BRB No. 96-1256

PATRICIA L. SEWELL Claimant-Petitioner v. NONCOMMISSIONED OFFICERS' OPEN MESS, McCHORD AIR FORCE BASE and AIR FORCE CENTRAL WELFARE FUND Employer/Carrier-Respondents	)	DATE ISSUED: _____ DECISION and ORDER

Appeal of the Decision and Order After Remand—Denying Benefits of Edward C. Burch, Administrative Law Judge, United States Department of Labor.

Patricia L. Sewell, Gig Harbor, Washington, *pro se*.

Roy H. Leonard, Office of Legal Counsel Air Force, MWR & Services Agency, San Antonio, Texas, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

SMITH, Administrative Appeals Judge:

Claimant, without the assistance of counsel, appeals the Decision and Order After Remand—Denying Benefits (88-LHC-2166) of Administrative Law Judge Edward C. Burch rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.,* as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *et seq.* (the Act). As claimant appeals without the representation by counsel, we will review the administrative law judge's findings of fact and conclusions of law to determine whether they are supported by substantial evidence, are rational, and are in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3); 20 C.F.R. §§802.211(e), 802.220.

This is the second time this case is before the Board. To recapitulate the facts, claimant worked as a civilian bartender for the Noncommissioned Officers' Open Mess Club at McChord Air Force Base in Tacoma, Washington from 1976 until May 15, 1986. In August 1985, Sgt. Edward Padilla became claimant's supervisor. Sgt. Padilla, who had a more aggressive management style than claimant's former supervisor, found serious problems with claimant's job performance. Claimant was ultimately terminated from her position effective May 15, 1986, for various personnel infractions. In 1987, Dr. Matheson, claimant's treating psychologist, diagnosed claimant with major depression, caused, to the greatest extent, by her work stressors. Claimant filed a claim under the Act alleging that she suffers from stress-related psychiatric problems as a result of poor working conditions and, in particular, stress associated with problems with her supervisor.

In his initial Decision and Order, the administrative law judge, relying on the holding of *Marino v. Navy Exchange*, 20 BRBS 166 (1988), noted that while there is medical evidence that claimant may have a psychological condition, claimant failed to establish her *prima facie* case under Section 20(a) of the Act, 33 U.S.C. §920(a), because employer's legitimate actions in disciplining and terminating claimant do not constitute working conditions which can form the basis for a compensable claim. Thus, the administrative law judge denied the claim.

On appeal, the Board held that, although the administrative law judge properly determined that, pursuant to *Marino,* a legitimate personnel action does not provide a proper basis for finding a compensable psychological injury, the administrative law judge failed to consider relevant evidence in finding that claimant failed to establish her *prima facie* case; specifically, the Board noted the testimony of Reverend Oscar Tillman, a former patron of the bar, and Donald Burrell, a former duty manager of the club, as well as claimant's testimony that Sgt. Padilla harassed, intimidated, and on one occasion, struck her. Thus, the Board vacated the administrative law judge's decision and remanded the case for reconsideration of whether claimant was entitled to invocation of the Section 20(a) presumption in light of all the evidence of record. On remand, the Board directed the administrative law judge to consider whether, irrespective of the disciplinary and termination procedures, the cumulative stress of claimant's general working conditions could have caused claimant's psychological injury. *See Sewell v. Noncommissioned Officers' Open Mess, McChord Air Force Base*, BRB No. 89-1075 (July 27, 1995) (unpublished).

In his decision on remand, the administrative law judge found that claimant's testimony, as well as the testimony of Messrs. Tillman and Burell, did not establish that working conditions existed which could give rise to claimant's psychological condition. The administrative law judge concluded that the record did not support the contention that the cumulative stress of claimant's general working conditions gave rise to claimant's psychological injuries, stating that the stresses involved in bartending at the club were not outside the realm of ordinary work place experiences. Accordingly, the administrative law judge reaffirmed his conclusion that claimant failed to establish her *prima facie* case, and thus denied claimant's claim for benefits.

On appeal, claimant, representing herself, challenges the administrative law judge's denial of her claim. Employer has responded by filing a motion to dismiss claimant's appeal for failure to file a Petition for Review and brief. This motion was denied by the Board in an Order dated August 29, 1996.

