

**STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY**

)	State File No. R-17278
Edward Bluto)	
)	By: Margaret A. Mangan
)	Hearing Officer
)	
v.)	For: R. Tasha Wallis
)	Commissioner
Compass Group/Canteen Vending)	
)	Opinion No. 11-02WC

Hearing held in Montpelier, Vermont on January 17 and 18, 2002
Records Closed February 5, 2002

APPEARANCES:

Edward Bluto, pro se
Keith J. Kasper, Esq. for Zurich/Canteen Vending
John W. Valente, Esq. for CNA/Canteen Vending

ISSUES:

1. Did the claimant suffer a compensable mental injury arising from the alleged mental stresses of his employment with the defendant?
2. If so, which carrier is responsible of the compensable injury?
3. If the claimant is found to have suffered a compensable mental injury for what period of time, if any, was he temporarily totally disabled?

STIPULATION OF FACTS:

1. Claimant was employed at Compass Group and its corporate predecessor Canteen Vending Company at all relevant times to this proceeding on May 19, 1977.
2. At all relevant times in this proceeding, claimant was an employee of Compass Group or its corporate predecessor Canteen Vending Company within the meaning of the Vermont Workers' Compensation Act (Act).
3. At all relevant times in this proceeding, Compass Group or its corporate predecessor Canteen Vending Company was the employer of claimant within the meaning of the Act.

4. From at least September 1, 1997 to August 30, 1999 CNA was the workers' compensation insurance carrier for claimant's employer.
5. From August 31, 1999 to the present Zurich was the workers' compensation insurance carrier for claimant's employer.
6. On February 13, 2001 claimant left work alleging a mental injury arising out of an in the course of his employment with defendant.
7. For the twelve weeks preceding February 13, 2001, claimant's average weekly wage was \$476.33, which would result in an initial compensation rate of \$317.52.
8. Claimant alleges that he has suffered a compensable mental injury unrelated to any physical injury arising out of and in the course of his employment with defendant, and that he has been totally disabled from that mental injury since February 13, 2001 and ongoing.

CLAIMANT SEEKS:

All workers' compensation benefits to which he is entitled by law, including the costs incurred in the litigation to date, specifically including temporary total disability benefits beginning on February 13, 2001 and continuing thereafter until he either returns to employment or reaches a medical end result for his alleged work-related mental condition and all medical benefits for the treatment of his alleged work-related mental injury.

EXHIBITS:

Joint Exhibit I:	Medical Records
Joint Exhibit II:	Stipulation
Claimant's Exhibit 1:	Richard Herbert Letter 11/3/97
Claimant's Exhibit 2:	Letter 12/1/97 re: IBM Confidentiality
Claimant's Exhibit 3:	Posting from Mr. Cross
Claimant's Exhibit 4:	Notice from Tony O'Rourke 9/23/99
Claimant's Exhibit 5:	Notice from Tony O'Rourke 10/22/99
Claimant's Exhibit 6:	Time cards 10/27/99
Claimant's Exhibit 7:	Notice from Tony O'Rourke 10/28/99
Claimant's Exhibit 8:	Time cards
Claimant's Exhibit 9:	Notice from Tony O'Rourke 10/29/99
Claimant's Exhibit 10:	Grievance No. G-14-99
Claimant's Exhibit 11:	Notice from Tony O'Rourke 11/3/99
Claimant's Exhibit 12:	Notice from Tony O'Rourke 11/8/99
Claimant's Exhibit 13:	Time cards 11/3/99
Claimant's Exhibit 14:	Grievance No. G-15-99
Claimant's Exhibit 15:	Notice from Tony O'Rourke 11/9/99

