United States Department of Labor
Employees' Compensation Appeals Board

M.P., Appellant	)	
and	)	**Docket No. 09-1787**
	)	**Issued: September 21, 2010**
DEPARTMENT OF THE NAVY, Norfolk, VA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 6, 2009 appellant filed a timely appeal from a June 5, 2009 decision of the Office of Workers' Compensation Programs that denied his request for reconsideration and an August 13, 2008 decision that denied his emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the appeal.[1]

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an emotional condition causally related to factors of his federal employment; and (2) whether the Office properly denied his reconsideration request without further merit review under 5 U.S.C. § 8128(a).

[1] For final decisions of the Office issued prior to November 19, 2008, an appellant had one year from the date of issuance to file an appeal to the Board. For final Office decisions issued on or after November 19, 2008, an appellant has 180 days from the date of issuance of the decision to file an appeal to the Board.

FACTUAL HISTORY

On May 16, 2008 appellant, then a 39-year-old electrical worker, filed an occupational disease claim alleging that he sustained anxiety and depression caused by racial discrimination, harassment and retaliation in the workplace. He became aware of his illness on February 20, 2007 and stopped work on January 23, 2008. The employing establishment controverted his claim.

In an April 4, 2008 letter, appellant alleged that the cultural environment of his workplace was the sole contributor to his illness. He noted seeking "solace in the EEO [Equal Employment Opportunity] process" to combat a discriminatory, racist and corrupt culture.

In an April 7, 2008 letter, Donald Davis, the utilities superintendent, advised that appellant's allegations of discrimination had been or were being dealt with by EEO and management. He denied that management retaliated against appellant, whose work he characterized as highly satisfactory. Mr. Davis advised that the only adverse action taken against appellant involved a notation of absence without leave (AWOL) for going to the union office without first filling out a permission slip to leave work.

In an undated statement received April 10, 2008, Mitchell Cutrell, a manager, advised that on August 8, 2007 appellant's truck was found running with the keys in it. Subsequently, appellant filed a discrimination complaint because Mr. Cutrell conducted a fact-finding investigation. Mr. Cutrell noted that it was a violation of policy to leave equipment running while unattended. Appellant contended that it was a common practice to do so and that he was being singled out by management.

In statements to the record, appellant asserted that the charge of leaving the job without permission on January 15, 2008 was in retaliation for filing EEO complaints against management and being a witness for other coworkers. He alleged a January 31, 2008 conversation among managers that he and a coworker were "shucking and jiving" while on sick leave. Appellant alleged that his medical information was compromised because his EEO activities created a hostile work environment. On November 11, 2006 Jerald Ballance, appellant's supervisor, used vulgar language to inform a coworker that appellant was operating his truck poorly. Appellant reported that Mr. Ballance also made an inappropriate remark in December 2006 when appellant and several coworkers discussed helping an injured employee and his family. He generally alleged that Mr. Ballance referred to African Americans as "you people."

Appellant contended that Mr. Ballance had retaliated against him on February 2, 2007, by assigning him to clean up the cable yard in the rain while other available crewmembers were not required to work in the rain. He alleged that Mr. Ballance removed a refrigerator and furniture from the shop and stated that it was not a lunchroom. Appellant alleged that Mr. Ballance routinely disregarded information from African Americans and would pretend not to hear them saying "Did n[o]t hear you, I [a]m sorry."

Appellant claimed that Mr. Ballance referred to coworkers in offensive and racist terms. On March 24, 2007 the supervisor allegedly passed a group of African American employees and stated that, "they are all gathered at the river." On March 30, 2007 Mr. Ballance allegedly

referred to the color of two women seen with a coworker and, on April 19, 2007, referred to an outfit that a pimp would wear. Appellant reiterated that no other employees were subjected to a fact finding for leaving a vehicle engine running. He provided an affidavit stating that it was common practice. Appellant noted that his supervisors were unaware of who left the keys in the truck until he came to their office.

Appellant also filed an EEO complaint against Mr. Cutrell for a hostile work environment. In a September 26, 2007 statement, he alleged that racial discrimination occurred and that Mr. Ballance warned him and others to watch their backs.

