COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Division of Administrative Law Appeals

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**TIMOTHY MANNING**, Fax: (617) 626-7220

*Petitioner* **www.mass.gov/dala**

Docket No: CR-12-325

*v.*

**STATE BOARD OF RETIREMENT,** Date: April 29, 2016

*Respondent*

**Appearance for Petitioner**:

Timothy Manning

3540 Coronado Drive, Apt 504

Sarasota, FL 34231

**Appearance for Respondent**:

Melinda Troy, Esq.

One Winter Street

Boston, MA 02108-4747

**Administrative Magistrate**:

Angela McConney Scheepers, Esq.

**SUMMARY**

The Board’s denial of the Petitioner’s accidental disability retirement application without convening a medical panel is affirmed because he has not articulated a personal injury as defined in Chapter 32.

**DECISION**

Pursuant to G.L. c. 32, § 16(4), the Petitioner, Timothy Manning, appealed the June 13, 2012 decision of the State Board of Retirement (Board) denying his application for accidental disability retirement benefits.

The Petitioner submitted a twenty-six page illegible handwritten Pre-Hearing Memorandum on July 28, 2015. At the Division of Administrative Law Appeals (DALA) hearing on August 5, 2015, I ordered him to resubmit any further memoranda in typewritten form.

The Petitioner submitted a typed Pre-Hearing Memorandum on September 16, 2015, which I marked “A” for identification. I marked the Respondent’s Pre-Hearing Memorandum “B” for identification. I admitted Joint Exhibits 1 – 10 into evidence. The Petitioner testified on his own behalf. The Petitioner submitted a Post Hearing Brief on September 18, 2015. The Respondent submitted a Post-Hearing Brief and two proposed exhibits on September 21, 2015. I marked the proposed exhibits as Exhibits 11 and 12 and closed the administrative record.

**FINDINGS OF FACT**

Based on the documents admitted into evidence and the testimony presented at the hearing, I make the following findings of fact:

1. The Petitioner, Timothy Manning, worked as an Accountant IV/Financial Analyst for the Department of Housing and Community Development (DHCD) from August 17, 2004 until March 16, 2010. (Exhibits 5 and 7; Testimony of Manning.)
2. According to his job description (Form 30), Mr. Manning was responsible for providing financial, administrative and programmatic support to DHCD’s housing programs. (Exhibit 5.)
3. Mr. Manning reported to Ayo Yakubu-Owolewa, the Finance Manager of the Bureau of Housing Management. (Exhibits 3 and 5.)
4. During several months in 2008, Mr. Manning reported to Ms. Yakubu-Owolewa that his calculator was “tampered with.” The calculator was replaced. Mr. Manning reported that he had found a substance on his phone which may have been dirt or spit. He was given cleaning materials. Mr. Manning also reported to Yakubu-Owolewa that he found two dimes on the floor in his cubicle. Mr. Manning did not witness any of these alleged actions. (Exhibit 5.)
5. Although Mr. Manning stated that he did not want any further action, Ms. Yakubu-Owolewa reported his complaints to Human Resources (HR) by notifying Laura Taylor, the Program Director. (Exhibit 5.)
6. Mr. Manning did not report to work on August 24, 2009. On September 21, 2009, he left a voicemail stating that he wanted to file for workers’ compensation. Mr. Manning filed a complaint at DHCD on September 23, 2009, alleging that he was being harassed at work and that he had sought medical attention. He did not provide any medical documents to his employer. At some point, Mr. Manning was granted FMLA leave. (Exhibit 5.)
7. HR commenced an investigation and issued its findings in an October 1, 2009 report. HR interviewed seventeen employees, including Mr. Manning, Ms. Yakubu-Owolewa and Ms. Taylor. The HR report concluded:

... Possible causes of damage to the calculator and telephone or presence of the coins on the floor cannot be determined. The location of Mr. Manning’s cubicle is in an area where employees routinely pass by over the course of the day.

The work environment as consistently described as casual, collegial and professional.

Staff were reminded of the importance in maintaining an environment which is safe and respective [respectful].

No further action is recommended at this time.

(Exhibit 5.)

