

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILLIE E. TRIPP and DEPARTMENT OF THE AIR FORCE,  
ROBINS AIR FORCE BASE, GA

*Docket No. 01-175; Submitted on the Record;  
Issued September 6, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has established that his emotional condition is causally related to factors of employment.

On August 19, 1999 appellant, then a 61-year-old sheet metal mechanic foreman, filed an occupational disease claim, alleging that factors of employment caused depression and stress. He submitted a personal statement and supporting medical evidence. By letter dated October 22, 1999, the Office of Workers' Compensation Programs requested that the employing establishment submit evidence regarding appellant's claim. In a second letter that day, the Office informed appellant of the type of evidence needed to support his claim. By decision dated February 24, 2000, the Office denied the claim, finding that appellant's emotional condition had not been sustained in the performance of duty. He timely requested reconsideration and submitted additional evidence. In a June 26, 2000 decision, the Office found that appellant established one compensable factor of employment, working overtime, but that the medical evidence did not establish that this factor caused his condition. The instant appeal follows.

The Board finds that appellant has not established that he sustained an emotional condition causally related to employment factors.

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.<sup>1</sup> Workers' compensation law is not applicable to each and every injury or illness that is somehow related to employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come

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<sup>1</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

within the coverage of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.<sup>2</sup> On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.<sup>3</sup>

In this case, appellant has alleged that the requirement that he attend meetings in his supervisor's office, which was decorated with United States Marine Corps (USMC) regalia caused flashbacks to his military duties in Vietnam. He also alleged that, not being paid for overtime work, an increased workload, a change from the swing shift to the day shift, and a change to a floating supervisory position caused his condition. He finally alleged that his supervisor's dissatisfaction with his ratings for his crew contributed to his condition. Appellant's supervisor, Steven G. Taylor, provided a response in which he disputed appellant's allegations.

The relevant medical evidence includes a report dated November 4, 1999 in which Dr. Paul R. Coplin, a psychiatrist, diagnosed major depression and post-traumatic stress disorder. He noted that appellant reported an "enormous" workload and flashbacks to Vietnam. In a December 8, 1999 report, Dr. Coplin advised that appellant should not work. By report dated June 5, 2000, Dr. Coplin advised that, while working overtime did not cause appellant's condition, it "certainly may have" aggravated appellant's condition and that the décor in Mr. Taylor's office triggered a post-traumatic stress response.

Initially, the Board finds appellant's working overtime to be a compensable factor of employment.<sup>4</sup> The Board, however, finds that the other factors identified by appellant are not established as compensable factors. Administrative or personnel matters, although generally related to employment, are administrative functions of the employer rather than regular or specially assigned work duties of the employee.<sup>5</sup> Where disability results from an employee's emotional reaction to certain administrative or personnel matters unrelated to the employee's regular or specially assigned work duties, the disability does not fall within coverage of the Act.<sup>6</sup> However, an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment.<sup>7</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>8</sup> The mere fact that personnel actions are later modified or rescinded does not, in and of itself, establish error or abuse on the

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Ezra D. Long*, 46 ECAB 791 (1995).

<sup>5</sup> *Gregory N. Waite*, 46 ECAB 662 (1995).

<sup>6</sup> *Michael L. Malone*, 46 ECAB 957 (1995).

<sup>7</sup> *Elizabeth Pinero*, 46 ECAB 123 (1994).

<sup>8</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

part of the employing establishment.<sup>9</sup> Coverage under the Act will attach if the factual circumstances surrounding an administrative or personnel action establish error or abuse by employing establishment superiors in dealing with a claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated.<sup>10</sup> Therefore, appellant's allegations regarding his change to the day shift<sup>11</sup> and to a floating supervisory position are not compensable employment factors.

The Board has held that matters involving the décor and maintenance of the work premises, and any rules or procedures relating thereto, are administrative and personnel matters which are not related to an employee's regular or specially assigned work duties.<sup>12</sup> Thus, appellant's contention that his supervisors office décor caused his condition would not be a compensable factor of employment

Likewise, regarding appellant's contention that his supervisor was dissatisfied with appellant's ratings for his crew, a claimant's own feeling or perception that a form of criticism by or disagreement with a supervisor is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under the Act absent objective evidence that the interaction was, in fact, abusive. This principle recognizes that a supervisor or management in general must be allowed to perform their duties and that, in performing their duties, employees will at times dislike actions taken but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent error or abuse. There is no such evidence here, and appellant's contention is not compensable.

Thus, in the instant case, while appellant identified one compensable factor of employment, overtime work, the medical evidence does not establish that this factor caused his emotional condition. Appellant's burden of proof is not discharged by the fact that he or she establishes an employment factor which may give rise to a compensable disability under the Act. To establish an occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he or she has an emotional or psychiatric disorder and that such disorder is causally related to the compensable employment factor or factors.<sup>13</sup> Dr. Coplin merely noted that appellant reported an "enormous" workload and opined

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<sup>9</sup> *Mary L. Brooks*, 46 ECAB 266 (1994).

<sup>10</sup> *Sandra Davis*, 50 ECAB \_\_\_\_ (Docket No. 97-117, issued July 8, 1999).

<sup>11</sup> While a change in a duty shift may be a compensable factor of employment, the factual circumstances surrounding the employee's claim must be examined to discern whether the alleged injury is being attributed to the inability to work regular or specially assigned job duties due to a change in the duty shift, *i.e.*, a compensable factor arising out of and in the course of employment, or to the employee's frustration over not being permitted to work a particular shift or hold a particular position. The assignment of a work schedule or tour-of-duty is an administrative function of the employing establishment and, absent any error or abuse, does not constitute a compensable factor of employment. Therefore, the announcement or proposal of a change in an existing tour-of-duty, instructions to leave the employment if sufficient work cannot be found, or the fear of being injured while commuting on a different work shift are not compensable factors sufficiently related to the employee's regular or specially assigned employment duties so as to arise in the course of employment. *Peggy R. Lee*, 46 ECAB 527 (1995).

<sup>12</sup> See *Donna Faye Cardwell*, *supra* note 1.

<sup>13</sup> See *Ruth S. Johnson*, *supra* note 8.

that working overtime “certainly may have” aggravated appellant’s condition. Medical opinions which are speculative or equivocal in character have little probative value.<sup>14</sup> Appellant, therefore, failed to establish that his emotional condition is causally related to a factor of employment.

The decision of the Office of Workers’ Compensation Programs dated June 26, 2000 is hereby affirmed.

Dated, Washington, DC  
September 6, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

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<sup>14</sup> See *Jennifer L. Sharp*, 48 ECAB 209 (1996).