Appellant alleged that on January 2, 2008 he was detailed to another crew in retaliation for filing an EEO claim and, on January 9, 2008, discovered that he and two other African American coworkers were the only employees not included in an "on the spot" award. He filed a discrimination complaint for nonreceipt of the award. Appellant stated that he was forced to take sick and advanced sick leave for work-related stress and anxiety. On January 31, 2008 his previously approved leave was rescinded and he experienced further problems related to use of leave in February, March and April 2008. Appellant provided a September 26, 2007 affidavit attesting that Mr. Ballance engaged in racially offensive and demeaning behavior. He stated that Mr. Ballance was "one of the worst supervisors I have ever had the displeasure to work for" and that he was forced to file an EEO complaint against Mr. Ballance, which was still in progress.

Appellant submitted a claim acknowledgement notice from the employer regarding his April 19 and August 24, 2007 racial discrimination complaints and a fact-finding investigation related to leaving his vehicle unattended and running. He enclosed a formal complaint of discrimination form. Appellant submitted a copy of a charge against the employer regarding leaving without permission on January 23, 2008. The Office also received an EEO specialist's May 11, 2007 report related to insensitive and racially degrading remarks made by Mr. Ballance. The EEO specialist interviewed Mr. Ballance, who denied making any racially insensitive remarks and explained the context of various interactions with subordinates. Mr. Davis advised the specialist that Mr. Ballance had been assigned to a temporary detail to help alleviate friction in the work unit. In a September 21, 2007 report from an EEO specialist pertaining to the unattended government vehicle, she noted that Mr. Davis claimed that the fact-finding process could not have been reprisal because no one knew who left the vehicle unattended.

Appellant submitted witness statements from relatives and friends regarding his condition. He also submitted records from Gary Rolfus, a social worker and a February 5, 2008 treatment note from Dr. Charlene M. Britt, a Board-certified family practitioner, who noted that appellant had work stress and diagnosed a stress reaction.

In an August 13, 2008 decision, the Office denied appellant's claim. It found that he failed to sustain an emotional condition in the performance of duty as no compensable employment factors were established.[2]

[2] On August 28, 2008 appellant appealed to the Board. On December 17, 2008 he asked to withdraw his appeal. On March 12, 2009 the Board issued an order dismissing appeal. Docket No. 08-2360.

On January 1 and March 18, 2009 appellant requested reconsideration. In a May 18, 2009 letter, he asserted that his allegations were supported by the evidence. Appellant noted that the Social Security Administration supported that his work environment caused a post-traumatic stress condition. Although some of his complaints were about administrative actions, he alleged that there had been malicious error and abuse. The Office received treatment notes and laboratory work from Dr. Britt and a November 17, 2008 report from Dr. Parthiv Sheth, a Board-certified psychiatrist and neurologist.

In a September 24, 2007 statement, Louis Johnson III, a coworker, addressed his employment and an EEO complaint by employees against Mr. Ballance for using racial epithets. He stated generally that Mr. Ballance had made "some remarks that's not becoming as a supervisor" and attributed comments made about other employees based on race or religion to the supervisor. In an October 2, 2007 statement, Ronald S. Eley, noted that he was presently employed at the shipyard and that he had been referred to by racially offensive and unfair ethnic slurs. He stated that he was a victim of racially insensitive behaviors by Mr. Ballance. In a statement dated September 26, 2007, Ronald K. Barber, a union steward and coworker, advised that he was presently employed and Mr. Ballance was his supervisor. He stated that Mr. Ballance had made comments that were derogatory, racially insensitive or anti-Semitic on a daily basis. Mr. Barber alleged generally that Caucasians were given special treatment, such as choosing their own job assignments and selecting the truck of their choice. In a September 26, 2007 statement, Milton Powell, a coworker, advised that Mr. Ballance used racially derogatory and profane terms to refer to African American, Jewish and Hispanic employees. Appellant also provided a February 21, 2006 statement which repeated his allegations.

Appellant submitted copies of March 16, 2006 and November 14, 2007 Equal Employment Opportunity Commission (EEOC) decisions in cases brought by his coworkers. A March 16, 2006 decision did not address the merits of one case; but found that it was improper to dismiss the complaint for failure to state a claim. The employer was directed to continue its administrative processing of the complaint. The November 14, 2007 decision vacated the prior decision and remanded the case for a hearing to assess witness credibility.[3]

In a June 5, 2009 decision, the Office denied appellant's request for reconsideration, finding that the evidence submitted was insufficient to warrant further merit review.

