United States Department of Labor
Employees' Compensation Appeals Board

PAUL VON RAVENSBERG, Appellant	)	
and	)	**Docket No. 05-1301**
	)	**Issued: November 10, 2005**
DEPARTMENT OF TREASURY, INTERNAL REVENUE SERVICE, Long Beach, CA, Employer	)	

Appearances:
Max Gest, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 2, 2005 appellant filed a timely appeal of a February 22, 2005 merit decision of a hearing representative of the Office of Workers' Compensation Programs that denied his claim for an emotional condition on the basis that no compensable factors of employment had been established. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

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

FACTUAL HISTORY

On November 5, 2002 appellant, then a 57-year-old internal revenue agent, filed a claim for compensation for a traumatic injury of anxiety sustained on October 30, 2002. He stated that he was rushing to complete several tasks and that his manager told him of a new procedure in

which he was required to record each case he would work on in advance. This made him lightheaded, resulting in a visit to the nurse and the emergency room. Appellant stopped work on October 30, 2002 and returned to work on November 11, 2002.

Appellant's group manager, Ruth Newton, stated that on October 30, 2002, during a discussion of appellant's work assignments, she brought up the memorandum regarding putting the name of the taxpayer in the sign-out book. Appellant objected to this as a duplication of work and that she told him that the two records were sometimes compared and that he should put the name in the sign-out book each time he was in the office or by telephone call when he was working outside the office. Ms. Newton stated that appellant indicated that he was feeling warm and having trouble breathing. He went to the nurse and was taken to a local hospital.

In a November 4, 2002 note, Dr. John Karapetian, a Board-certified family practitioner, diagnosed anxiety and found that appellant could not work from October 30 to November 11, 2002. He recommended a low or lower stress position. In a January 16, 2003 report, Dr. Gregory A. Benbow, an osteopath, stated that appellant sustained a panic attack during a counseling session regarding his performance.

By decision dated January 28, 2003, the Office found that appellant had not established that he sustained an injury as alleged. On February 6, 2003 appellant requested a hearing on this decision.

On January 15, 2003 appellant filed a claim for compensation for a traumatic injury sustained on January 13, 2003: an anxiety reaction while drafting a response to inaccuracies in his December 13, 2002 mid-year review. Appellant's January 13, 2003 email to his group manager, Joyce Lew, questioned whether language in the mid-year evaluation implied that he had a bad attitude toward management or was a bad role model by being involved in office gossip in the past. The mid-year appraisal rated appellant "exceeds" in 10 critical elements and "meets" in the remaining 5 elements. Suggestions in the narrative included that he refrain from using terms of endearment with the group secretary. In a January 9, 2003 email, appellant stated that he called his girlfriend "sweetie" during a brief conversation on his cellular telephone while standing near the group secretary. He requested that Ms. Lew retract the paragraph about terms of endearment.

In a March 12, 2003 letter, the Office advised appellant that his claim had been processed as an occupational disease claim and described the evidence he needed to submit to establish his claim.

Appellant submitted notes from Dr. Samuel H. Albert, a Board-certified psychiatrist, indicating that he was unable to work beginning February 25, 2003. In an April 14, 2003 narrative report, Dr. Albert set forth a history of work incidents: fear of entering the employing establishment premises after the Oklahoma City bombing on April 19, 1995 and after September 11, 2001 events; dismissal of his concerns about security in his building; the branch chief looking at her watch while passing his desk in 1992; the intensity of his work effort; the imposition of a timetable for completing his work in mid-1992; a March 15, 2002 meeting in which the territory manager was extremely hostile and accused appellant of being rude and disrespectful to his acting manager; the refusal of management to call into the meeting the