Claimant's Exhibit 16:	Notice from Tony O'Rourke 1/4/00
Claimant's Exhibit 17:	Notice from Richard Hebert 11/22/99
Claimant's Exhibit 18:	Notice from Duane Messier 4/17/00
Claimant's Exhibit 19:	Notice from Bill Breslin 4/17/00
Claimant's Exhibit 20:	Time cards
Claimant's Exhibit 21:	Compass Newsletter
Claimant's Exhibit 22:	Work Rules 5/31/96
Claimant's Exhibit 23:	Day in Court notice
Claimant's Exhibit 24:	Pictures
Claimant's Exhibit 25:	Letter dated 9/17/97
Claimant's Exhibit 26:	Canteen Vending Notice 9/22/97
Claimant's Exhibit 27:	Memo from Tom McGrath 9/27/97
Claimant's Exhibit 28:	Grievance No. G-21-97
Claimant's Exhibit 29:	Edward Bluto disciplinary write-up
Claimant's Exhibit 30:	Grievance No G-22-97 (10/31/97)
Claimant's Exhibit 31:	Undated letter from Ed Bluto to Gary Green
Claimant's Exhibit 32:	Bluto to Green letter 2/28/00
Claimant's Exhibit 33:	Bluto to Breslin letter 3/7/00
Claimant's Exhibit 34:	Grievance No. G-12-00
Claimant's Exhibit 35:	Bluto to Compass CEO letter 12/21/00

Defendants' Exhibit A:	Rescission Notice 11/19/97
Defendants' Exhibit B:	Letter from Chris Ashcroft 2/1/00
Defendants' Exhibit C:	Letter from Ashcroft 2/21/00
Defendants' Exhibit D:	Letter from Gary Green 3/3/00
Defendants' Exhibit E:	Letter from Bill Breslin 3/6/00
Defendants' Exhibit F:	Undated letter from Breslin
Defendants' Exhibit G:	Open Communication Policy 11/1/00
Defendants' Exhibit H:	Open Communication Policy 9/1/96
Defendants' Exhibit I:	Grievance Denial 12/21/01
Defendants' Exhibit J:	Bluto Grievance 1/10/01
Defendants' Exhibit K:	Letter from Bailey 1/12/01
Defendants' Exhibit L:	Arbitration decision 6/14/01
Defendants' Exhibit M:	Curriculum vitae of Albert Drukteinis. M.D., J.D.

FINDINGS OF FACT:

1. The facts in the stipulation are accepted as true and the exhibits are admitted into evidence.

2. Claimant is an intelligent, articulate advocate for himself. He began working for the defendant on May 19, 1977 and worked there continuously until February 21, 2001. He has been active in his union and for a period of time worked as the Teamsters statewide representative.

¹ Also referred to as Zurich Exhibits

3. Claimant is a proud man with a strong work ethic. He is a conscientious, honest worker with an excellent attendance record.
4. In September of 1997 the claimant's supervisor asked him to pick up plastic trays at IBM. When the claimant learned from a coworker that the items did not belong to Canteen Vending, he was concerned that he would be accused of theft. He also learned that other items had been taken from IBM, including a desk chair, stapler and rolls of plastic.
5. Because it was his supervisor who had asked him to take the item, claimant could not complain to him. Because claimant believed that the manager above his supervisor was aware that items from IBM had been taken in the past, he did not report the theft to him. And because he had a feeling of bad blood from a past union experience with the manager at the next step in the hierarchy, claimant did not believe he could complain to him. In short, claimant did not feel that he could report the incident to anyone at Canteen Vending. To protect his integrity and avoid a false accusation, claimant reported directly to IBM security that his supervisor had asked him to steal.
6. IBM was Canteen's largest customer in Vermont.
7. Because IBM has a security camera, claimant was concerned that he could have been filmed and charged with taking items from that plant. However, he was never charged or accused of theft.
8. Eventually it was confirmed that an office chair, pallet jack and some rolls of plastic had also been taken from IBM. The items were returned and supervisor disciplined, but not fired. IBM took no further interest in the matter.
9. Six weeks after the IBM incident, the claimant received a disciplinary letter for violating Canteen Vending's open communication policy by reporting a theft to IBM security and not to the managers within Canteen Vending. The policy set out an internal procedure through which an employee was to report concerns—first to the immediate supervisor, or to the next higher level if one were uncomfortable with the supervisor, then to the third level of supervisor and up the chain of command to the Regional Vice President or Compass Human Resource Manager.
10. In the claimant's opinion, management violated Canteen's strict policies on honesty and security.
11. Claimant filed a grievance based on the disciplinary letter. To put the matter to rest, the management rescinded the disciplinary letter. Claimant remained dissatisfied because he did not receive the apology he was seeking.

