

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BENJAMIN MARTINDALE and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Los Angeles, CA

*Docket No. 02-2352; Submitted on the Record;
Issued April 28, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

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

On May 30, 1999 appellant, then a 56-year-old plumbing supervisor, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained an emotional condition while in the performance of duty. Appellant described his condition as major depressive disorder. He identified May 5, 1999 as the date he first realized his emotional condition was employment related.¹ Appellant did not otherwise identify any employment factors or incidents he believed caused or contributed to his claimed emotional condition.

In response to a request for information from the Office of Workers' Compensation Programs, appellant submitted an October 4, 2001 statement. He explained that his condition arose as a result of a May 1999 employing establishment investigation concerning his alleged misuse of credit cards and misappropriation of other employing establishment property. On May 4, 1999 appellant was allegedly interrogated by several employing establishment officials and was "falsely accused ... of credit card fraud and stealing" and threatened with dismissal. The following day appellant was asked to leave his office while the locks were being changed. That same day he was assigned to work outdoors digging, which appellant perceived as a demotion. On May 6, 1999 the employing establishment police allegedly interrogated appellant for more than two hours. The employing establishment police again questioned appellant on May 7, 1999 and later placed him under arrest for theft and escorted him to the county jail where he was booked. Appellant remained in custody until the charges were dropped on May 11, 1999. He stated that he feared for his life during his five-day incarceration. Appellant returned to work on July 1, 1999, at which point he was moved from his prior office and relocated to the laundry facility. He was allegedly assigned new duties as a quality control inspector and his access to other areas at the agency facility, including the cafeteria, was severely restricted. Appellant also

¹ The employing establishment's portion of the claim form was not completed until August 27, 2001.

alleged that the employing establishment police and a representative from the Office of the Inspector General (OIG) harassed him on three separate occasions in March and April 2000.

In a decision dated October 23, 2001, the Office denied appellant's claim on the basis that he failed to establish that he sustained an injury in the performance of duty.²

Appellant requested an oral hearing, which was held April 1, 2002. At the hearing appellant reiterated most of the allegations described in his October 4, 2001 statement. Additionally, appellant clarified that the alleged harassment by employing establishment police and the OIG occurred at his private residence. Appellant also testified that he had been charged with absence without official leave and that the employing establishment fired him effective April 6, 2000. The basis for appellant's separation from duty was later modified in accordance with a settlement agreement reached in June 2000.

By decision dated June 10, 2002, the Office hearing representative affirmed the October 23, 2001 decision denying compensation. The hearing representative explained that the May 1999 investigation, which led to appellant's arrest on May 7, 1999, was administrative in nature. Additionally, the hearing representative found that appellant failed to establish that the employing establishment either erred or acted abusively in carrying out its administrative responsibilities.³

The Board has duly reviewed the case record on appeal and finds that the case is not in posture for a decision.

To establish that he sustained an emotional condition causally related to factors of his federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.⁴

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview 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

² The Office's October 23, 2001 decision made no reference to appellant's October 4, 2001 statement, which was received on October 22, 2001.

³ The settlement agreement reached in June 2000 pertained to the April 6, 2000 dismissal action for unauthorized absence. The agreement made no reference to the May 1999 charges of credit card fraud or theft of property. The hearing representative noted that the settlement agreement did not provide for any back pay or otherwise reflect a finding of error on the part of the employing establishment.

⁴ See *Kathleen D. Walker*, 42 ECAB 603 (1991).

deemed compensable.⁵ To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.⁶

As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Federal Employees' Compensation Act.⁷ However, to the extent that the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.⁸

In his October 4, 2001 statement, appellant alleged that his condition arose as a result of a May 1999 investigation and arrest for theft. On May 7, 1999 the employing establishment police arrested appellant and escorted him to the local county jail where he was booked. Appellant stated that he remained in custody until the charges were dropped on May 11, 1999.

An investigation is generally related to the performance of an administrative function of the employer and not the employee's regular or specially assigned work duties. Therefore, an investigation is not a compensable factor of employment unless there is affirmative evidence that the employer erred or acted abusively in the administration of the matter.⁹

The current record is insufficient to render a fully informed decision as to whether the employing establishment's investigation, which culminated in appellant's May 7, 1999 arrest, constituted error or abuse on the part of the employing establishment. After spending approximately five days in jail, appellant stated that the charges were dropped and he was released from custody. The Office was unaware of appellant's May 7, 1999 arrest when it requested additional factual and medical evidence on September 17, 2001. Appellant's October 4, 2001 statement outlining the events of May 1999 was not received by the Office until October 22, 2001 and the Office's initial decision dated October 23, 2001 makes no reference to appellant's statement. Thus, the Office did not undertake any further development regarding the alleged incidents of May 1999 as set forth in appellant's October 4, 2001 statement. The Office did not request, nor did the employer submit, any information concerning the investigation and appellant's May 7, 1999 arrest. Additionally, there is no information regarding the reason why the theft charges were dropped on May 11, 1999. Because of the dearth of evidence regarding this issue, the Board is not in a position to render a fully informed decision. Accordingly, the claim is remanded to the Office for further development of the record.¹⁰

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁷ *Id.*

⁸ *Id.*

⁹ *Ernest St. Pierre*, 51 ECAB 623, 624 (2000).

¹⁰ Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done. *William J. Cantrell*, 34 ECAB 1223 (1983).

The June 10, 2002 decision of the Office of Workers' Compensation Programs is set aside and the claim is remanded to the Office for further action consistent with this opinion.

Dated, Washington, DC
April 28, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member