employees to whom these comments were allegedly made; the territory manager's comment at this meeting that appellant would not have gotten his promotion if she had known then what she now knew; his July 11, 2002 annual performance review rating him as "meets" for all elements at the instruction of the territory manager; advice by his group manager to obtain a detail away from the employing establishment; an October 30, 2002 meeting in which he was instructed to record every case he would work on two weeks in advance; his group manager's justification that if he made misstatements he would have lied on an official document; admonishment by the territory manager in late 2002 for only having six or seven returns assigned to him when only his manager could assign work; a January 2003 statement by a group manager that he must follow the territory manager's instructions even if he disagreed with them; appellant's subsequent attempts to work harder, the January 9 and 13, 2003 responses to his mid-year review and a January 21, 2003 scheduling conflict between a meeting with an inspector from the Office of the Inspector at 11:00 a.m. and a meeting with a taxpayer at 1:00 p.m., with the earlier meeting, which was scheduled to last 15 minutes, lasting until 12:45 p.m. Dr. Albert stated that these incidents caused progressive worsening of appellant's depressed mood and severe anxiety, that each event or incident caused a portion of his emotional distress and that the cumulative effect of all the events resulted in severe depression, anxiety, suicidal thoughts and emotional inability to work. He stated that job stress exacerbated appellant's symptoms of anxiety and resulted in a new diagnosis of generalized anxiety disorder with panic attacks and concluded that appellant's emotional reaction to his assigned tasks was the direct cause of his conditions, with the preexisting anxiety disorder aggravated and the major depressive disorder caused by work events. Dr. Albert stated that no other factors caused his condition, that there was a definite relationship in time and sequence between his assigned duties and the onset and worsening of his conditions and that each incident made a significant causative contribution to these conditions.

Appellant submitted further evidence. His July 22, 2002 rebuttal to his performance appraisal for the period July 1, 2001 to June 30, 2002 contended that it was arbitrary, that it did not consider his actual performance in relation to his requirements and that he had not received counseling or a written narrative to justify the reduction in his rating. A November 29, 2002 letter from an employing establishment human resource specialist stated that Ms. Newton informed him that his restriction of lower stress was being met. June 23 and July 21, 2003 letters described his fear of entering the employing establishment's building after the Oklahoma City bombing and September 11, 2001 and his fear of mailed explosives. In an October 6, 2003 report, Dr. Albert cited additional employment incidents, including a 1993 incident where a fish store owner spoke of getting a shotgun, a hostile telephone message after appellant's 1997 or 1998 constructive criticism of management in a focus group and a 1998 threat by a taxpayer to punch appellant in the nose. Dr. Albert stated that each of these incidents resulted in a progressive worsening of his emotional condition.

In an October 29, 2003 letter, appellant stated that he was subjected to excessive scrutiny by his branch chief in 1992, that in 1993 a taxpayer made a veiled threat about a shotgun, that in 1998 a neighbor threatened to punch him in the nose if he turned him in to the Internal Revenue Service and that, in late 2001 the territory manager, Joan Thiret, told him she was unhappy he only had six or seven tax returns assigned to him to audit, that he explained that his manager told him he had no additional returns to assign and that Ms. Thiret insisted that he accept part of the responsibility despite the fact that only his manager could assign work. Appellant continued that shortly thereafter the number of returns assigned to him increased to 25, that this workload was

overwhelming compared to the 12 to 14 returns usually assigned, that on February 20, 2002 he received a mid-year review rating him at three out of five for all elements, that Ms. Thiret was hostile in a March 11, 2002 meeting in which she contended that appellant had been rude and disrespectful to his acting manager in comments to two coworkers overheard by the acting manager, that he denied making these comments but Ms. Thiret refused his request to call these coworkers in for their comments and that she told him later that day that if she had known what she did now he would not have been promoted. Appellant stated that he again received ratings of three on a July 2002 annual performance evaluation, that the reviewer, Dick Toon, told him he had been instructed by Ms. Thiret to issue this rating, that this reviewer told him to try to get a detail or transfer away from Ms. Thiret and that his grievance over this rating had not yet been decided.

At a hearing held on October 29, 2003, appellant described the October 30, 2002 incident, testifying that Ms. Newton instructed him to mark on the group calendar all the cases he was going to work on each day for two weeks in advance. Ms. Newton did not have authority to institute this new procedure and retracted it a few days later. She told him that she was requiring this because if he made a misstatement by working on something other than what he said he would, he would have lied on an official document. Appellant submitted an October 24, 2003 statement from the former president of his local union that at a meeting she attended, Ms. Thiret stated that appellant was rude and discourteous to his acting manager and that she would not tolerate that type of behavior, that appellant denied the charges, that Ms. Thiret became agitated and pointed at appellant and that later that day Ms. Thiret stated to appellant that if she had known what she does now he would not have been promoted. In a November 13, 2003 letter, appellant stated that in 1991 or early 1992 his neighbor told him that if he turned him in to the Internal Revenue Service he would kill him and that he reported this incident to a special agent who advised him to avoid further contact with his neighbor.

