few 42 projects, he had to be reassigned to others because of problems he created. The employing establishment offered appellant, along with other excess and unfunded personnel, to other organizations in the directorate that had funding. Mr. Terry indicated that appellant's reassignment to Code 5A41 resulted from numerous discussions at the directorate level, which involved management trying to effectuate a compromise over which current employees should be reassigned. Appellant has provided no corrobating evidence of error or abuse by the employing establishment concerning the reorganization, reassignment and his subsequent placement on the job list. Therefore, he has failed to establish a compensable work factor arising from these administrative or personnel matters.

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

[2] 5 U.S.C. § 8101 *et seq.*

[3] *Martha L. Watson*, 46 ECAB 407 (1995).

Second, appellant asserted that a space and working condition dispute occurred in October/November 1995, after he expressed a desire for additional space. Mr. Armester made changes in the space configurations, which appellant alleged further reduced his space and made his job more difficult. Due to the reduction in space, appellant argued with a coworker about the amount of light needed to illuminate the workspace they shared.

In a November 2, 1995 meeting on the space and light issue, appellant alleged that he was subjected to Mr. Armester's hostile demeanor, abusive language and fist pounding. He stated that Mr. Armester's reaction tended to alienate him and served as a deterrent to any future requests for Mr. Armester's supervisory assistance.

The employing establishment related that, when appellant instigated the dispute over workspace, Mr. Armester relocated both employees. Appellant was provided adequate space to perform his duties and Mr. Armester asked the safety officer for assistance in redesigning the work site for all three employees. The safety officer later notified the department manager that a chair located in appellant's workspace was creating a safety hazard and would have to be removed or relocated from the workspace. Appellant has not submitted any corroborating evidence that the employing establishment improperly assigned work duties or failed to provide adequate workspace. Therefore, he has failed to establish any error or abuse regarding these administrative or personnel matters.

Third, appellant described his Equal Employment Opportunity (EEO) complaint regarding coworkers' "unprofessional conduct" and the fall-out from it involving appellant's team leader, subsequent meetings, and the employing establishment's personnel actions after one of the accused coworkers filed an EEO complaint against him. In March 1996, Mr. Armester spoke to appellant concerning an EEO complaint against appellant. Appellant had reported to Mr. Terry, a project team manager, that he had observed unprofessional conduct during work hours between two coworkers. An investigation ensued, and one accused coworker filed an EEO complaint against appellant for sexual harassment. Appellant asserted that, after reporting his coworkers' behavior to management, he was subjected to an increasingly hostile, abusive and harassing environment.

Appellant stated that his team leader at that time wrote a memorandum describing appellant's "allegations" and stating that, while he was "forced to work" with appellant, he did not have to put up with "this kind of abuse" involving the sexual harassment complaint. He alleged that he experienced difficulty in working with his team leader and fear and anxiety in performing his regular duties as a result of the entire episode.

In June 1996, appellant was given a list of work rules to follow and later his office was moved. He alleged that these incidents contributed to his anxiety and made it increasingly hard to perform his work duties. Appellant made several other allegations regarding the methods by which the employing establishment and Mr. Armester carried out administrative and personnel functions as a result of the EEO complaint.

Although appellant contends that he had never wanted management to conduct a formal investigation into the alleged behavior of his coworkers, it is management's responsibility to investigate such allegations. Thus, the subsequent investigation and managerial actions are a

direct result of appellant's own allegations. In a May 9, 1996 report from the EEO counselor investigating the accused coworker's complaint against appellant for sexual harassment, the employing establishment agreed to reassign appellant to another team. As a result of the EEO complaint filed against appellant, management issued a memorandum entitled, "Procedures to be observed by [appellant]."

Mr. Terry related that management moved appellant to another location as an informal resolution to the coworker's EEO complaint against appellant. Appellant was consulted and asked whether he desired a union representative. Although appellant declined union representation, Mr. Terry contacted the union President, Floyd Johnson, and informed him of the situation and the reason for relocating appellant. Mr. Terry stated that Mr. Johnson had no problem with the relocation as long as appellant had no problem with it. Mr. Terry related that he also informed Mr. Johnson when appellant was permanently moved to another building. According to Mr. Terry, appellant never expressed concern or complained about these actions.

Mr. Terry further related that appellant was advised about procedures for entering his new building to ensure that there was no contact between him and the coworker. He stated that appellant did not complain about the procedures until an incident occurred a month later (July 1996) and Mr. Armester brought the issue to appellant's attention. Mr. Terry stated that the issue was resolved through discussions between appellant and Mr. Armester.

Mr. Terry stated that, when he and Mr. Armester were contacted on July 19, 1996 by an EEO counselor investigating appellant's allegation of "disparate treatment" on the basis of age and national origin, the issues were resolved informally by management making a minor modification to the procedures appellant was directed to follow for checking in and out of his workspace.

Although appellant contends that these administrative policies are beyond what could be considered reasonable, many of the procedures were simple requirements to accommodate everyday dealings between a supervisor and subordinate. The procedures were established as a result of the informal EEO process to resolve a coworker's sexual harassment complaint against appellant. These procedures were not established to put appellant in the "public eye" or to make him feel "disrobed" or unsettled. Accordingly, appellant has not established that the employing establishment acted unreasonably in carrying out its supervisory and disciplinary actions.