1. After the investigation, DHCD informed Mr. Manning that his FMLA status would end on November 30, 2009 unless he filed for an extension by December 11, 2009.[[1]](#footnote-1) DHCD deemed that Mr. Manning’s medical documents were incomplete, and on December 15, 2009 placed him on unauthorized leave status. Mr. Manning was further informed that if he failed to provide complete medical documentation by December 31, 2009, a pre-termination hearing would be scheduled. He failed to provide the documentation, and DHCD scheduled a Show Cause hearing for unauthorized absence. At the March 2, 2010 hearing, Mr. Manning appeared and was represented by union counsel. By letter dated March 16, 2010, Mr. Manning was terminated. Mr. Manning filed for Workers’ Compensation. (Exhibit 7.)
2. Mr. Manning treated with Ann V. Nicholson, a registered nurse and clinical specialist for mental health treatment at West Side Behavioral Health on November 24, 2009, December 10 and 18, 2009. Mr. Manning relayed his discomfort at DCHD due to his status as a whistleblower at OCME, but Ms. Nicholson pointed out that Mr. Manning had contributed to some of his recent workplace difficulties. Ms. Nicholson noted that due to his personality qualities, Mr. Manning always found himself in the same particular role in a system. She suggested that his personality traits and factors are primarily responsible for Mr. Manning’s symptoms, not any event or series of events in the workplace. Mr. Manning informed Ms. Nicholson that he wanted an internal transfer within DCHD. Ms. Nicholson concurred. In a January 2010 letter to his attorney, Ms. Nicholson assessed Mr. Manning as being able to return to work at the Commonwealth of Massachusetts, just not in the same department.[[2]](#footnote-2) (Exhibit 6.)
3. On March 15, 2010, Mr. Manning saw Michael Rater, M.D., a psychiatrist, for an Independent Medical Examination (IME) in connection with his Workers’ Compensation claim. Dr. Rater reviewed the medical records from Bruce Ring, M.D., Mr. Manning’s primary care physician at Beth Israel Deaconess and Ms. Nicholson. Mr. Manning informed Dr. Rater that he had been out of work for one year because of the stress caused by his whistleblowing while he was an accountant at the Office of the Chief Medical Examiner back in 2000. Upon Mr. Manning’s return to work, he complained that the same conditions that led to the whistleblowing remained in effect. Mr. Manning related that his complaint led to a reorganization of the OCME, with the elimination of the entire Accounting Department. It was difficult for Mr. Manning to find a new job, but he was offered a lateral position at DHCD. According to Mr. Manning, at DHCD he was kept isolated and had minimal responsibilities, earned significantly less than his OCME salary and believed that he received the cold shoulder due to his previous whistleblowing activity. Mr. Manning asserted that his coworkers tampered and broke his machinery, made comments about him being an informer and left dimes on his chair. Mr. Rater also described that his co-workers gathering outside his cubicle and speak about an “odor” in the vicinity.[[3]](#footnote-3) These alleged actions caused Mr. Manning anxiety and stress and led a nervous breakdown on August 24, 2009.[[4]](#footnote-4) (Exhibit 5.)
4. Mr. Manning also reported depression since the end of July 2009, significant anxiety symptoms and irritability, decreased sleep and his energy level weight fluctuation. He reported that he could not work in any state agency. When Dr. Rater examined Dr. Ring’s medical records, he noticed that Mr. Manning did not mention his job at the May and August 31, 2009 appointments, but his job at the September 22, 2009 appointment in relation to not landing a coveted DCHD job reassignment. On September 30, 2009, Mr. Manning told Dr. Ring that he had to stop work without going into detail. (Exhibit 5.)
5. Dr. Rater diagnosed that Mr. Manning did not have a psychiatric condition causally related to any event or series of events in his workplace. Dr. Rater concluded the medical record did not support that Mr. Manning suffered his earlier medical problems as a result of his whistleblowing activities at the Office of the Chief Medical Examiner, and that his earlier health problems could be attributed to his cardiac sarcoidosis. Cardiac conditions are known to be associated with depression and anxiety. On the other hand, Ms. Nicholson pointed out that due to his personality qualities, Mr. Manning always found himself in the same particular role in a system. Her records suggested that his personality traits and factors are primarily responsible for Mr. Manning’s symptoms, not any event or series of events in the workplace. (*See* Finding of Fact 21; Exhibits 5 and 6.)
6. Dr. Rater opined that Mr. Manning did not have any treatment needs related to any event or series of events directed at him in course of his employment. Although elective and not medically necessary, Mr. Manning could benefit from counseling for anxiety due to his personality and temperament. Based on Mr. Manning’s status at the time of the IME, Mr. Manning was able to function in his daily life and take care of his responsibilities. (Exhibit 5.)
7. Dr. Rater opined that Mr. Manning had no psychiatric condition that limited or restricted his ability to work. He exhibited no behaviors suggestive of a psychiatric condition or an inability to adapt to the workplace. Mr. Manning’s failure to return to work appeared based on his unhappiness with administrative issues in regard to his salary and FMLA rather than an incident or series of incidents directed towards him. (Exhibit 5.)