12. Claimant thought Dave Cross, the supervisor who instructed him to remove the trays from IBM, should have been fired. He was not. Claimant and his colleagues filed a grievance seeking the supervisor's termination, but that grievance was not taken to arbitration and Cross retained his job, although he had been disciplined.
13. On October 30, 1997 claimant was seen at the Immediate Care Health Center for low back pain. At that visit he reported "extensive stress and concern about work situation causing tension and shaking extremities."
14. Claimant and his coworker friends were angry that Cross still had his job. They often discussed the September IBM incident and management's failure to fire Cross.
15. In January 1998 the claimant spoke with John McDonald, Division President who was in Vermont visiting accounts. McDonald told the claimant he would rather "be punched in the face than hear rumors" and asked the claimant what was going on. He did not speak in a threatening way. Claimant did not seem threatened at the time. McDonald attempted to discuss the rumors circulating in the plant and hoped to put the claimant's concerns to rest.
16. Also in January 1998 the claimant had a conversation with Robert Kelly, regional vice president for Canteen/Compass Group, and one who had known the claimant since 1986, for a short time as his supervisor. Kelly asked the claimant to set aside issues for the good of the branch. No threats were made at that meeting.
17. Claimant now alleges that the conversations with both Kelly and McDonald in January of 1998 were sources of mental stress.
18. From late January 1998 through September 23, 1999 claimant continued to work under conditions he described as "ok" and routine with the exception of a separate work-related injury. That injury was one to his shoulder sustained on August 31, 1999 and for which the claimant has had surgery. It was an accepted worker's compensation claim.
19. On September 23, 1999 a memorandum was sent to all employees regarding a time card policy. At that time, the claimant had been totaling his time and signing his time card as required.

20. In late September or early October 1999 a new supervisor approached the claimant about another employee's erroneous time card indicating the employee had worked more hours than he actually worked. Claimant thought the supervisor was unfairly accusing the employee of stealing when the time card error was probably only an innocent mistake. Thereafter, the claimant refused to follow the required time card procedure.
21. Pursuant to the contract, claimant received the lowest level of discipline for his refusal to follow the time card procedure. He grieved the disciplinary measure. When he continued to refuse to sign the time cards, he was disciplined again. And again he filed a grievance. At the union's request, Compass Group voluntarily withdrew the discipline.
22. While other employees may have inadvertently failed to sign or total the hours on their time cards, none except the claimant make a conscious and vocal decision not to comply with the procedural requirement.
23. Claimant wrote a 6-page undated letter to Gary Green, Compass Group CEO, with multiple complaints including, but not limited to, the union history, 1997 IBM incident, failure to fire his supervisor, the disciplinary letters he received, the January 1998 meeting with Jack McDonald that claimant described as threatening and his having been singled out for harassment. In the letter claimant said he would form an informational picket at IBM and invite the press if McDonald did not respond to the letter.
24. By letter to the claimant dated February 1, 2000, Chris Ashcroft, Vice President for Human Services at the Compass Group, promised an investigation. By letter to the claimant on February 21, 2000, Ashcroft reported the results of the investigation. He found no wrongdoing, thanked the claimant for bringing concerns to the CEO and stated, "it is important that you do not contact any client, the press, or arrange an informational picket as mentioned in your earlier letter."
25. Claimant remained dissatisfied and again wrote to Gary Greene with concerns that the investigation did not address the problem. He faulted the company for not firing the supervisor who asked him to steal and for disciplining him for violating the time card policy. Overall, he described the situation as stressful. Mr. Green responded on March 3, 2000 by stating that the conclusions from the investigation were satisfactory and that he would take no further action.
26. Claimant again threatened an informational picket. The company responded by involving its labor relation's manager, Bill Breslin.