Fourth, appellant contends that he was summarily removed from a team selected to participate in "Switchboard" presentations in July 1996. He had expressed his desire to Mr. Armester to be transferred to another position and Mr. Armester responded in a belligerent manner by removing him from the program and placing him in an unfunded position. Appellant alleged that Mr. Armester told appellant's new team leader why appellant was removed from the program and his performance appraisal, which had previously been rated in prior years as "exceeds fully successful," was downgraded to "fully successful." He alleged that Mr. Armester also harassed him by talking to him in abusive language and in making managerial decisions with little or no explanation in terms of his work and performance review.

Appellant has submitted no evidence in support of his allegations that the employing establishment acted unreasonably in removing him from a team selected to participate in

"Switchboard" presentations, or from the ADS/Q70 program. Matters regarding managerial decisions to remove or place appellant in other positions, performance appraisal issues, and discussions concerning performance are considered administrative in nature and will not give rise to a compensable factor of employment without error or abuse on the part of the employing establishment.[4]

Fifth, appellant relates harassment during an October 1996 meeting with Mr. Armester, after which he went to the hospital and underwent bypass surgery. Appellant stated that he filed an EEO complaint in August 1996. On October 11, 1996 Mr. Armester sent an email to appellant concerning appellant's allegations that he was being asked continually by management to retire and that this was being investigated. Appellant asserted that he was called into a morning meeting on October 11, 1996 at Mr. Armester's office, who was in another building, and was subjected to abusive behavior by Mr. Armester. Mr. Romo was present as a witness.

A November 19, 1996 investigative memorandum from Mr. Terry stated that the October 11, 1996 meeting, which appellant attributes to his having to undergo bypass surgery the next day, was administrative in nature with the purpose of bringing performance problems and conduct issues to appellant's attention. Mr. Terry stated that this was standard management practice for supervisors to bring to the attention of employees any performance or conduct problems in order to rectify inappropriate behavior or to improve performance. Mr. Armester was following these standard management practices when he set up this meeting. Mr. Terry also stated that, since March 1995, it was a practice to have a witness present in any administrative meeting or discussion with appellant, due to a history of untruthfulness. During the course of the meeting, discussions focused upon appellant's untruthfulness regarding previous statements made during an investigation of several EEO complaints against him. When appellant said that his blood pressure was rising, Mr. Armester discontinued the meeting immediately and asked appellant to leave the office. Statements provided by Mr. Romo, who witnessed the October 11, 1996 meeting between appellant and Mr. Armester, corroborates the circumstances of the meeting and are contrary to appellant's allegation that Mr. Armester was angry and yelling at him. At the conclusion of the October 11, 1996 meeting, appellant went to the union President, Mr. Johnson. Mr. Terry related that Mr. Johnson was not a witness to events other than the meeting between him and appellant. He further stated that the previous conversations he had with Mr. Johnson regarding appellant's allegations that Mr. Armester had been shouting at him and creating a hostile work environment were unverifiable as Mr. Johnson was merely repeating appellant's assertions. The record further reflects that appellant had a history of chronic hypertension with LVH, by EKG and Mr. Terry's November 19, 1996 statement acknowledges that he knew appellant had a history of chest pains as far back as March 1995. Accordingly, as there is no evidence of error or abuse on the part of the employing establishment with regard to the October 1996 meeting with Mr. Armester, after which appellant underwent bypass heart surgery, this is not considered a compensable factor of employment.

Sixth, appellant asserted that Mr. Armester sent emails to appellant concerning the above subjects which were accessible to all and the constant public criticism of appellant was terribly abusive and destructive to him. He additionally asserted that he went beyond the requirements

[4] *Elizabeth Pinero*, 46 ECAB 123, 130 (1994).

of his position description to aid others and when he did not perform to their liking, he received cursory emails from Mr. Armester who offered no support to him. Appellant also asserted that he was expected to receive and follow instructions from Mr. Terry, Mr. Armester and Mr. Gray, who each had distinctive agendas with different lists of priorities. He alleged that he was constantly being asked to retire. Appellant also stated that he did not know what Mr. Armester would do with his rage and feared physical assault.

Appellant alleged that Mr. Armester openly embarrassed him by using the email system, which is accessible to all and discussing his situation with other coworkers. There is also no evidence that management utilized the email system or discussed appellant's professional situation with other coworkers.

There is no evidence to establish that appellant expressed fear of Mr. Armester in terms of supposed rage or physical assault. There is no evidence that Mr. Armester's demeanor was anything other than controlled with appellant.

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 insufficient evidence in support of his allegations of harassment, verbal abuse or otherwise, by Mr. Armester.