8. On March 6, 2010, Mr. Manning met with Michael Braverman, M.D. for a psychiatric evaluation. Mr. Manning reported that his work conditions led to significant emotional distress and worsening of his medical conditions, and that he had to stop working at DHCD on August 24, 2009 after his concerns were not adequately addressed and resolved. He reported that he was seeing a therapist, and taking desipramine, a medication for irritable bowel, depression and anxiety. (Exhibit 6.)
9. Mr. Manning reported to Dr. Braverman that did not sleep well at night, suffered nightmares and was tired during the day. He gained weight and felt emotionally overwhelmed. (Exhibit 6.)
10. Dr. Braverman found that Mr. Manning was upset, depressed, anxious and dysphoric, with no brightening of affect and he was never at ease. Dr. Braverman diagnosed Mr. Manning with Axis I: major depression with significant stress disorder; Axis II, none; Axis III, irritable bowel syndrome, cardiac condition and hypertension; Axis IV, severe and Axis V. (Exhibit 6.)
11. Dr. Braverman certified that Mr. Manning became totally psychiatrically disabled from all employment as of October 24, 2009. His significant emotional distress was escalating and worsening as a result of the ongoing hostile work environment that he had experienced, and by August 24, 2009 the symptoms were so severe, that he was no longer able to function in the workplace. Dr. Braverman wrote that Mr. Manning was functioning in the workplace and successfully employed until the escalating hostile work environment at DHCD culminated in his decompensation and inability to work as of August 24, 2009. Dr. Braverman concluded that for the foreseeable future Mr. Manning was totally psychiatrically disabled from all employment due to his ongoing emotional distress, depression, and anxiety with disturbance of vegetative functions. Dr. Braverman opined that it was unlikely that Mr. Manning could return to that work environment and had at least 6 to 12 months of total psychiatric disability from all employment. Dr. Braverman concluded that as Mr. Manning’s psychiatric and medical conditions stabilized, he would improve over time, and be able to work in a different capacity. (Exhibit 6.)
12. On June 28, 2010, Mr. Manning saw Stuart Grassian, M.D., psychiatrist, for an IME in connection with his Workers’ Compensation claim. Mr. Manning narrated his work history and whistleblower background at OCME. He then told discussed his alleged harassment at the hands of his co-workers at DCHD, which began in 2007 after a supervisor accused him via email of lying about hours worked. The supervisor refused to meet with him to resolve the issue. Then his co-workers began to harass him: anonymously leaving spit on his phone, leaving a dime on his chair and talking about an odor around his workplace. When Mr. Manning returned to work one Monday, he found his adding machine broken and adding machine paper wound around his desk.[[5]](#footnote-5) (Exhibit 5.)
13. Mr. Manning reported that around August 10, 2009, he informed his supervisor that he was having a nervous breakdown. Mr. Manning reported that he worked the remainder of the week until Thursday, August 13, 2009; and stayed out of work while HR investigated his complaints upon the advice of his supervisor. Mr. Manning reported that he was willing to work in a different department. He said that he had not sought other employment opportunities because he had filed a grievance was in negotiations with the Commonwealth for a settlement. (*See* Finding of Fact 26; Exhibit 5.)
14. Dr. Grassian did not connect Mr. Manning’s alleged harassment at work with his OCME whistleblower activities because he allegedly experienced the harassment until two years into his work there. When Dr. Grassian inquired about Ms. Nicholson’s observations that Mr. Manning’s poor interpersonal skills could have contributed to his problems, Mr. Manning had no explanation. (Exhibit 5.)
15. Dr. Grassian diagnosed Mr. Manning with adjustment disorder with mixed features, caused by stresses at work in contradiction with Dr. Rater’s diagnosis. He opined that given the antagonism that developed in his workplace, Mr. Manning was permanently disabled from working in that office. He found no evidence that Mr. Manning was disabled from working in a similar capacity in some other office, possibly for the Commonwealth, or more certainly for an employer other than state government. Dr. Grassian encouraged Mr. Manning to seek counseling and psychopharmacologic consultation. (Exhibit 5.)
16. Mr. Manning received a Workers’ Compensation lump sum payment of $18,500 on December 16, 2010. (Exhibit 8.)
17. Mr. Manning grieved his termination on March 29, 2010, and was represented by Theresa McGoldrick, his Steward/Union representative. (Exhibits 7, 11 and 12.)
18. On January 25, 2012, Mr. Manning entered into a settlement agreement of $30,000 in full settlement and satisfaction of all claims arising out of or relating to his employment with DHCD. The DHCD agreed that it would not object to any application for disability retirement filed by Mr. Manning. (Exhibit 7.)
19. *Application for Accidental Disability Retirement*
20. On December 21, 2011, Mr. Manning filed a Member’s Application for Accidental Disability Retirement. He described his duties as:

