

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of J.W. and DEPARTMENT OF HOUSING & URBAN DEVELOPMENT,  
JACKSONVILLE AREA OFFICE, Jacksonville, FL

*Docket No. 02-486; Submitted on the Record;  
Issued August 8, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,  
MICHAEL E. GROOM

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing as untimely filed.

On December 13, 2000 appellant, then a 49-year-old supervisor of the senior community builder program, filed an occupational disease claim alleging that factors of his federal employment caused him stress, which resulted in a heart condition with surgery. He stopped work on November 16, 2000.

In a statement received by the Office on January 26, 2001, appellant discussed medical symptoms leading to the claimed cardiac condition and disability, which he attributed to stress in the workplace. He alleged that he suffered from high blood pressure, stress and angina related to work factors and that, as a result, he underwent a heart operation in December 1999. Appellant noted that he had been hospitalized on several occasions with the above symptoms, which he related to work. He asserted that various medical professionals advised him on November 18 and 20, and December 4, 2000 that he should remain on sick leave until released.

On February 22, 2001 the Office advised appellant that additional factual and medical evidence was necessary in order to establish his emotional condition claim. The Office requested specific information including: a detailed statement and witness statements of the events and work factors believed to have caused or aggravated his physical or mental condition and medical records for treatment for any emotional condition.

In a statement dated March 28, 2001, appellant responded to the February 22, 2001 Office letter and submitted additional evidence. He noted that he headed an Office of approximately 135 employees and supervised 7 employees at various grade levels at that time. Appellant indicated that his work-related stress began during the initiation of the community builder fellowship program in 1999, prior to his first heart operation in December 1999. He asserted that he was not involved in the selection of his staff and that, as a result, some of the

higher-grade staff members opined that they did not have to report to or respond to him as their supervisor. Appellant alleged that the situation created stress and a hostile work environment for him.

Appellant submitted a March 20, 2001 medical report from Dr. Lance Maier, a clinical psychologist, who indicated that he had provided psychological services to appellant since April 3, 2000 for stress, anxiety and depression which appellant attributed to work stress.

Appellant also submitted a statement from Benjamin Davis a coworker from the employing establishment dated March 22, 2001. Mr. Davis stated that appellant had been a victim of an overly stressful position with the employing establishment, as a result of the implementation of a community builder concept that had far-reaching health and career implications for himself and appellant. He stated:

“[The employing establishment] has continued to add new programs while in a downsizing mode. Additionally the staffing mix at [the employing establishment] has often been insufficient and without proper skills to provide managers the support needed to do the work assigned or endure the hostile environment created. While I do not know [appellant’s] staffing situation on a first hand basis I can attest that he and I have commiserated many times over the last few years about our personnel problems we inherited through trying to maintain management accountability over the department’s new hires, who often displayed little regard for federal rules and regulations, or federal protocol. We have experienced uncooperative staff without proper skill mixes needed to accomplish the department’s new mission, as well as employee retaliation against outside hires with little or no knowledge of [the employing establishment] programs, having been hired at substantially higher salaries and grades. This resulted in conscientious managers like [appellant] and myself with years of management and program experience and a sense of dedication and commitment to [the employing establishment], and the housing customers, to spend extensive stressful hours and weekends of work to meet these ever increasing demands placed upon us to deal with staffing issues, public relations and program obligations....

“These sequence of daily stressful working conditions no doubt has taken their toll on [appellant] and caused irreparable health damage, mental trauma and burnout. I am very concerned for his well being continuing in a high stress environment especially after his recent illness and operations.”

Appellant submitted a medical report from Dr. J. Pulido, a Board-certified internist, dated April 4, 2001 in which he discussed that appellant underwent cardiac catheterization and angioplasty in 1999 following evidence of a 90 percent occlusion to a primary blood vessel. He stated: “the apparent extreme stress perceived by [appellant] at work has apparently accelerated and aggravated his underlying coronary artery disease.”

In a handwritten statement dated June 15, 2001, appellant provided additional factual information regarding his claim for work-related stress. He alleged that, as a supervisor with the employing establishment, he had to deal with continual complaints, false allegations and

insubordination from employees of his staff, which had directly impacted his health. Appellant discussed the specific actions of one employee, whom he explained had filed a complaint against him and had given him a hard time. He alleged that the actions of this employee in particular had caused him extreme stress. Appellant further submitted voluminous materials regarding a program initiated by the employing establishment in which appellant and other employees worked alleged to have caused him stress.