A psychological impairment which is work-related is compensable under the Act. *Sanders v. Alabama Dry Dock & Shipbuilding Co.*, 22 BRBS 340 (1989); *Turner v. Chesapeake & Potomac Telephone Co.*, 16 BRBS 255 (1984)(Ramsey, C.J., dissenting on other grounds). Furthermore, the Section 20(a) presumption is applicable in psychological injury cases. *Cotton v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 380, 384 n.2 (1990). In order to be entitled to the Section 20(a) presumption, however, claimant must establish a *prima facie* case by showing that she suffered a harm and that either a work-related accident occurred or that working conditions existed which could have caused or aggravated the harm.[1] *See Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1990); *Perry v. Carolina Shipping Co.*, 20 BRBS 90 (1987). Claimant's psychological injury need only be due in part to work-related conditions to be compensable under the Act. *See Peterson v. General Dynamics Corp.*, 25 BRBS 78 (1991), *aff'd sub nom. Ins. Co. of North America v. U.S. Dept. of Labor, OWCP*, 969 F.2d 1400, 26 BRBS 14 (CRT)(2d Cir. 1992), *cert. denied*, 113 S.Ct. 1253 (1993). For the reasons that follow, we reverse the administrative law judge's determination that claimant failed to establish her *prima facie* case.

Our analysis begins with a discussion of *Marino*. In *Marino*, the Board held that a psychological injury resulting solely from a termination of employment is not compensable under the Act, stating:

> A legitimate personnel action or termination is not the type of activity intended to give rise to a workers' compensation claim. To hold otherwise would unfairly hinder employer in making legitimate personnel decisions and in conducting business. Employer must be able to make decisions regarding layoffs without the concern that it will involve workmen's compensation remedies. If the reduction-in-force was improper, claimant has other remedies.

Marino, 20 BRBS at 168. Nevertheless, drawing a distinction between legitimate personnel actions and work-related cumulative stress, the Board in *Marino* remanded the case for the administrative law judge to address the claimant's allegation that his injury was due as well

[1]It is undisputed that claimant established the first prong of her *prima facie* case, *i.e.*, the existence of a harm, as the uncontroverted medical evidence establishes that she suffers from a psychological condition, depression.

to work-related cumulative stress from supervising a number of locations, insufficient personnel to perform the job, working more than required hours, and performing the duties of subordinates. *Id.* On remand, the administrative law judge awarded the claimant benefits on this theory, finding that the claimant's general working conditions were a cause of his psychological injury. This decision was affirmed by the Board on appeal. *Marino v. Navy Exchange*, BRB No. 88-1720 (Dec. 12, 1990)(unpublished).

Thus, it is axiomatic that a psychological injury caused or aggravated by work-related cumulative stress is compensable under the Act. *See, e.g., American Nat'l Red Cross v. Hagen*, 327 F.2d 559 (7th Cir. 1964); *Konno v. Young Brothers, Ltd.*, 28 BRBS 57 (1994); *Cairns v. Matson Terminals, Inc.,* 21 BRBS 252 (1988). The "working conditions" prong of a *prima facie* case necessary to invoke Section 20(a) requires that the administrative law judge determine whether the employment events claimed as a cause of the harm sustained by claimant in fact occurred. *See U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). In a case involving allegations of stressful working conditions, moreover, contrary to the administrative law judge's conclusion, claimant is not required to show unusually stressful conditions in order to establish a *prima facie* case; rather, even where stress may seem relatively mild, claimant may recover if an injury results. *See Konno*, 28 BRBS at 61. *See generally Wheatley v. Adler*, 407 U.S. 307 (D.C. Cir. 1968); **1B Larson, Workmen's Compensation Law,** §42.25(f), (g) (1996). The issue in such situations is the effect of this stress on claimant. *Id.*