Prepare spreadsheets and other accounting related tasks. Make payments to LHAs. Must work with finance group while maintaining professional relationships and respecting each other.

(Exhibit 3.)

1. In the application, Mr. Manning stated that his disability was due to personal injury and described the disability as:

Job related stress, gastrointestinal chronic syndrome, cardiac abnormal heart rhythm (pacemaker), anxiety.

1. Mr. Manning noted that his injury occurred on “various” dates; that

I was harassed by co-workers on various occasions I believe due to my whistleblower status at the medical examiner’s office. My desk was tampered with, my adding machine broken, spit on the phone and dimes left on my seat.

(Exhibit 3.)

1. Mr. Manning further stated that he was unable to perform any of his work duties due to his disability, and that he was last able to perform the essential duties of his job in August 2009. (Exhibit 7.)
2. Mr. Manning completed the Other Actions Taken section of the application, stating that he had filed a grievance because he terminated without just cause while on approved FMLA leave. (Exhibit 3.)
3. Mr. Manning’s application was supported by Dr. Ring’s undated Physician’s Statement. Dr. Ring certified in the affirmative to disability, permanence and causation and diagnosed Mr. Manning with major depression, recurrent and anxiety disorder. Dr. Ring noted that in the last three months Mr. Manning’s depression and obsessive worries had increased, while his sleep, appetite and focus decreased. Dr. Ring opined that Mr. Manning’s symptoms were likely to persist and that Mr. Manning reported that his “work environment would be stressful regardless of what department [he worked in].” Mr. Manning filed complaints due to co-workers’ harassment and his hostile work environment, which he believed directly led to his termination while he was FMLA leave. Dr. Ring prescribed Celexa and Trazepam. (Exhibit 4.)
4. On March 11, 2012, Ms. Yakubu-Owolewa submitted the Employer’s Statement. She noted that Mr. Manning’s disability was gastro-intestinal syndrome and anxiety. (Exhibit 5.)
5. By letter dated June 13, 2012, the Board declined to process Mr. Manning’s application. The Board found that Mr. Manning’s allegations about his co-workers could not be substantiated by his employer; that his allegations of work-place stress and difficult interpersonal relationships with co-workers were not uncommon or compensable pursuant to G.L. c. 32, §7; and cited *Sugrue v. Contributory Retirement Appeal Bd*., 45 Mass. App. Ct. 1 (1998) in support thereof (job conflicts and events that lead to feelings of persecution or unfair treatment do not give rise to a personal injury) (Exhibit 1.).
6. In the letter, the Board further noted that Mr. Manning was fifty-one years of age, had accrued 24 years and 1 month of service, and should contact the board for information on whether he was eligible for superannuation retirement upon verification of the service. (Exhibit 1.)
7. On June 27, 2012, Mr. Manning filed an appeal at DALA. (Exhibit 2.)
8. Pursuant to G.L. c. 32, § 10 (2), the Board approved Mr. Manning’s August 6, 2012 application for termination retirement on August 31, 2012. (Exhibit 7.)

**CONCLUSION AND ORDER**

The decision of the State Board of Retirement to deny the accidental disability retirement application filed by Timothy Manning, without first convening a regional medical panel[Next Hit](http://sll.gvpi.net/document.php?id=crab:0487746-0000000&type=hitlist&num=9#hit14), is affirmed. I find that the circumstances at DCHD that Mr. Manning cited as the cause of his mental disability are not personal injuries.

 To qualify for accidental disability retirement, the Petitioner must prove by a preponderance of the evidence that he is permanently and totally disabled “by reason of a personal sustained or a hazard undergone as a result of, and while in the performance of, his duties at some definite place and at some definite time ... .” G.L. c. 32, § 7(1).