On December 3, 2003 the Office of Personnel Management advised appellant that his application for disability retirement had been approved. By decision dated December 4, 2003, an Office hearing representative vacated the Office's January 28, 2003 decision on the basis that the claim should be reviewed as one for an occupational rather than a traumatic injury.

In a December 11, 2003 memorandum the employing establishment's acting territory manager, Susan Braunz, found that appellant's July 11, 2002 performance appraisal should reflect that he exceeded in 11 elements and met the other 4 elements. Ms. Braunz offered to settle appellant's grievance on the basis of the improved performance appraisal and appellant accepted this offer on December 12, 2003.

By letter dated January 6, 2004, the Office requested that the employing establishment comment on appellant's allegations. In a February 13, 2004 statement, Ms. Lew, appellant's former group manager, stated that she had heard appellant on more than one occasion challenging, in a condescending and insubordinate manner, his acting manager's authority to increase his inventory and that Ms. Thiret never directed her ratings of appellant. In a February 20, 2004 statement, Mr. Toon stated that Ms. Thiret did not instruct him how to rate appellant in July 2002, that this rating was based on appellant's "documented performance recordations," and that he and appellant had discussed career options including opportunities at other locations.

By decision dated February 27, 2004, the Office found that appellant had not established any incidents or factors that occurred in the performance of duty.

Appellant requested a hearing, which was held on November 16, 2004. Appellant testified that, when his caseload was increased to 25 cases, overtime was not approved and that he worked at lunch and at home to complete his work. He submitted a February 6, 2002 memorandum he wrote to his acting manager stating that his assigned workload of 19 or 20 cases had become barely manageable and that her assignment of one additional complex case the previous day made his workload unmanageable. At the hearing appellant described a September 4, 1997 threat by a taxpayer profanely threatened him and submitted an employing establishment report of the September 4, 1997 threat. He also testified that on October 30, 2002 Ms. Newton told him he would have to put his plan for every hour of every workday two weeks in advance in the sign-in book and that if he was not accurate in predicting what case he would work on, he would have liked on an official document. In response, Ms. Newton stated that appellant was not required to account for every hour of everyday and that he was always required to put his appointments in the book.

By decision dated February 22, 2005, an Office hearing representative found that appellant had failed to establish any compensable factors of employment.

LEGAL PRECEDENT

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 reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.[1] Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.[2] Where appellant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.[3]

[1] *Lillian Cutler*, 28 ECAB 125 (1976).

[2] *Michael Thomas Plante*, 44 ECAB 510 (1993).

[3] *Joel Parker, Sr.*, 43 ECAB 220 (1991).

ANALYSIS

Some of the incidents or factors cited by appellant are not considered factors of employment that could give rise to coverage under the Act. His fear of entering the employing establishment that he attributed to the Oklahoma City bombing and the September 11, 2001 attacks does not have the necessary nexus to his employment.[4] The discussion with Mr. Toon about seeking other employment opportunities also has too little connection to the performance of appellant's duties to be considered a compensable factor of employment.

Appellant has not submitted evidence sufficient to corroborate that some of the incidents he alleged actually occurred. These include being subjected to excessive scrutiny in 1992, which also lacks needed specificity and the threats allegedly made by a neighbor in 1991 or 1992 and in 1998 and by a taxpayer involving a shotgun in 1993. In contrast to these incidents, appellant has corroborated, by submission of an employing establishment report,[5] that he was threatened by a taxpayer on September 4, 1997. This incident occurred in the performance of his regular duties of reviewing taxpayer's documents. An Office hearing representative, in a February 22, 2005 decision, found that this incident occurred beyond the statute of limitations. Appellant, however, was not claiming this incident as a traumatic injury but rather as one in a series of incidents that caused latent disability years later. In that regard, the situation in this case is similar to *Larry J. Thomas*,[6] where the Board found timely a 1990 claim for an emotional condition related to 1979 house fire, as one of a series of incidents resulting in his disability beginning in 1990. Consideration of the September 4, 1997 incident as a factor of employment is not barred by the time limitation provisions of the Act.