With these principles in mind, we turn to the facts of the instant case as determined by the administrative law judge. On remand, the administrative law judge found the testimony of Rev. Tillman and Mr. Burrell unpersuasive regarding the existence of working conditions which could have caused claimant's harm. Specifically, the administrative law judge found that Rev. Tillman's testimony that claimant became moody and depressed after Sgt. Padilla became her supervisor did not support a causal connection between claimant's harm and her employment. Rev. Tillman also testified that he observed Sgt. Padilla in an angry mood, walking over to the bar when claimant was working and throwing things around. Tr. at 13. The administrative law judge determined that since claimant had a number of work infractions filed against her, *see* Emp. Ex. 5 at 39; Emp. Ex. 6,[2] these actions did not necessarily mean that Sgt. Padilla was treating her inappropriately. In addition, the administrative law judge accepted the testimony of Rev. Tillman that Sgt. Padilla used an angry tone with claimant, but concluded that due to the personnel grievance against claimant this tone may well have been justified. The administrative law judge also determined that Sgt. Padilla's statement to Rev. Tillman "I've got that bitch," *see* Tr. at 13, did not mean that Sgt. Padilla was intimidating or harassing claimant, as this remark was made to Rev. Tillman, not claimant. The administrative law judge similarly

[2]Claimant had allegedly failed to comply with numerous club directives regarding tardiness, proper work appearance, failure to request sick leave, and shortages of inventory. *See* Emp. Ex. 6.

found that Mr. Burrell's testimony that "the whole place was in an uproar" after Sgt. Padilla's arrival did not support the contention that working conditions existed which could give rise to claimant's psychological injury. *See* Decision and Order at 4.

Lastly, the administrative law judge gave little weight to claimant's testimony of harassment, stating that she did not provide concrete examples of how Sgt. Padilla harassed and intimidated her. In this regard, the administrative law judge found that Sgt. Padilla's accusations that claimant improperly cashed checks, stole from the club, and used drugs were all legitimate concerns of a supervisor. Moreover, the administrative law judge discredited claimant's assertion that Sgt. Padilla hit her, and accepted Sgt. Padilla's version of the incident that he merely touched her shoulder. Since both accounts concurred that claimant responded by saying, "Don't you ever touch me again," *see* Tr. at 69, 152, the administrative law judge stated that claimant would not have reacted so calmly if Sgt. Padilla had actually hit her. Based upon the foregoing, the administrative law judge found that the evidence of record failed to establish that claimant's overall working conditions were so stressful, even cumulatively, that they gave rise to her psychological injury, and concluded that the stresses involved in bartending at the club were not outside the realm of ordinary work place experiences. Instead, the administrative law judge found that the club experienced a natural transition with the new management. Thus, the administrative law judge concluded that claimant failed to establish her *prima facie* case.

In reviewing the administrative law judge's analysis of the evidence on remand, it is clear that the administrative law judge considered whether employer's daily interactions with claimant, including Sgt. Padilla's treatment of her, were legitimate or justified. However, when considering a claim based on stressful work conditions, the issue is not whether employer's actions were justified but whether, irrespective of the disciplinary and termination procedures, claimant's working conditions were stressful, *i.e.*, whether claimant experienced cumulative stress in her general working conditions which could have caused or aggravated her psychological injury.

In this regard, the uncontradicted medical evidence attributes claimant's psychological condition to stress at work. In her July 23, 1987 report, Dr. Matheson, claimant's treating psychologist, diagnosed claimant with major depression,[3] caused, "to the greatest extent," by claimant's work stressors.[4] *See* Matheson Depo., at Ex. 2; *see also*

[3]In contrast to her depression following the work events at issue here, a psychological evaluation prior to Sgt. Padilla's arrival found no similar problems. In a 1984 report, Dr. Sutherland, a psychologist who examined claimant after an automobile accident, administered the Minnesota Multiphasic Personality Inventory. He concluded that her profile was within normal limits except for a need to be liked or accepted. Emp. Ex. 8.