LEGAL PRECEDENT -- ISSUE 1

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion must be one of reasonable medical certainty and must be supported by

[3] Appellant was not a party to either of these complaints.

medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[4]

It is well established that, in an emotional condition claim, a claimant must first establish a compensable work factor before the medical evidence is considered.[5] A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition, for which he claims compensation, was caused or adversely affected by employment factors.[6] This burden includes the submission of a detailed description of the employment factors or conditions, which the employee believes caused or adversely affected the condition or conditions, for which compensation is claimed.[7]

Workers' compensation law does not apply to each and every illness that is somehow related to an employee's employment. There are situations where an injury or 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 specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[8] 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.[9]

Investigations are considered to be an administrative function of the employer where they are not related to the employee's day-to-day duties or specially assigned duties or to a requirement of the employee's employment. The employer retains the right to investigate an employee if wrongdoing is suspected or as part of the evaluation process. An employee's fear of being investigated is not covered under the Act. Investigations will be considered a factor of employment where the evidence demonstrates error or abuse on the part of the employer.[10]

The Board has held that actions of the employing establishment in matters involving the use of leave are generally not considered compensable factors of employment as they are administrative functions of the employer and not duties of the employee. Approving or denying a leave request is an administrative function of a supervisor. An administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or

[4] *Roy L. Humphrey*, 57 ECAB 734 (2006); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

[5] *Richard Yadron*, 57 ECAB 207 (2005).

[6] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[7] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[8] 5 U.S.C. §§ 8101-8193.

[9] *See Lillian Cutler*, 28 ECAB 126 (1976).

[10] *Jeral R. Gray*, 57 ECAB 611 (2006). *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

abuse.[11] Allegations that the employing establishment engaged in unfair disciplinary actions, improperly handled work accommodation requests and mishandled or ignored employee inquiries about workload issues relate to administrative or personnel matters, unrelated to employee's regular or specially assigned work duties and do not generally fall within the coverage of the Act. An employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable. A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.[12]

Where an employee alleges harassment and cites to specific incidents or working conditions and the employer denies that harassment has occurred, the Office, as part of its adjudicatory function must make findings of fact regarding whether the alleged factors are factually established and constitute compensable factors of employment. In such cases the issue is not whether the claimant has established harassment or discrimination under EEOC standards. Rather, the issue is whether the claimant under the Act has submitted evidence sufficient to establish an injury arising in the performance of duty. In assessing the evidence, the Board has held that grievances and EEOC complaints, by themselves, do not establish that workplace harassment or unfair treatment has occurred.[13]

With regard to emotional claims arising under the Act, the term "harassment" as applied by the Board is not the equivalent of harassment as defined by other agencies, such as the EEOC, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, under the Act, the term harassment is generally synonymous with a persistent disturbance, torment or persecution. It is mistreatment by coemployees or coworkers. Mere perceptions and feelings of harassment will not support an award of compensation.[14] Where a claimant alleges harassment, the issue is whether the claimant has submitted sufficient evidence under the Act to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[15]

ANALYSIS -- ISSUE 1

Appellant alleged an emotional condition due to various incidents he characterized as harassment or racial discrimination by his supervisor. The Board must review whether the alleged incidents are employment factors under the Act. Appellant did not attribute his emotional condition to the regular or specially assigned duties of his position as an electrical worker. Therefore, he has not alleged a compensable factor under *Cutler*.[16]

[11] *T.G.*, 58 ECAB 189 (2006).

[12] *Robert Breedon*, 57 ECAB 622 (2006).

[13] *Michael A. Deas*, 53 ECAB 208 (2001).

[14] *V.W.*, 58 ECAB 428 (2007).

[15] *C.S.*, 58 ECAB 137 (2006).

[16] *See supra* note 9.

