

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DONALD A. POTENZA and DEPARTMENT OF THE NAVY,  
NAVAL WEAPONS STATION, Seal Beach, CA

*Docket No. 02-2311; Submitted on the Record;  
Issued February 5, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,  
DAVID S. GERSON

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

On September 22, 2000 appellant, then a 49-year-old supervisory electronics technician, filed a claim for an occupational disease for "stress, causing: lack of sleep, memory loss, depression, anxiety, confusion, [and] high blood pressure." Appellant attributed his condition to "improper and illegal treatment by management" since October 16, 1997, including a 14-day suspension from March 16 through 29, 1998, as reprisal for filing and winning a grievance he filed on November 4, 1997. Appellant stated that the ordnance production superintendent, Jack Norris, refused to allow him to speak to the commanding officer and screamed at him, that Mr. Norris was illegally rehired by the employing establishment "directly upon his retirement from the Navy," and that the employing establishment illegally changed a position to a lower grade to accommodate Mr. Norris, who did not qualify for the position at the higher grade. Appellant alleged that his second-level supervisor Merrill Bailey was preselected for a position, that the employing establishment violated reduction-in-force (RIF) rules to try to get rid of a coworker, that the employing establishment disregarded his request for accommodation even though he submitted a medical report and that the three on-the-spot awards he received in the past year "were just a ploy to cover up any action they may take against me in the future." Appellant stated that he had "suffered from mild stress since about 1992" and that his "job, managing the depot operations, itself is extremely stressful."

Mr. Norris responded to appellant's allegations in a statement dated October 17, 2000, denying that he screamed at appellant and stating that he did not refuse to allow appellant to speak to the commanding officer but rather told him that the commanding officer could not speak to appellant about ongoing disciplinary issues because of his possible involvement in the disciplinary process. Mr. Norris stated that he was "unaware of any situations that would indicate that [appellant] was incompetent at this time. His most recent performance appraisal, for the performance cycle ending August 31, 2000, indicates that his performance is acceptable."

Appellant submitted a July 17, 1998 report from Dr. Martin Blanco-Eccleston, a family practitioner, addressed to the employing establishment's commanding officer. Dr. Blanco-Eccleston stated that since April 1992, appellant had "had sporadic minor anxiety/stress being partially work related. [Appellant] had been handling it fairly well on his own with normal blood pressures until March 11, 1998, when his stress level escalated due to conflicts with some people and pressure at work." Dr. Blanco-Eccleston stated that appellant was then "placed on medical treatment for his anxiety, stress, insomnia and hypertension probably greatly related to his work problems and/or triggered by his work problems." He concluded: "It is my opinion that [he] will benefit if he is transferred to another department where he is not in contact with the individuals causing his conflicts and pressure at work, or at least a trial of 3 to 6 months to see if it will have a definite impact in his ailments."

By decision dated March 29, 2001, the Office of Workers' Compensation Programs found that the evidence failed to demonstrate that appellant sustained a medical condition in the performance of duty. The Office found that appellant's frustration over not being able to secure the promotion Mr. Norris obtained was not compensable, that appellant's 14-day suspension was not compensable in the absence of a showing of error or abuse and that appellant's reaction to the rehiring of Mr. Norris was not compensable. The Office found that his other allegations were not established as factual: that his suspension was illegal, that management was conspiring to remove appellant from his job, that Mr. Norris refused to allow him to speak to the commanding officer, that RIF rules were changed to try to get rid of a coworker and that the employing establishment disregarded his July 1998 request for accommodation.

Appellant requested a hearing, which was held on August 7, 2001. In his testimony appellant amplified the allegations submitted with his claim and testified that in 1995 inspectors were removed from his area, which "started causing quality control problems with our products," and that his concerns over quality control and the overload of work where he had to perform inspections in addition to his other duties caused him to feel a lot of pressure because he could not keep up with it all. Appellant testified that he was allowed to serve as an acting supervisor only when no one else was left, but acknowledged that management could pick anyone they wanted and that no policy was abused. Appellant stated that he was seeking only medical expenses and did not care about the time he had lost from work.

Appellant submitted a report dated February 23, 2001 from Dr. Abilio A. Hernandez, a Board-certified psychiatrist, who set forth a history that appellant had been subjected to improper and illegal treatment by management since October 16, 1997, including a 14-day suspension as reprisal for winning a grievance and a conspiracy by his supervisors "to take action against him for personal and not for professional reasons" and "to remove him from the Federal service due to their personal dislike of him." Further, history was that "Mr. Norris not only refused to allow him to speak with the commanding officer but screamed at him during a meeting that he had trying to resolve the issues," that Mr. Norris was hired directly upon retirement from the U.S. Navy in violation of a 180-day waiting period, that Mr. Norris was illegally promoted through the change in the grade of a position and that RIF rules were violated to target an injured coworker. Dr. Hernandez stated that appellant had "been living in fear for the last few years and since Mr. Norris' promotion, the fear has become unbearable to him," and that appellant had "experienced a lot of emotional symptoms" since his suspension in 1998, which was "a very traumatic experience for him." Dr. Hernandez diagnosed major depression, single episode and

post-traumatic stress disorder and concluded, “There is no evidence of precipitating or contributory factors in any other area of the patient’s life other than the aforementioned work problems. The patient provided abundant information to support his claim that his present psychiatric condition had resulted from his work situation.”

