

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARTIN R. BRAUCHLE and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Syracuse, NY

*Docket No. 01-1613; Submitted on the Record;*  
*Issued September 4, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly found that appellant failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

On April 13, 2000 appellant, a 52-year-old housekeeping aid, filed a Form CA-2, claim for benefits based on occupational disease, alleging that he had developed an emotional condition caused by factors of his employment. He asserted that the employing establishment had unfairly denied him numerous promotions which had been granted to other, less qualified workers. In a written statement accompanying the form, appellant alleged that the employing establishment had also unfairly denied him merit pay awards. He further alleged that after he was diagnosed with depression in January 2001, he asked his supervisor for permission to miss a mandatory employee staff meeting because he believed his emotional condition would undermine his ability to control himself at the meeting. Appellant stated that although his supervisor refused such permission, he did not attend the meeting and was consequently charged with being absent without official leave. Since this time, appellant asserts, his supervisor and division chief have "made [his] life a living hell."

Appellant submitted a March 1, 2000 report from Dr. Timothy R. Burke, Board-certified in psychiatry and neurology, who stated that appellant was being treated at the Veterans Medical Center for symptoms of severe stress and anxiety. Dr. Burke noted that appellant was treated with medication for these symptoms, but that these had not "achieved their full effect." He recommended that appellant be excused from work from March 2 to 5, 2001 for "mental health purposes."

In a statement received by the Office on June 26, 2000, appellant alleged that while working as a telephone operator for the employing establishment from November 1991 to August 21, 1994, the incompetence of his coworkers resulted in a backlog of telephone calls for which he was blamed and which caused him great stress and anxiety. He reiterated his previous

allegations that he was unfairly passed over for promotions and merit pay raises. Appellant also asserted that his supervisors subjected him to a pattern of harassment and discrimination.

By decision dated January 27, 2001, the Office found that fact of injury was not established, as the evidence of record did not establish that an emotional condition was sustained in the performance of duty.

By letter dated February 17, 2001, appellant requested reconsideration. In his letter, appellant essentially reiterated his previous contentions. He also submitted copies of written and email correspondence between himself and various employing establishment officials; these were in regard to the February 2000 staff meeting that he missed and to the disciplinary actions taken by the employing establishment due to appellant's unapproved absence at this meeting.

By decision dated May 22, 2001, the Office found that appellant did not submit evidence sufficient to warrant modification of its January 27, 2001 Office decision.

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty.

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.<sup>1</sup> There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.<sup>2</sup>

The first issue to be addressed is whether appellant has cited factors of employment that contributed to his alleged emotional condition or disability. 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 Federal Employees' Compensation Act.<sup>3</sup> On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.<sup>4</sup>

The Board finds that appellant has failed to submit sufficient evidence to establish his allegations that his supervisors engaged in a pattern of harassment. He has alleged, in general terms, harassment from his supervisors, but he has not provided a description of specific

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<sup>1</sup> See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

<sup>2</sup> See *Ruth C. Borden*, 43 ECAB 146 (1991).

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

<sup>4</sup> *Id.*

incidents or sufficient supporting evidence to substantiate the allegations.<sup>5</sup> Appellant has not submitted any factual evidence to support his allegations that he was harassed, mistreated or treated in a discriminatory manner by his supervisors. To that end, appellant failed to establish that his supervisors threatened or verbally abused him, or otherwise ridiculed him during the periods and dates he alleged these episodes to have occurred.

The Office reviewed all of appellant's allegations of harassment, abuse and mistreatment, and found that they were not substantiated or corroborated. To that end, the Board finds that the Office properly found that the episodes of harassment cited by appellant did not factually occur as alleged by appellant, as he failed to provide any corroborating evidence for his allegations. As such, appellant's allegations constitute mere perceptions or generally stated assertions of dissatisfaction with certain superiors at work which do not support his claim for an emotional disability.<sup>6</sup> For this reason, the Office properly determined that these incidents constituted mere perceptions of appellant and were not factually established.