[4]In her letter dated July 23, 1987, and in her deposition testimony, Dr. Matheson related claimant's feelings that she was being harassed at work. Claimant felt she was falsely accused of stealing from the bar and stealing cigarettes; she was questioned about the content of liquor in the drinks she served; she became violently ill at work one day and

Matheson Depo. at 6-8, 18. Dr. Strait, who treated claimant for hypertension, stated in his July 28, 1986 report that claimant is “a delightful lady who has been under a great deal of pressure recently working as a bartender. She feels the stress is so bad she is about to explode and with this she has had some anterior chest pain without a particular radiation.” Emp. Ex. 10. Significantly, there is no contrary medical opinion. Thus, the administrative law judge’s conclusion that "the record does not support the contention that [work] was so stressful, even cumulatively, that it gave rise to psychological injuries," Decision and Order at 5, is not supported by the medical evidence; in fact, it is directly contrary to the uncontroverted medical evidence. Accordingly, this conclusion is simply not supported by substantial evidence .

The administrative law judge’s concluding paragraph in his Decision and Order also states that "the evidence of record fails to establish that the stresses involved in bartending at the club were outside the realm of ordinary work experiences." Decision and Order at 5. This statement, coupled with the language quoted above regarding work being "so stressful," indicates that the administrative law judge required a showing of more than ordinary stress in order to establish the "working conditions" element. As we have discussed, this is not the correct standard. The evidence, including the testimony of Sgt. Padilla whom the administrative law judge credited, supports the conclusion that working conditions for claimant were stressful, and this demonstration of stress is sufficient to invoke the presumption. Sgt. Padilla testified that when he and his supervisor, William Mitchell, arrived, they instituted a new policy whereby the amount of liquor per drink was decreased, and doubles were eliminated. The bartenders came under closer scrutiny as every bartender was inventoried with greater frequency. Tr. at 141-144. Sgt. Padilla testified that claimant’s beverage inventory was often short, and that her over-pouring constituted “thievery to the company.” *Id*. at 145-146. Sgt. Padilla also accused claimant of poor cash handling procedures, *id.* at 147, and counseled her on her appearance at work. *Id.* at 148-149. Ultimately, Sgt. Padilla referred claimant for alcohol rehabilitation because of the deterioration in her work. *Id*. at 149-150. While all of these actions arose from changes in management policies due to legitimate business concerns, as the administrative law judge found, the question is whether claimant experienced stress in working under these conditions.

Other interactions between claimant and Sgt. Padilla, which the administrative law judge discounted as justifiable, were also clearly stressful. When considering whether Sgt.

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believed she was poisoned by employer, and was then ordered to undergo alcohol and drug treatment. Matheson Depo. at 6-9, 18. Dr. Matheson opined that claimant’s major depression resulted, to the greatest extent, from work-related stress, in addition to family and financial problems. *See* Matheson Depo., Ex. 2.

Padilla struck claimant, the administrative law judge accepted Sgt. Padilla's testimony that he did not hit claimant but, rather, put his hand on her shoulder. According to Sgt. Padilla, he put his hand on top of claimant's shoulder "as a gesture to get a . . . look at the bank." *Id.* at 152. The administrative law judge accepted the accounts given by Sgt. Padilla and claimant that claimant's response to Sgt. Padilla was the statement, "Don't you ever put your hands on me again." *Id.* at 69, 152. The administrative law judge found that this reaction would be a logical reaction to Sgt. Padilla's putting his hand on her shoulder, not to being struck by Sgt. Padilla, and thus discounted this incident as evidence of claimant's work-related stress. Accepting the fact that Sgt. Padilla "only" put his hand on claimant's shoulder and did not hit her, the issue, when considering whether work-stress caused claimant's psychological injury, is not merely the act itself but the effect it had on claimant. *See Konno*, 28 BRBS at 61. Claimant's statement does not support the conclusion that she reacted "calmly" to this incident; rather, at the least, this contact was unwelcome. Similarly, the administrative law judge did not discredit Mr. Burrell, but discounted his testimony, stating that the "fact that Rev. Tillman observed Sgt. Padilla become angry with claimant does not mean he was treating her inappropriately." Decision and Order at 3. Aside from whether claimant's supervisor's using an "angry tone" to her in front of her customers or placing his hand on her shoulder are actually justifiable, such interactions are undoubtedly stressful.

