

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GARY L. BROWNING and DEPARTMENT OF THE ARMY,  
ABERDEEN PROVING GROUND, Aberdeen, MD

*Docket No. 01-2270; Submitted on the Record;  
Issued June 26, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

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

On March 2, 1999 appellant, then a 48-year-old supervisory environmental protection specialist, filed a claim for aggravation of Crohn's disease and depression, which he related to stress from personal friction. His supervisor indicated that appellant had gone on sick leave on December 7, 1998 and had not returned.

Appellant alleged that his division was short staffed for work that had to be done around the clock. He stated that he was concerned about exposure to chemical, biological and radioactive waste in the sewers. Appellant reported that he kept asking questions about what was being dumped at the employing establishment but indicated that his supervisor, Lt. Col. Kuchar, evaded his questions. He noted that there was at least one incident of an accidental radioactive spill. Appellant stated that he raised the issue at weekly staff meetings but his supervisor refused to discuss the issue. He related that his supervisor accused him of attempting to help his employees get a contract with the employing establishment if appellant's division was placed up for bid in a privatization plan. Appellant contended that his supervisor was showing favoritism to a former colleague and managed to have language inserted into the contract to keep employees from bidding for the contract. He related that Lt. Col. Kuchar stated that appellant served at his pleasure and could be removed at any time. Appellant claimed that he was being sent a message on the privatization issue.

Appellant stated that on February 19, 1998 he was notified to attend a staff meeting on reorganization. He indicated that, when he arrived at the meeting, Lt. Col. Kuchar told him in front of others that his presence was not needed but he could take a donut as he left the meeting site. Appellant stated that he was humiliated in front of others.

Appellant stated that, in a March 4, 1998 staff meeting, Richard Wiggins, a project manager from the Directorate of Safety and Health, (DSHE) in charge of pretreatment, stated

that anthrax and human immunodeficiency virus (HIV) had been dumped in the sewer system but did not say where. Appellant stated that he kept his employees out of the sewers and lift stations while he attempted to get his questions answered, but he never received an answer. He commented that, during this period, his Crohn's disease became worse. Appellant noted that he had previously found out that he had been submitted discharge monitoring reports, which he signed, to DSHE for submission to the Environmental Protection Agency (EPA). He stated that the personnel at DSHE had been changing the results reported and then submitting the inaccurate reports to the EPA and state officials under his signature.

Appellant indicated that his supervisor scheduled a meeting for March 16, 1998 to discuss his concerns on the exposure of his employees to potential hazardous waste. He related that, when he arrived at the meeting, he was surprised to see that the staff of DSHE had been invited to attend. Appellant stated that he and his staff were criticized at the meeting on every issue except the issue of potential chemical and biological exposure. He contended that Lt. Col. Kuchar sat back and allowed open hostility to be expressed to him without directing the meeting to the real issue. Appellant claimed that it appeared that DSHE was not interested in resolving the problem but seeing who would get the blame.

Appellant stated that, in an April 15, 1998 meeting, Lt. Col. Kuchar suggested that appellant step down from his position because of stress. Appellant declined at that time. He went on vacation on April 17, 1998. When he returned, a coworker informed him that he had been removed from his position and placed on a detail assignment, effective May 4, 1998. Appellant contended that his supervisor's action in placing him on a detail was improper.

Appellant stated that, after he was placed on detail, a supervisor insisted that appellant receive an out of cycle performance evaluation. He protested that the evaluation was unnecessary as his detail assignment was to last 120 days. Appellant related that the supervisor told him that he would never be allowed to return to his supervisory position. He contended that the use of the detail assignment to remove him permanently from his position was an improper use of the detail assignment.

Appellant indicated that coworkers told him that Lt. Col. Kuchar and other managers were stating that he had been removed from his position due to his health and his performance. He stated that the discussion of his medical condition by his supervisor with other employees was a violation of his privacy.

Appellant stated that on December 3, 1998 he was informed that his replacement, Mr. Wiggins, had taken a television/video cassette recorder (TV/VCR) set from a colleague's office. He stated that the TV/VCR had been assigned to him when he was a supervisor. When appellant was removed, he turned the TV/VCR over to another supervisor, Jack Bergin, who would transfer it to his control. He related that when Mr. Wiggins took the equipment over the objection of Mr. Bergin's secretary, he stated, "I do n[o]t care about Gary Browning now. I am Waterworks Chief now." Appellant indicated that he contacted Ed Simmons, who handled the distribution of equipment. He accompanied Mr. Simmons to Mr. Wiggins' office to get the equipment to return it to Mr. Bergin but Mr. Wiggins was not in his office. Appellant stated that he contacted his supervisors to explain the situation, indicated that Mr. Wiggins had taken the equipment inappropriately, and ask them to straighten the situation. He indicated that

Mr. Simmons subsequently had Mr. Wiggins return the TV/VCR but Mr. Wiggins was verbally abusive. Appellant stated that, in a December 7, 1998 staff meeting, Mr. Wiggins claimed that appellant had stolen the TV/VCR and that he would file criminal charges against appellant. He stated that his supervisors never corrected the story. Appellant indicated that the pain in his side from the Crohn's disease became unbearable. He stopped working and saw his personal physician who instructed him to take an immediate leave of absence. Appellant noted that, during this time period, he had lost 30 pounds, was unable to concentrate and was very depressed and frustrated. He noted that other employees, including Mr. Simmons, had committed suicide and stated that he did not intend to end up that way.