Appellant's allegations relate primarily to administrative and personnel actions taken by his supervisor. In *McEuen*,[17] the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employer is not covered under the Act unless there is evidence of administrative error or abuse. Generally, such actions pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. Absent evidence of error or abuse, the emotional condition is not employment generated. To determine whether error or abuse has occurred, the Board must examine whether the employer acted reasonably.[18]

Appellant alleged that his supervisor engaged in improper disciplinary actions, issued unfair performance evaluations, such as the denial of an on the spot award, wrongly denied leave, improperly assigned work duties and unreasonably monitored his activities at work. These allegations relate to administrative or personnel matters and do not fall within the coverage of the Act.[19] Although these matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[20]

Appellant alleged that the AWOL time discipline was retaliation for his EEOC filings and activity. Mr. Davis, appellant's supervisor, explained that the employer required the employee to fill out a permission slip before departing from work. He denied that any action toward appellant was taken as retaliation and noted that appellant's work was found highly satisfactory. Appellant also alleged retaliation when a fact-finding investigation was initiated when keys were found left in a truck with the engine running. Mr. Cutrell, a manager, stated that it was a violation of the employer's policy to leave equipment running unattended. He denied that the fact-finding investigation was discriminatory. The September 21, 2007 report from an EEO counselor noted that Mr. Davis stated that because no one knew at the initiation of the investigation who left the vehicle unattended, it could not have been reprisal against appellant. The Board has held that investigations are an administrative function of the employing establishment that do not involve an employee's regularly or specially assigned employment duties and are not considered to be employment factors.[21] Although appellant generally alleged that his supervisor and managers acted abusively, he did not provide sufficient evidence to support his contention claim. The employing establishment provided reasonable explanations for these actions and the evidence is insufficient for the Board to find any improper motive to warrant error or abuse in these matters.

Appellant alleged that he was treated unfairly because he was not included in an "on the spot award" on January 9, 2008.[22] He filed an EEO complaint in this matter. The employing

[17] *See supra* note 10.

[18] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[19] *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).

[20] *Id.*

[21] *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

[22] Although the handling of evaluations is generally related to the employment, it is an administrative function of the employer and not a duty of the employee. *C.S.*, *supra* note 15.

establishment denied any act of retaliation or abuse. On its face, this allegation, if accurate, does not rise to the level of an employment factor. The record contains no finding of error or abuse in the EEO process. The evidence of record before the Board is not sufficient to establish error or abuse by the employer for the spot awards issued to various employees.

The Board has held that, although the handling of leave requests and attendance matters are generally related to employment, they are administrative matters and not a duty of the employee.[23] Appellant has not submitted sufficient corroborating statements or other evidence to support his allegations that his employer acted abusively in handling his requests. He has not submitted sufficient evidence to establish error or abuse in the handling leave-related matters.

Appellant alleged that, on January 2, 2008, he and a coworker were detailed to another crew due to inability to get along with Mr. Ballance. On February 2, 2007 Mr. Ballance assigned him to clean up the cable yard in the rain, while other employees were available. The assignment of work is an administrative function of the employer and not a duty of the employee.[24] There is no evidence of record to corroborate his allegation that the employing establishment acted unreasonably in assigning work to appellant.

A number of appellant's allegations relate to other workers. Such allegations are not sufficient to establish error or abuse by appellant's supervisor or managers with regard to the actions taken pertaining to him. The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.[25]

Appellant alleged that, on February 6, 2007, Mr. Ballance retaliated against him and coworkers by removing a refrigerator and furniture from the shop and told them it was not a lunchroom. There is no evidence that this act was directed against appellant or that the employing establishment did not have the right to control the work space.

Appellant generally alleged that he and coworkers were unreasonably monitored by Mr. Ballance such as when Mr. Ballance allegedly overheard appellant in conversation with coworkers about an injured coemployee. The monitoring of work activities is generally related to the employment, it is an administrative function of the employer and not a duty of the employee.[26] Appellant's statements are not sufficiently corroborated and many are vague in that they are not specific to time, place, manner or individuals involved.[27] He primarily alleged that Mr. Ballance made racist statements or references to African American and other employees.

[23] *See Joe M. Hagewood*, 56 ECAB 479 (2005).

[24] *See Lori A. Facey*, 55 ECAB 217 (2004).

[25] *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

[26] *See Dennis J. Balogh*, 52 ECAB 232 (2001); *see also John Polito*, 50 ECAB 347 (1999).