27. Claimant also sought assistance from his union which asked that the harassment claimant perceived cease and desist. The company agreed, “no employee shall be subject to any form of harassment by any other personnel.” And in his letter, Breslin apologized for “any misperception of my remarks....” Claimant was not satisfied with the response.
28. In November 2000 the Compass Group instituted a new Open Communications Policy, promulgated as part of a company wide reevaluation of all company policies and procedures and applicable to the approximately 96,000 company employees in North America.
29. Claimant interpreted the new communications policy as a gag order meant to keep him quiet about his story.
30. On February 13, 2001 claimant left work alleging work-related mental stress. No specific incident arose at that time.
31. Claimant has contacted IBM, the Essex Police Department, the Vermont State Police, the Vermont Attorney General’s Office, Vermont state legislators, Congressman Sanders Office, The US Olympic Committee and ABC news about his perceived work stress, particularly the September 1997 IBM incident.
32. On February 16, 2001 Mr. Wood diagnosed depression and anxiety secondary to conflicts at work, which the claimant dated back to the September 1997 IBM incident. Claimant reported that he left work on February 13, 2001 because he was thinking about the problem all the time, and he requested a leave of absence. Wood documented the claimant’s feelings that had been blamed, threatened and unsupported. He noted the claimant had significant emotional distress leading to difficulties with concentration and concluded as a result that the claimant was “unable to function in his job at Canteen Vending, processing accurate orders in the warehouse.”
33. On February 23, 2001 the claimant started seeing his primary care physician, Dr. Hobbs, who prescribed medication for anxiety and acid reflux. Beginning with that February 2001 visit, the claimant spoke with Dr. Hobbs at some length about his emotional distress and the work incident that claimant believed left him in a state of conflict and confusion.
34. On March 26, 2001 the claimant told Mr. Wood that he was not interested in continuing counseling. Nevertheless, he had a few more sessions.

35. On May 29, 2001 the claimant reported to Mr. Wood that he had stopped taking the Prozac Dr. Hobbs had prescribed for him. He also reported increased stress “when triggered by as events associated with his ongoing problems with Canteen Vending.” Mr. Wood noted that the claimant “seems to understand that his maladaptive thinking, including personalizing and catastrophizing, contributes to his level of stress.”
36. At a session on June 12, 2001 Mr. Wood restated his diagnosis of Adjustment Disorder with Mixed Anxiety and Depressed Mood. He noted that the claimant continued to “experience both emotional and physiological symptoms of stress triggered by events associated with his ongoing problems with Canteen Vending.” Yet, the claimant’s insight and judgment were assessed as good and there was no evidence of perceptual disturbances.
37. On July 9, 2001, the last scheduled appointment, Mr. Wood reported that the claimant intended to pursue treatment for his shoulder injury and “[t]hereafter he will make a decision about his return to work.” Mr. Wood’s assessment of the claimant’s condition was recorded as follows:

Mr. Bluto seems to be experiencing ongoing symptoms of stress associated with his conflict with his employer, Canteen Vending. He feels frustrated, discouraged, and anxious about his future. Although he seems to be able to effectively manage his symptoms at home, when he is faced with the prospect of returning to work, he has more difficulty. It will be important for him to continue to challenge any maladaptive thinking and practice effective coping strategies so that he can better manage his symptomatology when he does return to work. Clinically his diagnosis remains the same: Adjustment Disorder with Mixed Anxiety and Depressed Mood.

38. At the defendant’s request, the claimant had an examination by Dr. Albert Drukteinis on September 4, 2001. Dr. Drukteinis noted that the claimant had no prior history of psychiatric illness or treatment. He noted that the claimant was having difficulty managing routine affairs and at times “may feel immobilized, withdrawn, and without energy for life.” He concluded that paranoid features dominated his profile. But he also concluded “whether his claims are accurate is ultimately a factual matter which cannot be psychiatrically determined.”