In a September 24, 1999 decision, the Office found that appellant did not sustain an injury in the performance of duty. Appellant requested a hearing before an Office hearing representative which was conducted on February 14, 2000. In an April 27, 2000 decision, the Office hearing representative affirmed the Office's September 24, 1999 decision, stating that the evidence did not support that appellant's concern for the safety of his employees was justified. In a March 13, 2001 letter, appellant's requested reconsideration. In a June 8, 2001 merit decision, the Office denied appellant's request for modification of the prior decisions.

The Board finds that the case is not in posture for decision.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. 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. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.<sup>1</sup> When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.<sup>2</sup> In these cases the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.<sup>3</sup>

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<sup>1</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>2</sup> *Artice Dotson*, 41 ECAB 754 (1990); *Buck Green*, 37 ECAB 374 (1985); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

<sup>3</sup> *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

Appellant stated that the initial cause of his stress was his efforts to ascertain whether his employees were at risk from chemical, biological or radioactive waste. It was part of his assigned duties to ensure the safety of the employees he supervised. Appellant submitted evidence indicating that there was an incident in which radioactive waste was accidentally released at the employing establishment. He reported that another official stated that anthrax and HIV material had been dumped in the sewers. The Office found that the matter was not a compensable factor of employment. However, the evidence establishes that appellant's regular and specially assigned duties pertained to matters of environmental protection and he was acting reasonably and within his assigned duties in seeking information on whether toxic wastes were entering the sewer system at the employing establishment.<sup>4</sup>

Appellant indicated that he was removed from his position by being placed on a detail assignment and then informed that he would not be allowed to return to his former position. The transfer of an employee is an administrative action and therefore not a compensable factor of employment. Appellant argued that the employing establishment had used the detail assignment improperly in an effort to remove him from his supervisory position. He submitted a general policy statement about when a reassignment is required as a reasonable accommodation. However, appellant did not present sufficient evidence to show that the Office's actions in this situation were erroneous or abusive.<sup>5</sup>

Appellant stated that he was humiliated by being forced to leave one meeting and was exposed to hostility in another meeting, both called by Lt. Col. Kuchar. He, however, did not present sufficient evidence that Lt. Col. Kuchar's actions in arranging and conducting the meetings were erroneous or abusive.<sup>6</sup> Appellant also described actions relating to the proposed privatization of his division, which was not within his assigned duties. Although he claimed that Lt. Col. Kuchar had engaged in inappropriate actions, there is no evidence that Lt. Col. Kuchar took actions that were erroneous or abusive. Appellant also claimed that private medical and personal information concerning his case was improperly circulated and claimed that Lt. Col. Kuchar was the probable source of the information. However, he did not submit any evidence to substantiate his charge. These matters, therefore, are not compensable factors of employment.

Appellant stated that the DSHE had altered his reports before sending them to the EPA under his signature. This matter, if substantiated, could constitute error and abuse by the employing establishment. The Office did not seek to ascertain whether appellant's allegation was accurate. Similarly, appellant discussed an incident involving the possession of a TV/VCR in which he was publicly accused of stealing the equipment and was threatened with criminal charges. He claimed that the charge was false. A false accusation by an administrative official could be error and abuse on the part of the employing establishment. These matters should be developed further on the remand of this case.

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<sup>4</sup> Compare *Robert B. Schuett*, 44 ECAB 393 (1993).

<sup>5</sup> See *Minnie L. Bryson*, 44 ECAB 713 (1993).

<sup>6</sup> See *Raul Campbell*, 45 ECAB 869 (1994).

Appellant submitted medical evidence in support of his claim. In a February 11, 2000 report, Dr. Victor Ferrans, a Board-certified psychiatrist, diagnosed recurrent major depression. He attributed appellant's condition to job stress and humiliation that he had experienced at work. Dr. Ferrans stated that, over the course of time, appellant's confrontations coincided with a worsening of his depressive symptoms. In a March 12, 1999 report, Dr. Peter C. Belitsos, a Board-certified gastroenterologist, indicated that appellant had Crohn's disease which caused chronic abdominal pain. He stated that the periodic worsening of appellant's pain was exacerbated by his stressful employment at work.

On remand, the Office should develop the record further to determine whether the employing establishment was in error or abuse by improperly altering official reports from appellant to government agencies, as alleged, and whether a supervisor allegedly made a false accusation that appellant had stolen employing establishment equipment. After further development on these issues, the Office should prepare a new statement of accepted facts, and develop whether those factors found as compensable caused his disability for work. After further development as it may find necessary, the Office should issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated June 8, 2001 is hereby set aside and the case remanded for further action as set forth in this decision.

Dated, Washington, DC  
June 26, 2002

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member