In sum, the overwhelming evidence here is that the cumulative effect of claimant's working conditions, irrespective of the justified disciplinary and termination procedures, resulted in stress which could have caused or aggravated claimant's psychological injury. Invocation of Section 20(a) involves determining whether events in the course of employment alleged by claimant as the cause of an injury in fact occurred. In this case, claimant alleged stressful working conditions and the evidence credited by the administrative law judge establishes that stressful conditions existed. While employer's action in placing its bartenders under greater scrutiny may have been well-justified by business considerations, this change created stressful working conditions. More significantly, specific instances, including Sgt. Padilla's use of an angry tone with claimant in the presence of bar patrons, as well as his unwelcome touching of claimant, clearly were stressful. The administrative law judge did not find these events, which were the basis for claimant's claim, did not occur. As these incidents involve day-to-day working conditions rather than personnel actions, such as the disciplinary and termination proceedings, they can establish working conditions sufficient to demonstrate a *prima facie* case. *See Marino*, 20 BRBS at 168. Moreover, in the opinion of claimant's treating psychologist, claimant's work-related stress contributed greatly to her major depression. Based on the foregoing, it is clear that the administrative law judge's findings regarding the working atmosphere at employer's facility mandate a conclusion that the working conditions element necessary to establish claimant's *prima facie* case is established. We therefore reverse the administrative law judge's finding on this issue, and we hold that claimant is entitled to invocation of the presumption at Section 20(a) of the Act. *See, e.g. Konno*, 28 BRBS at 60-61.

Once the Section 20(a) presumption is invoked, the burden shifts to employer to

rebut the presumption with substantial evidence that claimant's condition is not caused or aggravated by her employment. *See Bridier v. Alabama Dry Dock & Shipbuilding Corp.*, 29 BRBS 84 (1995); *Sam v. Loffland Bros.*, 19 BRBS 288 (1987). It is employer's burden on rebuttal to present specific and comprehensive evidence sufficient to sever the causal connection between the injury and the employment. *See Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976). If the administrative law judge finds that the Section 20(a) presumption is rebutted, the administrative law judge must weigh all of the evidence and resolve the causation issue on the record as a whole. *Devine v. Atlantic Container Lines, G.I.E.,* 23 BRBS 279 (1990).

In the instant case, there is no medical evidence in the record suggesting that claimant's psychological condition is not related, at least in part, to her work environment.[5] Accordingly, we hold that employer did not rebut the Section 20(a) presumption, and that claimant's psychological injury is work-related as a matter of law. *See, e.g., Manship v. Norfolk & Western Railway Co.*, 30 BRBS 175 (1996); *Bass v. Broadway Maintenance*, 28 BRBS 11 (1994); *see generally ITO Corp. v. Director, OWCP*, 883 F.2d 422, 22 BRBS 126 (CRT) (5th Cir. 1989). The case must therefore be remanded for the administrative law judge to address the nature and extent of claimant's disability and any other remaining issues.

Accordingly, the administrative law judge's finding that claimant's psychological condition is not work-related is reversed, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

I concur:

BETTY JEAN HALL, Chief
Administrative Appeals Judge

McGRANERY, Administrative Appeals Judge, dissenting:

I respectfully dissent from the majority's decision to reverse the administrative law judge's Decision and Order denying benefits. The Board has previously remanded this case, directing the administrative law judge's attention to specific evidence in the record

[5]Drs. Puracal and Rochat did not comment on the etiology of claimant's psychological condition. Emp. Exs. 7-9.

and instructing him to determine whether "irrespective of the disciplinary and termination procedures, the cumulative stress of claimant's general working conditions could have caused claimant's psychological injury." *Sewell v. Noncommissioned Officers' Open Mess, McChord Air Force Base*, BRB No. 89-1075 (July 27, 1995)(unpublished).

On remand, the administrative law judge fully complied with the Board's order. He considered the evidence to which the Board had directed him and he determined that it did not demonstrate stressful working conditions, rather, that the stress which claimant suffered was due to the termination of her employment and disciplinary actions which were justifiable personnel actions. *See* Decision and Order After Remand — Denying Benefits at 2-3. Applying *Marino v. Navy Exchange*, 20 BRBS 166, 168 (1988), the administrative law judge denied benefits. In *Marino*, the Board held:

> A legitimate personnel action or termination is not the type of activity intended to give rise to a worker's compensation claim. To hold otherwise would unfairly hinder employer in making legitimate personnel decisions and in conducting its business. Employer must be able to make decisions regarding layoffs without the concern that it will involve workmen's compensation remedies. If the reduction-in-force was improper, claimant has other remedies.