39. Claimant and his union grieved the Open Communications Policy, a grievance that led to arbitration on May 31, 2001. The arbitrator held that the policy was fair, reasonable and clearly within the power of the company to make. He found no evidence that it was a gag order or unreasonable.
40. On February 14, 2001 at his manager's urging, claimant went to the Occupational Health Service where he spoke with Doris Raymond. Ms. Raymond identified the problem of "multiple occupational stressors." He was then referred to C. Tyler Wood, M.S., L.C.M.H.C., a clinical mental health counselor.
41. Although the claimant was advised to look for work, he made only one trip to the unemployment office in the summer of 2001.

CONCLUSIONS OF LAW:

1. In workers' compensation cases, the claimant has the burden of establishing all facts essential to the rights asserted. *Goodwin v. Fairbanks*, 123 Vt. 161 (1963). The claimant must establish by sufficient credible evidence the character and extent of the injury and disability as well as the causal connection between the injury and the employment. *Egbert v. Book Press*, 144 Vt. 367 (1984).
2. There must be created in the mind of the trier of fact something more than a possibility, suspicion or surmise that the incidents complained of were the cause of the injury and the inference from the facts proved must be the more probable hypothesis. *Burton v. Holden & Martin Lumber Co.*, 112 Vt. 17 (1941).
3. This claim is based on the claimant's contention that the stress at work caused a mental injury that disables him from working, a so-called "mental-mental" claim. To recover for a work-related mental-mental injury, a claimant in Vermont must first demonstrate that the stresses in the workplace are significant and objectively real. *Gordon Little v. IBM*, Opinion No. 13-97WC (June 30, 1997); *Filion v. Springfield Electroplating*, Opinion No. 29-96WC (May 16, 1996). Second, the claimant must show that his illness is actually a product of unusual or extraordinary stresses. *Bedini v. Frost*, 165 Vt. 167 (1996); *Crosby v. City of Burlington*, Opinion No. 43-99WC (Dec. 3, 1999).
4. Stress from bona fide personnel actions, such as transfers or disciplinary actions, is not compensable. See, *Wilson v. Quechee Landowners Assoc.*, 9-87WC (Nov. 4, 1987); *Crosby*, Opinion No. 43-99WC.

5. The 1997 IBM theft incident was significant and objectively real. Although the employer attempts to minimize the event, claimant indeed was asked to steal and suffered some emotional distress as a result. However, that distress did not disable him as demonstrated by his continual work until February of 2001.
6. The gravamen of the claimant's complaint is that as a result of his reporting the incident to IBM security, "management" created a stressful work environment that ultimately led to his leaving the job he held for more than twenty years.
7. Although the initial incident was an objectively real stressor, the events that followed were not. Contrary to the claimant's assertions, there is nothing about the time card incident to connect the supervisor's discipline of the claimant to the 1997 incident. Nor is there objective evidence that the 1998 conversations with McDonald and Kelly were objectively stressful and linked to the 1997 incident in anyone's mind than the claimant's.
8. The atmosphere the claimant claims was stressful was in large part of his own making. When the employer failed to follow his solution, for example to fire the supervisor who had him steal, he became angry and persisted with a letter writing campaign. Yet he was still able to work. Not until sometime after the timecard incident did he feel that working was no longer possible. And even that incident, which is based on the claimant's subjective perception of a legitimate personnel action, preceded his departure from work by several months.
9. Because the claimant's subjective perceptions, and not objective stressors, form the basis for his psychological condition, this claim is not compensable.
10. Finally, the records are clear that the claimant, not health care providers, determined that he should not work. Therefore, even if this claim were compensable, he would not be entitled to temporary total disability benefits, because he has not proven that he is disabled from working.
11. Given the conclusion in this case, it is not necessary to address the dispute between the carriers.

ORDER:

THEREFORE, based on the Foregoing Findings of Fact and Conclusions of Law, this claim is DENIED.

Dated at Montpelier, Vermont this 25th day of February 2002.

R. Tasha Wallis
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.