By decision dated November 6, 2001, an Office hearing representative affirmed the Office’s March 29, 2001 decision.

Appellant appealed this decision to the Board, which by order dated July 23, 2002,<sup>1</sup> noted that the case record did not contain a transcript of the hearing held on August 7, 2001. The Board remanded the case to the Office for completion of the case record and, to fully protect appellant’s appeal rights, for reissuance of the November 6, 2001 decision.

On August 28, 2002 the Office reissued its Office hearing representative’s November 6, 2001 decision, without any changes in the body of the decision.

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

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers’ compensation. Where the 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 Federal Employees’ Compensation Act. On the other hand, the disability is not covered where it results from such factors as an employee’s fear of a RIF or his frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>2</sup>

Appellant’s allegations that the employing establishment violated RIF rules to try to get rid of a coworker, that Mr. Norris was illegally hired in disregard of a waiting period after he left military service and that appellant’s second-level supervisor was preselected for a position would not be compensable under the Act, even if they were substantiated, which they were not. All these alleged actions were directed toward other employees and none involved actions taken with regard to appellant.<sup>3</sup> These alleged actions did not occur in the performance of appellant’s duties. Appellant has not provided any substantiation that he should have been promoted instead of Mr. Norris.

Appellant also alleged that his supervisor screamed at him when he asked to see the commanding officer. This could be compensable factors of employment,<sup>4</sup> but appellant did not

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<sup>1</sup> Docket No. 02-853.

<sup>2</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> See *Marion A. Chaney*, 43 ECAB 897 (1992) (The Board found that the employee’s reaction to her supervisor’s removal from his position was not compensable).

<sup>4</sup> *Harriet J. Landry*, 47 ECAB 543 (1996) (Verbal abuse can be compensable).

submit any evidence to substantiate this incident, which his supervisor specifically denied. Where appellant alleges compensable factors of employment, he must substantiate such allegations with probative and reliable evidence.<sup>5</sup> Appellant also has not substantiated that his supervisor refused to allow him to speak to the commanding officer, as the supervisor explained that he told appellant that the commanding officer could not speak to him about ongoing disciplinary issues.

Appellant alleged that the employing establishment refused to accommodate him by transferring him to a less stressful position. The employing establishment's denial of appellant's request to transfer is an administrative or personnel matter, which is compensable only upon a showing of error or abuse by the employing establishment.<sup>6</sup> Appellant has not established that he was entitled to the accommodation sought, or that the employing establishment erred or acted abusively by refusing appellant's request for a transfer. Appellant also has not shown that his 14-day suspension in March 1998, was a reprisal for winning a grievance or was otherwise erroneous or abusive.<sup>7</sup>

Appellant has shown one erroneous personnel action by the employing establishment. In a December 17, 1997 decision, appellant's grievance of the denial of a within-grade increase was sustained on the basis that his supervisor was unable to establish elements and standards within a reasonable time frame prior to the end of your waiting period for your step increase. This decision, which granted appellant his within-grade increase, shows that the employing establishment erred by not timely providing appellant with performance standards.

Appellant also attributed his emotional condition to the pressures of performing his regular duties, which is a compensable employment factor.<sup>8</sup> This factor was cited in his initial claim and at the August 7, 2001 hearing, appellant described these pressures, testifying that inspectors were removed from his area in 1995, which resulted in his concerns about quality control and in an overload of work because he had to perform inspections in addition to performing his other duties.

Although appellant identified two compensable employment factors, his burden of proof is not discharged by establishing employment factors, which may give rise to a compensable disability under the Act. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to accepted compensable employment factors.<sup>9</sup>

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<sup>5</sup> *Joel Parker, Sr.*, 43 ECAB 220 (1991).

<sup>6</sup> *James W. Griffin*, 45 ECAB 774 (1994).

<sup>7</sup> Disciplinary actions are administrative functions of the employer. *Sharon R. Bowman*, 45 ECAB 187 (1993).

<sup>8</sup> *Georgia F. Kennedy*, 35 ECAB 1151 (1984).

<sup>9</sup> *William P. George*, 43 ECAB 1159 (1992).

Appellant submitted two medical reports, but neither attributes his emotional condition to accepted compensable employment factors. Dr. Blanco-Eccleston did not cite any specific factors of employment, instead referring to “work problems” and “conflicts with some people and pressure at work.” Dr. Hernandez cited specific employment incidents: the 14-day suspension, appellant’s supervisor screaming at him, violations of rules in hiring and promoting Mr. Norris and violation of RIF rules to target a coworker. As found above, however, all of the incidents cited by Dr. Hernandez either were not substantiated as having occurred as alleged or are not considered compensable factors of employment. Appellant has not met his burden of proof.

The August 28, 2002 decision of the Office of Workers’ Compensation Programs is hereby affirmed.

Dated, Washington, DC  
February 5, 2003

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member