

**United States Department of Labor
Employees' Compensation Appeals Board**

EDDIE D. TOLEDO, Appellant

and

**DEPARTMENT OF THE INTERIOR, BUREAU
OF INDIAN AFFAIRS, Tuba City, AZ, Employer**

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**Docket No. 04-394
Issued: April 21, 2004**

Appearances:
Eddie D. Toledo, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On December 1, 2003 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated September 17, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

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

FACTUAL HISTORY

Appellant, a 58-year-old school teacher, filed a claim for benefits based on an emotional condition on May 23, 2003. He stated that he came under stress on January 24, 2003 when he was falsely put on administrative leave because he was accused of physically assaulting a student. Appellant alleged that he also experienced stress because the employing establishment placed him on administrative leave and assigned him to a nonteaching position pending an

investigation. In a June 20, 2003 statement, appellant stated that the assault allegation was made by four students who stated that appellant had struck one of their classmates. Appellant stated that the incident had been referred to the tribal police and that he had been judicially charged by a tribal court. As a result of this incident and the attendant legal ramifications appellant stated that he experienced stress, anxiety and fear of losing his job and retirement benefits. Appellant noted that, although the tribal court dismissed the charges on May 27, 2003, he continued to experience mental anguish and suffered damage to his reputation. Appellant submitted a February 4, 2003 treatment note from Dr. Joe Magee, Board-certified in internal medicine, who indicated that appellant was very upset over an allegation at work. He diagnosed adjustment disorder and sleep disorder. In a report dated June 17, 2003, Dr. Magee stated that appellant had been under great stress since January 2003 due to an investigation at work. He noted that appellant was currently “greatly relieved” and was close to his baseline health. In a June 17, 2003 treatment note, Dr. Magee stated that appellant was under great stress due to an investigation at work, but was now very relieved.

By letter dated August 5, 2003, the Office advised appellant that he needed to submit additional information in support of his claim. The Office requested that he submit additional medical evidence in support of his claim, including a comprehensive medical report, and provide factual evidence, which would establish that he had developed an emotional condition caused by factors of his employment.

By decision dated September 17, 2003, the Office denied appellant compensation for an emotional condition, finding that the evidence was not sufficient to establish that his stress-related condition was causally related to his employment.

LEGAL PRECEDENT

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.¹ There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.²

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 Act.³ 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

¹ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

² See *Ruth C. Borden*, 43 ECAB 146 (1991).

³ *Lillian Cutler*, 28 ECAB 125 (1976).

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.⁴

ANALYSIS

The Board finds that the administrative and personnel actions taken by management in this case contained no evidence of agency error, and are therefore 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.⁵ 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. Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions and work assignments, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.⁶ Although the handling of disciplinary actions and the assignment of work duties are generally related to the employment, they are administrative functions of the employer.⁷ The Office properly found the actions of the school board in placing appellant on administrative leave and temporarily reassigning him to a nonteaching office were administrative functions which, absent agency error or abuse, were not compensable. Appellant has provided insufficient evidence to establish that the employing establishment acted unreasonably or committed error in discharging its administrative duties with regard to its handling of the incident. Further, appellant's allegations that he was being wrongly investigated for an alleged assault on a student, that he was deprived of due process in the course of the investigation, or that the investigation was unduly protracted, are not compensable. The Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regularly or specially assigned employment duties are not considered to be employment factors.⁸ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁹ A review of the evidence indicates that appellant has not shown that the employing establishment's actions in connection with its investigation of him were unreasonable. Regarding appellant's allegation that he developed stress due to the insecurity of his job duties and his insecurity about maintaining his

⁴ *Id.*

⁵ See *Alfred Arts*, 45 ECAB 530, 543-44 (1994).

⁶ See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

⁷ *Id.*

⁸ *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

⁹ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

position, the Board has previously held that a claimant's job insecurity is not a compensable factor of employment under the Act.¹⁰ 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. Finally, the fact that the assault charge against appellant was ultimately dismissed without prejudice does not establish error or abuse on the part of the employing establishment in placing him on administrative leave or reassigning him pending an investigation. The mere fact that personnel actions were later modified or rescinded, does not in and of itself, establish error or abuse.¹¹

The Board notes that, since appellant has not established a compensable work factor, the medical evidence will not be considered.¹²

CONCLUSION

The Board finds that 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.

¹⁰ See *Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

¹¹ *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

¹² See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the September 17, 2003 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: April 21, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member