In a decision dated June 27, 2001, the Office denied appellant's claim on the grounds that he failed to establish that he sustained an emotional condition in the performance of duty. The Office found that appellant cited no incidents or events, which would afford coverage under the Federal Employees' Compensation Act. Matters found noncompensable included appellant's noninvolvement with the selection of his subordinate staff, which he believed led to a hostile, stressful work environment and his alleged Equal Employment Opportunity (EEO) investigation, which he claimed caused him stress.

Appellant filed a request for an oral hearing on September 25, 2001. By decision dated November 8, 2001, the Office denied appellant's request.

The Board finds that appellant has not established an emotional condition causally related to compensable work factors.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment.<sup>1</sup> To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.<sup>2</sup>

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 coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.<sup>3</sup>

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<sup>1</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>2</sup> *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>3</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

It is well established that administrative or personnel matters, although generally related to employment, are primarily managerial functions of the employer rather than duties of the employee.<sup>4</sup> The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.<sup>5</sup> In determining whether the employing establishment erred or acted abusively, the Board considers whether the employing establishment acted reasonably.<sup>6</sup> Thus, administrative actions are compensable only if it is established that such actions were erroneous or abusive.

In this case, there is no probative evidence of error or abuse on the part of the employing establishment. There is no evidence, for example, that the employing establishment's decision to select the members of appellant's staff without his involvement was erroneous. Therefore, appellant's implication that the insubordination received from employees of his staff due to his lack of involvement in their hiring is not be considered a factor of employment leading to his stress condition. His emotional reaction of stress resulted from his own desire to work within a particular work environment and from his frustration in his failure to effect desired changes. As this did not relate to any requirement of his assigned duties, his reaction did not arise in the performance of duty.<sup>7</sup>

To the extent that appellant stated he was subjected to continual complaints and false allegations while at work, and developed extreme stress from one employee in particular, he did not submit probative evidence to establish these facts. Appellant did submit a witness statement from Benjamin Davis, a fellow manager who indicated that, through working extensive stressful hours together on the community builder program, they experienced staffing issues, public relations and program obligations. Mr. Davis has not however corroborated any specific allegation of harassment or discrimination.

Appellant indicated that he was investigated because of an EEO complaint of one of his subordinates, although the record is devoid of any evidence to support this allegation. The Office properly found that this allegation was not a compensable factor of employment.

In this case, appellant has not submitted probative evidence with respect to an allegation of harassment or discrimination by a coworker or established error and abuse on the part of the employing establishment, which could be considered a compensable factor of employment. Inasmuch as appellant has failed to meet his burden of proof in providing factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition, the Board finds that the Office properly denied his claim. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.<sup>8</sup>

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<sup>4</sup> *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

<sup>5</sup> *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>6</sup> *Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>7</sup> *See generally, William Karl Hansen*, 49 ECAB 140 (1997).

<sup>8</sup> *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

The Board additionally finds that the Office properly denied appellant's request for a hearing.

Section 8124(b)(1) of the Act<sup>9</sup> provides as follows:

“Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative....”

The regulations interpreting the Act make clear that the request for a hearing must be postmarked within 30 days following the issuance of the decision.<sup>10</sup>

Although the envelope, which contained appellant's request for a hearing is not contained in the record, appellant's letter was not signed until September 25, 2001. Because he did not request a hearing within 30 days of the June 27, 2001 denial decision, he is not entitled to a hearing as a matter of right.

The Office, however, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and the Office must exercise this discretionary authority in deciding whether to grant a hearing. The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when a hearing request is untimely or made after reconsideration under section 8128(a) are a proper interpretation of the Act and Board precedent.<sup>11</sup>

The Office in its November 8, 2001 decision noted that appellant's request for a hearing was untimely filed and that consideration of the issue involved revealed that appellant could request reconsideration before the Office. Therefore, the Office properly exercised its discretion in denying appellant's request for a hearing.

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<sup>9</sup> 5 U.S.C. § 8121 *et seq.*

<sup>10</sup> 20 C.F.R. § 10.616(a).

<sup>11</sup> *Henry Moreno*, 39 ECAB 475 (1988).

The decisions of the Office of Workers' Compensation Programs dated November 8 and June 27, 2001 are affirmed.

Dated, Washington, DC  
August 8, 2002

Michael J. Walsh  
Chairman

Alec J. Koromilas  
Member

Michael E. Groom  
Alternate Member