The Board further finds that the administrative and personnel actions taken by management in this case contained no evidence of agency error and, therefore, are not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.<sup>7</sup> With regard to appellant being denied permission by the employing establishment to be absent from the February 2000 staff meeting and to the disciplinary actions taken by the employing establishment due to appellant's unapproved absence, such matters are not compensable in the absence of administrative error or abuse.<sup>8</sup> The Board notes that matters pertaining to use of leave are generally not covered under the Act as they pertain to administrative actions of the employing establishment and not to the regular or specially assigned duties the employee was hired to perform.<sup>9</sup> However, error or abuse by the employing agency in an administrative or personnel matter or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage.<sup>10</sup> In the present case, there is no evidence of record to substantiate appellant's allegations of error or irregularity in being disciplined for missing a mandatory meeting. Disciplinary matters consisting of counseling sessions, discussions or letters of warning for conduct pertain to actions taken in an administrative capacity and are not compensable as factors of employment.<sup>11</sup>

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<sup>5</sup> See *Joel Parker, Sr.*, 43 ECAB 220 (1991). (The Board held that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

<sup>6</sup> See *Debbie J. Hobbs*, *supra* note 1.

<sup>7</sup> See *Alfred Arts*, 45 ECAB 530 (1994).

<sup>8</sup> *Drew A. Weismuller*, 43 ECAB 745 (1992); *Kathi A. Scarnato*, 43 ECAB 220 (1991).

<sup>9</sup> *Elizabeth Pinero*, 46 ECAB 123 (1994).

<sup>10</sup> *Margreate Lublin*, 44 ECAB 945 (1993).

<sup>11</sup> *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

In the instant case, appellant has presented no evidence that the employing establishment acted unreasonably or committed error with regard to the incidents of alleged unreasonable actions involving personnel matters on the part of the employing establishment. As to appellant's allegation that he was overburdened with an excessive workload while working as a telephone operator, appellant did not provide any evidence that the employing establishment acted in an abusive or unreasonable manner in setting performance guidelines for him.

The Board has held that emotional reactions to situations in which an employee is trying to meet his position requirements are compensable.<sup>12</sup> However, appellant has not submitted evidence indicating that the employing establishment imposed an unusually heavy workload and unreasonable deadlines.<sup>13</sup> Regarding appellant's allegation that he developed stress due to the uncertainty of his job duties and his insecurity about maintaining his position, the Board has previously held that a claimant's job insecurity is not a compensable factor of employment under the Act.<sup>14</sup>

Appellant's dissatisfaction with the failure to receive promotions is not a factor of employment. The Board notes that error or abuse by the employing establishment in an administrative or personnel matter or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage.<sup>15</sup> However, appellant has submitted no evidence indicating that the employing establishment committed error or abuse or that its actions in this instance were unreasonable. Determinations by the employing establishment concerning promotions are administrative in nature and not a duty of the employee.<sup>16</sup>

Accordingly, a reaction to such factors did not constitute an injury arising within the performance of duty. The Office properly concluded that in the absence of agency error or abuse such personnel matters were not compensable factors of employment.

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<sup>12</sup> See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

<sup>13</sup> Compare *Georgia F. Kennedy*, *supra* note 12.

<sup>14</sup> See *Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

<sup>15</sup> *Margreate Lublin*, 44 ECAB 945 (1993).

<sup>16</sup> *George A. Ross*, 43 ECAB 346 (1991).

The decisions of the Office of Workers' Compensation Programs dated May 22 and January 27, 2001<sup>17</sup> are hereby affirmed.

Dated, Washington, DC  
September 4, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>17</sup> The Board notes that it has treated the Office's January 27, 2001 decision as one based on a merit review, notwithstanding the fact that the Office found in this decision that appellant had not submitted evidence sufficient to warrant such a review. Contrary to this finding, the Office discussed and considered all of the evidence submitted by appellant, and made specific findings that this evidence was not sufficient to meet Board standards for establishing an emotional condition in the performance of duty.