

involved in an Equal Employment Opportunity (EEO) complaint on which appellant was serving as the counselor. The email continued, "Accordingly, you have a conflict of interest as well as an appearance of a conflict and cannot be involved as the counselor in this matter. Please withdraw so that a new counselor can be assigned."

In a September 1, 2003 letter, appellant stated that in January 1995 he was falsely arrested and convicted of a crime but was subsequently acquitted by a jury. In 1996, he was diagnosed with PTSD, which had been misdiagnosed since January 1995, and that he was still undergoing treatment for this condition at the time of the May 28, 2003 incident. Appellant submitted medical reports from Dr. Antoinette Lewis, a Board-certified psychiatrist, including an August 4, 2003 report indicating that appellant's PTSD was related to being removed from a case due to a conflict, as his previous symptoms had abated before this incident.

By decision dated October 1, 2003, the Office found that appellant had not established that he sustained an injury in the performance of duty. It noted that being removed from a case was an administrative matter and no evidence was presented to show that the employing establishment acted abusively or in error.

By letter dated October 21, 2003, appellant requested reconsideration. He submitted a May 30, 2003 email from Nancy Hendricks, his supervisor, stating that she would like him to get back with Mr. Reback about the EEO situation. Ms. Hendricks believed if they had a chance to talk things out, it would definitely help everyone understand what was going on. Appellant also submitted a July 11, 2003 letter he sent to the employing establishment's Director of the Office of Civil Rights, noting that he was not consulted or given the opportunity to respond before being removed from the EEO case. He noted that he was initiating the EEO complaint process and that he would have recused himself if there had been a conflict of interest in fact or appearance. Appellant also submitted questions about the conflict of interest, including the name of the individual involved and his relationship with this individual.

By decision dated November 14, 2003, the Office found appellant's request for reconsideration insufficient to warrant review of its prior decision.

By letter dated November 21, 2003, appellant requested reconsideration, stating that management knew and approved of his EEO counseling activity a month before he was removed for a conflict of interest. Appellant contended that Mr. Reback did not consult the EEO director or follow the chain of command and that there was no reason to believe he had a conflict of interest. He contended that the May 27, 2003 email accused him of accepting an engagement with a known conflict of interest, that the email constituted harassment, and that it challenged his integrity. Appellant stated that this caused his PTSD to recur.

By decision dated December 8, 2003, the Office found that appellant had not established that he sustained an injury in the performance of duty, as no administrative error was shown.

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

ANALYSIS

Appellant claimed that a May 27, 2003 email directing him to withdraw as counselor for an EEO complaint due to a conflict of interest aggravated his preexisting PTSD. The May 27, 2003 email involved assignment of work, which is an administrative function of the employer.³ Coverage therefore can only be afforded if error or abuse by the employing establishment is established.

Appellant has not established error or abuse. The May 27, 2003 email was not abusive on its face in tone or content. Appellant alleged that it was not issued in the chain of command but has not shown that Mr. Reback was not authorized to direct him to withdraw as counselor from an EEO complaint or that there was any error in this management official being the author of the email and directing appellant's removal from the case.⁴ He also has not established that the conflict of interest referred to in the May 27, 2003 email did not in fact exist.

CONCLUSION

The May 27, 2003 email to which appellant attributed his emotional condition was an administrative action of the employing establishment in which error or abuse was not shown. Appellant therefore has not established that he sustained an emotional condition in the performance of duty.

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

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

³ *James W. Griffin*, 45 ECAB 774 (1994).

⁴ At oral argument, appellant's attorney contended that improper influence by the individual being investigated in the EEO complaint resulted in the May 27, 2003 email but the case record contains no evidence supporting this contention.

ORDER

IT IS HEREBY ORDERED THAT the December 8 and October 1, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 24, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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