Marino, 20 BRBS at 168. *Accord Chaukalos v. North Dakota Worker's Compensation Bureau*, 427 N.W. 2d 344 (N.D. 1988).

I believe that in reversing the administrative law judge's decision the majority has contravened its statutory mandate: "The findings of fact in the decision under review by the Board shall be conclusive if supported by substantial evidence in the record considered as a whole." 33 U.S.C. §921(b)(3). The majority has substituted its own interpretation of the evidence for that of the administrative law judge, even though credibility determinations are committed to the discretion of the administrative law judge. *U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982).

The majority has taken out of context statements which the administrative law judge made and has indicated that the administrative law judge denied benefits because claimant failed to prove that her working conditions were unusually stressful. That is not accurate. The administrative law judge held that claimant suffered a work-related, psychological injury, but that it was not compensable because it was due to the termination of her job, criticisms of performance, and disciplinary actions, all of which were justifiable personnel actions under *Marino*, and that her stress was not caused by other working conditions. The administrative law judge marshaled substantial evidence to support this conclusion:

> When Sgt. Padilla arrived at McChord, he implemented stricter policies and more frequent inventories in order to reduce costs. (Trial Transcript ("TT") at 163, 167). It is documented in the record that claimant had difficulty adapting to the new system. She often refused to follow published guidelines. She

> was repeatedly reprimanded for: cashing her own personal checks; following improper closing procedures; and, careless handling and security of the clubs cash assets. (Employer's Exhibit (EX) 6). She also had problems with cash shortages, overages and unauthorized absences. (EX 6). Employer attempted to counsel claimant, however, she was generally uncooperative and non-responsive. (EX 6). In addition, the termination package outlines her progressive deterioration in the position over a period of years, beginning in 1980. (EX 5, 6).

Decision and Order After Remand — Denying Benefits at 2.

Moreover, claimant's psychologist testified that claimant's depression was caused primarily by the termination of her employment. Matheson Depo. at 6. Finally, all of claimant's complaints of stress relate to her interaction with her supervisor. The administrative law judge recognized that this interaction was extremely unpleasant, but, given claimant's poor work performance, the administrative law judge did not consider Sgt. Padilla's statements to claimant unjustified, even if said in an angry tone. *See* Decision and Order After Remand - Denying Benefits at 3. The majority clearly disagrees with the administrative law judge's determinations and exceeds its authority in rejecting his findings. *See U.S. Industries/Federal Sheet Metal,* 455 U.S. at 608, 14 BRBS at 631.

The majority's decision blurs the distinction which the administrative law judge made below and which the Board made in *Marino, i.e.,* between stress due to personnel actions (not compensable) and stress due to other working conditions (compensable). The "other working conditions" in *Marino* were: responsibility to "supervis[e] a number of locations, insufficient personnel to perform the job, working more than the required number of hours and performing the duties of subordinates...." *Marino*, 20 BRBS at 168. In the instant case, the majority finds the "other working conditions" to be Sgt. Padilla's change in policy regarding serving alcohol, his criticism of claimant's shortages in inventory, her over-pouring drinks, her appearance at work, his touching claimant's shoulder to get her attention, and his speaking in an angry tone. Unlike the "other working conditions" discussed in *Marino*, all of claimant's stressors are part and parcel of legitimate personnel actions, as the administrative law judge found. If stress due to termination is not compensable, then stress induced by corrective action leading ultimately to termination cannot be compensable. *See generally Crowley v. SAIF Corp.*, 115 Or. App. 460, 839 P.2d 236 (1992). Accordingly, I would affirm the administrative law judge's determination that claimant's psychological injury was caused by legitimate personnel actions and I would affirm his Decision and Order After Remand — Denying Benefits.

REGINA C. McGRANERY
Administrative Appeals Judge