[27] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

Appellant generally alleged that several supervisors favored Caucasians in assigning work and that Mr. Ballance purposely pretended not to hear feedback by African Americans.

Appellant submitted statements from various coworkers; however, the evidence provided does not address any specific allegations raised by appellant with regard to Mr. Ballance or other managers at work. The various statements of record pertain to interactions each worker had with Mr. Ballance and alleged generally that he made racial statements or innuendos when referring to various employees. The statements are of reduced probative value in this case as they do not specifically pertain to appellant's allegations or verify that on specific dates Mr. Ballance made such comments to appellant. While it appears that Mr. Ballance had a reputation for derogatory or off-putting remarks, the allegations raised by appellant are not substantiated by the affidavits which fail to identify time, place or the parties involved. The fact that other employees proceeded with EEOC claims involving Mr. Ballance is not sufficient to establish the allegations made by appellant as factual. The record in this case does not establish that the EEO process produced any finding in appellant's favor on his allegations.

Appellant alleged that his supervisors frequently spoke to him in a rude, demeaning manner. The Board has recognized the compensability of verbal abuse in certain circumstances. However, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.[28] As noted, the incidents cited by appellant are generally either insufficiently corroborated or were not identified as being directed towards him. This reduces the probative value of the statements submitted on his behalf.

On appeal, appellant argued that he established his claim and referred to a Social Security Administration finding regarding his ability to work. The Board notes that decisions of other agencies regarding disability are not binding on the Office. The standards for establishing work-related disability under the Act, which governs the Office and the Board, are not the same as the standards set for disability retirement or social security benefits.[29]

The question before the Board is whether appellant met his burden to produce evidence which establishes his claims of harassment, retaliation or racial discrimination. Appellant was charged with several hours of being AWOL and had other leave issues with the employing establishment. He was subject to a fact finding procedure concerning whether he left an unattended government vehicle with the engine running. Appellant was assigned to work while it rained, assigned to different work crews and was not included in a cash award. He failed to establish; however, that the employer committed error or abuse in these administrative matters. As appellant has not established a compensable employment factor, it is not necessary to address the medical evidence.[30]

[28] *Charles D. Edwards*, 55 ECAB 258 (2004).

[29] *See Raj B. Thackurdeen*, 54 ECAB 396 (2003).

[30] *Garry M. Carlo*, 47 ECAB 299 (1996). *See Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[31] the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[32] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[33] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[34]

ANALYSIS -- ISSUE 2

Appellant disagreed with the denial of his claim for an emotional condition and requested reconsideration. However, he did not provide any relevant or pertinent new evidence to the issue of whether he established a compensable employment factor. Appellant did not submit evidence to show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered.

On reconsideration, appellant contended that his allegations were supported by the evidence of record but he did not submit relevant and pertinent new evidence to support his allegations. The underlying issue is whether he established a compensable factor of employment as a cause of his claimed emotional condition. Appellant resubmitted names of witnesses but this list of names does not establish that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered.

Appellant also resubmitted copies of statements from his coworkers who alleged that Mr. Ballance made derogatory and racial comments toward various minorities. These statements are not relevant because they did not identify specific instances of such comments directed toward appellant or made in his presence. Appellant provided copies of EEOC decisions regarding the claims brought by several coworkers; however, the decisions do not contain any specific findings regarding appellant. This evidence concerning claims of other employees is not relevant or pertinent to the allegations raised by appellant. This evidence is insufficient to warrant further merit review of the claim.

Appellant submitted additional treatment notes from Drs. Britt and Sheth; but if no compensable employment factors were established, it is not necessary to consider medical

[31] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

[32] 20 C.F.R. § 10.606(b)(2).

[33] *Id.* at § 10.607(a).

[34] *Id*. at § 10.608(b).

evidence regarding causal relationship.[35] The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[36] Consequently, the evidence and argument submitted by appellant on reconsideration is insufficient to require the Office to reopen his claim for merit review and it properly denied his request.

CONCLUSION

Appellant did not meet his burden of proof to establish that he sustained an emotional condition arising in the performance of duty. The Board also finds that the Office properly denied his request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the June 5, 2009 and August 13, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 21, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[35] *See supra* note 30.

[36] *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Robert P. Mitchell*, 52 ECAB 116 (2000).