Although “personal injury” is not defined in chapter 32, courts have consistently applied the definition of “personal injury” from G.L. c. 152, § 1(7A). *See, e.g.,* *Zavaglia v. Contributory Retirement Appeal Bd.*, 345 Mass. 483 (1963). “Personal injury” includes “mental or emotional disabilities only where the predominant contributing cause of such disability is an event or series of events occurring within any employment.” However,

[n]o mental or emotional disability arising principally out of a bona fide, personnel action including a transfer, promotion, demotion, or termination except such action which is the intentional infliction of emotional harm shall be deemed to be a personal injury within the meaning of this chapter.

G.L. c. 152, § 1(7A). An “employer’s conduct need not alter an employee’s status or his employment relationship to constitute personnel action under § 1(7A).” *Upton’s Case*, 84 Mass. App. Ct. 411, 414 (2013). In the case at hand, Mr. Manning did not assert that management was involved in any of the alleged incidents, and it is undisputed that management was responsive to his complaints.[[6]](#footnote-6)

Mr. Manning gave a winding argument as to the extent and chronology of his injuries. In his application for accidental disability retirement, Mr. Manning cited harassment by his DHCD co-workers, which began three years on the job in 2007. Before DALA, Mr. Manning misrepresented his earlier illnesses and testified that in 2002 he suffered cardiac issues as a result of workplace stress and harassment due to his 2000 whistleblowing activities. In his March 15, 2010 IME, Dr. Rater opined that while at OCME Mr. Manning suffered from nervousness and anxiety, conditions common to cardiac patients. I accept Dr. Rater’s opinion.

There were no witnesses to the circumstances that Mr. Manning claims caused his stress, depression, and anxiety in the DHCD workplace. There is no evidence that at least two of the three events took place. In his December 21, 2011 accidental disability application, Mr. Manning made it clear that the alleged harassment was carried out by his co-workers. (Exhibit 3.) There is no evidence that Mr. Manning’s co-workers were cognizant of his whistleblower status, which had taken place nine years before at a different state agency.

When Mr. Manning accused his co-workers of breaking his adding machine,[[7]](#footnote-7) his supervisor Ms. Yakubu-Owolewa made sure it was replaced. When he accused his co-workers of putting dirt or spit on his telephone, he was provided with cleaning materials. When he filed a complaint about the hostile work environment, Ms. Yakubu-Owolewa informed HR, which conducted a thorough investigation. In the investigative report that HR issued on October 7, 2009, HR found that there were no witnesses to either of the above incidents, and that no one was observed placing coins in Mr. Manning’s cubicle area.[[8]](#footnote-8)

In his accidental disability application, Mr. Manning alleged that he was injured when he had a nervous breakdown on August 24, 2009 as a result of the hostile work environment at DHCD. He cited the above incidents as evidence of his hostile work environment. Although Mr. Manning later told his medical care providers that he worked alone and was isolated from his co-workers because of his status as a whistleblower, the HR report stated that the “[work] area is primarily cubicles with a few private offices. It is consistently described as a busy area with interaction among employees as their duties are inter-related.” The evidence demonstrates that Mr. Manning’s work area was not as private and isolated as he testified it was. (Exhibit 5.)

Given the busyness and location of Mr. Manning’s work station, it is possible that a co-worker could have used and accidentally damaged his adding machine. It is likely that a co-worker used his telephone and was not as concerned about hygiene as Mr. Manning. It is likely that a co-worker lost change in the busy workspace. However, the HR report was inconclusive as to whether these incidents had occurred.

If these incidents did in fact occur, they do not amount to intentional infliction of emotional harm. For actions to be considered intentional infliction of emotional harm, they must be “extreme and outrageous, beyond all possible bounds of decency, and utterly intolerable in a civilized society.” *Agis v. Howard Johnson Co.*, 371 Mass. 140, 144-45 (1976). Liability “cannot be predicated upon ‘mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities,’ nor even is it enough ‘that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by ‘malice.’” *Foley v. Polaroid Corp.*, 400 Mass. 82, 99 (1987); Restatement (Second) of Torts § 46, comment d (1965).

When viewed in light of this standard, the alleged actions of Mr. Manning’s co-workers were not extreme and outrageous. Even if Mr. Manning felt belittled and humiliated, the acts of breaking an adding machine, leaving a telephone dirty and leaving change in the cubicle area are not “extreme and outrageous.” It is of note that although the alleged incidents took place throughout 2008, and his nervous breakdown occurred on August 24, 2009, Mr. Manning failed to mention the incidents or the ensuing breakdown at his contemporaneous August 31, 2009 appointment with Dr. Ring.