Appellant alleged that he was expected to receive instruction and/or respond to requests from Mr. Terry, Mr. Armester and Mr. Gray. He additionally asserted that, although he was not required through his position description to provide equipment specialists with the tools and information necessary to complete their jobs, he was willing to help others when he could and often did. Appellant asserted that he helped Mr. Foster when he could, but Mr. Foster came to view appellant as his personal assistant and when appellant did not perform in that capacity to Mr. Foster's liking, he received cursory emails from Mr. Armester. The record reflects that the chain of command was always adhered to with appellant. The record reflects that Mr. Gray was Code 5A41 team leader, Mr. Armester was the first level supervisor and Mr. Terry was the department manager. The record is devoid of any evidence that Mr. Terry provided specific project direction or administrative supervision to appellant. Moreover, appellant's position description involves an integrated product/service team concept, which requires team members to share, interact and interface with one another in order to complete projects. Accordingly, his assertion that he was not required to assist others with the tools and information necessary to complete their jobs is not supported by the record.

Appellant alleged that he was continually being asked by management to retire and filed an EEO complaint. However, there is no evidence, such as an EEO finding, to establish this allegation. A January 6, 1999 memorandum from Mr. Terry supports disability retirement for

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

appellant based on his medical inability to perform the duties of his position. The memorandum states that appellant suffered a stroke at home on April 3, 1998 and that he returned to work on July 13, 1998. After medical documentation from appellant's physician established that appellant could work within certain physical restrictions, Mr. Terry stated that there was a sharp decline in appellant's performance and that he was unable to complete critical task assignments from August 12 through December 4, 1998. Mr. Terry stated that medical reports he received in support of appellant's workers' compensation claim showed that appellant had physical and mental problems as a result of his stroke. He stated that he relieved appellant of any duties, which dealt with classified information. Appellant additionally underwent a fitness-for-duty examination. The December 1, 1998 report showed that appellant was no longer able to perform the duties of an electronics engineer, GS-12. The January 6, 1999 memorandum, although supportive of the fact that management is of the opinion that a medical retirement is in the best interest of appellant, in no way supports appellant's allegation that he was continually being asked by management to retire. Accordingly, appellant has not established a work factor in this regard.

As appellant has failed to substantiate a compensable factor of employment, he has failed to meet his burden of proof and the Office properly denied his claim that his cerebrovascular condition was caused or aggravated by factors of his employment.

The Board further finds that the Office acted within its discretion in denying appellant's request for reconsideration of its April 22, 1999 decision.

Section 10.606 of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.[6] Section 10.607 provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.[7]

In this case, appellant's claim was denied on the basis that, although fact of injury was established, he failed to substantiate a compensable factor of employment and thus his injury could not be considered to be in the performance of duty. Although in his reconsideration request of June 29, 1999, appellant attempts to offer new evidence that the Office did not previously consider,[8] such evidence is either irrelevant or immaterial and, therefore, is insufficient to require reopening of the case for further merit review.

[6] 20 C.F.R. § 10.606.

[7] 20 C.F.R. § 10.607.

[8] Reports which were previously of record and reviewed in the merit decisions of December 28, 1998 and April 22, 1999 include a copy of the procedures to be observed and the October 9, 1998 medical report of Dr. Philip B. Maurice's fitness-for-duty evaluation.

Appellant submitted a series of exhibits, but failed to explain how this information coincided with the established events and arose within the performance of his duties. Materials submitted included: a memorandum regarding the relocation of appellant's work site from building 1385 to building 1388 due to the conversion of the space into military and VIP office space; a January 23, 1997 email from Victor Lucio discussing drawing review comments; an email among various individuals regarding TDP review; an email dated April 3, 1998; a copy of the cover sheet and organization of the logistics redesign project of October 13, 1994. These items are irrelevant to appellant's claim as they do not pertain to any of the work events established as factual.

Other documents submitted pertained to some of the work events but did not add any additional information. These included: the March 28, 1995 logistic job fair list; a February 8, 1996 memorandum regarding safety concerns of appellant's workspace; a memorandum from Mr. Armester regarding the redistribution of appellant's work load; copies of appellant's performance appraisals from May 1997 through February 1998, March 1996 through February 1997 and November 1994 through February 1995 and a copy of the definition of the minimally successful standard; a July 29, 1998 approval of administrative leave; an August 4, 1998 medical report from Dr. William Rajala; documentation stating that appellant must submit to a fitness-for-duty examination; a December 2, 1998 notice of proposed removal for medical inability to perform the duties of the position; a May 18, 1999 settlement agreement between appellant and the employing establishment; an October 17, 1996 memorandum by Mr. Armester regarding the informal meeting of October 11, 1996; and a report of management's investigation into allegations of Mr. Armester's disrespectful conduct. This additional evidence was either duplicative of evidence already considered or immaterial to establishing compensable factors of employment.

The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deduction from established facts.[9] The medical evidence submitted is not relevant and pertinent to the issues in this case and is, therefore, insufficient to warrant modification.[10] The Board finds that the Office properly denied appellant's application for reconsideration.

The December 30 and April 22, 1999 decisions of the Office of Workers' Compensation Programs dated are affirmed.

Dated, Washington, DC
June 22, 2001

[9] *See Daniel J. Perea*, 42 ECAB 214, 221 (1990).

[10] 20 C.F.R. § 8128(a)(3).

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member