Many of the incidents cited by appellant, concerned administrative or personnel matters. The March 15, 2002 meeting amounted to an investigation of appellant's alleged rude and discourteous remarks about his acting manager. The Board has held that investigations are administrative functions of the employing establishment that do not involve an employee's regularly or specially assigned duties.[7] Although appellant disagreed with the manner in which this investigation was conducted, particularly the refusal to call in other employees to the meeting, this does not establish error or abuse by the employing establishment in this matter.[8]

Also not covered, without a showing of error or abuse, are appellant's reactions to assessments of his performance.[9] His reaction to his December 13, 2002 mid-year review, which

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[4] *Kathryn S. Graham Wilburn*, 49 ECAB 458 (1998) (the Board stated: "[t]he fact that an employee learns of a tragedy and sustains an emotional condition during working hours does not, in and of itself, provide the necessary nexus to establish an emotional condition occurred while in the performance of duty").

[5] Appellant indicated that he reported the other threats to the employing establishment, but he did not submit incident reports from the employing establishment.

[6] 44 ECAB 291 (1992).

[7] *Jimmy B. Copeland*, 43 ECAB 339 (1991).

[8] A perception of poor management by the employing establishment is not compensable under the Act. *Reco Roncaglione*, 52 ECAB 454 (2001).

[9] *Mildred D. Thomas*, 42 ECAB 888 (1991).

manifested itself during his preparation of a response on January 13, 2003, is not covered. Appellant alleged but has not established that this review, including the narrative comments contained therein, was erroneous or abusive. The same is true of the discussion in late 2001 about his low inventory of cases. Ms. Thiret's comment that she would not have promoted him if she had known what she did now, which was corroborated by the former union president, was an assessment of his performance and does not rise to the level of verbal abuse that would be covered under the Act.[10]

Appellant has, however, established that his performance appraisal for the period July 1, 2001 to June 30, 2002 was erroneous. While the mere fact that personnel actions are later modified or rescinded does not, in and of itself, establish error or abuse,[11] the evidence of record shows more than the mere modification of a performance evaluation. The settlement of appellant's grievance regarding his performance evaluation not only increased his rating but was based on the acting territory manager's December 11, 2003 memorandum that contained a finding that his appraisal should reflect that he exceeded in 11 elements and met in the other four elements. The character of this admission of error is not changed by making it part of a settlement.

Appellant has not shown error or abuse in the October 30, 2002 meeting in which his group manager instructed him to put the names of taxpayers on whose cases he was working in the sign-in book. Appellant has not shown that this assignment of work, which is an administrative function of the employing establishment, was erroneous or abusive.[12] He has not submitted any evidence to corroborate that Ms. Newton told him that he was required to do this task so that he could be found to have lied on an official document if his account of his future work was inaccurate.

Appellant has cited incidents that produced stress in trying to meet the requirements of his position, as a revenue agent which can be compensable under the Act.[13] He found the increase in the number of cases assigned to him in early 2002 overwhelming and complained to his manager in a February 6, 2002 memorandum that his workload had become unmanageable. Also in the performance of duty was a January 21, 2003 incident in which his meeting with an inspector ran longer than anticipated and conflicted with his later meeting with a taxpayer. The stress he experienced due to this scheduling conflict and to his work duties relates to his regular and specially assigned duties under *Cutler*.

CONCLUSION

Many of the factors and incidents cited by appellant as the cause of his emotional condition are either not established as having occurred as alleged or are not compensable.

[10] *See Alfred Arts*, 45 ECAB 530 (1994) (the Board found that the employee's reaction to coworkers' comments such as "you might be able to do something useful" was self-generated).

[11] *Michael Thomas Plante*, *supra* note 2 at 516.

[12] *Barbara J. Latham*, 53 ECAB 316 (2002).

[13] *Ezra D. Long*, 46 ECAB 791 (1995); *Joseph A. Antal*, 34 ECAB 608 (1983).

Appellant, however, has established several compensable employment factors. The case will be remanded to the Office for further development of the medical evidence to determine whether his emotional condition is causally related to the compensable employment factors.

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2004 decision of the Office of Workers' Compensation Programs is affirmed in part, set aside in part and remanded to the Office for action consistent with this decision of the Board.

Issued: November 10, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board