Ms. Nicholson and Dr. Rater recommended that Mr. Manning undergo counseling due to the predilections of his personality. Ms. Nicholson found that Mr. Manning has personality traits and factors that were partly responsible for his workplace difficulties. She recommended that he transfer to a different department within DHCD. Dr. Rater recommended that Mr. Manning could benefit from elective counseling for anxiety due to his personality and temperament, and that he was able to function in daily life and take care of his responsibilities. I accept their opinions over those of Dr. Braverman and Dr. Grassian.

Because the DHCD agreed that it would not object to any application for disability retirement in the January 25, 2012 settlement agreement, Mr. Manning appeared to be under the impression that any such application would automatically be approved by the Board. Mr. Manning is subject to the provisions of chapter 32, as is any other retirement system member. I do not doubt that Mr. Manning was displeased with the non-lateral transfer that translated into lower stature and a corresponding lower salary at DHCD, and was unhappy with his co-workers and his work conditions. An investigation by DHCD was inconclusive as to whether most of the circumstances cited by Mr. Manning even took place. Even if I were to accept Mr. Manning’s version of the incidents, the alleged incidents do not amount to recognizable personal injury.

I find that no personal injury took place, and thus conclude that Mr. Manning could not incur a disability due to “a personal injury sustained or a hazard undergone . . . while in the performance of [his] duties.” *See* *Damiano v. Contributory Retirement Appeal Bd*., 72 Mass. App. Ct. 259 (2008), quoting *Namvar v. Contributory Retirement Appeal Bd*., [422 Mass. 1004](http://sll.gvpi.net/document.php?field=jd&value=sjcapp:422_mass._1004), 1005 (1996). Moreover, even if the actions he alleged occurred, the still do not amount to a personal injury under the standard explained in *Zavaglia*.

The Petitioner has failed to meet a threshold requirement for an award of accidental disability retirement benefits by failing to demonstrate that he suffered a personal injury, as defined in Chapter 32. In processing a disability retirement application, the Board is permitted at any stage of the proceedings to deny the application “if it determines that the member cannot be retired as a matter of law” under PERAC regulation 840 CMR 10.09(2).

Accordingly, the State Board of Retirement’s denial of Timothy Manning’s application for accidental disability retirement is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

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Angela McConney Scheepers

Administrative Magistrate

DATED:

1. Although Mr. Manning signed and dated a DHCD FMLA Extension Request Form on September 10, 2009, and his primary care physician signed and dated it on September 22, 2009, there is no evidence of when it was submitted to DHCD. On the form the doctor stated that it was probable that the condition could have a six month duration, but requested a leave of 8/24/2009 – 11/24/2009. (Exhibit 6.) [↑](#footnote-ref-1)
2. Ms. Nicholson diagnosed Mr. Manning with DSM-IV; Axis I, 311, Axis II, depends; Axis III, none and Axis IV: Psychological and Environmental Problems – problems with primary support group, problems related to social environment and occupational problems. (Exhibit 6.) [↑](#footnote-ref-2)
3. It is likely that Mr. Manning inferred that his co-workers wanted him to know that they “smelled a rat.” [↑](#footnote-ref-3)
4. In contrast, Mr. Manning told Dr. Grassian that while at the OCME, he suffered significant cardiac problems associated with complications of sarcoidosis, an autoimmune disease. He eventually needed a pacemaker inserted due to bradycardia, and was out of work for one year. (Exhibit 5.) [↑](#footnote-ref-4)
5. The incident with the supervisor is not included in Mr. Manning’s accidental disability application. The incident of adding machine paper wound around his desk is neither in the HR October 1, 2009 report nor Mr. Manning’s application. (Exhibit 4.) [↑](#footnote-ref-5)
6. There is no mention in the application of the time reporting issue with a supervisor. (Exhibit 3.) [↑](#footnote-ref-6)
7. Also referred to interchangeably as a calculator in the HR report, medical records and Mr. Manning’s testimony. (*See* Findings of Fact 4 and 7; Exhibits 5 and 6; Testimony of Manning.) [↑](#footnote-ref-7)
8. The HR report incorrectly described the coins as nickels. Mr. Manning alleged that dimes were left in his work area because he had “dropped a dime”. (Exhibit 5; Testimony of Manning.) [↑](#footnote-ref-8)