

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD L. EATON and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, Los Angeles, Calif.

*Docket No. 96-1393; Submitted on the Record;
Issued August 20, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained an anxiety reaction on June 28, 1995 in the performance of duty, causally related to factors of his federal employment.

On July 6, 1995 appellant, then a 59-year-old electronics technician, filed a claim alleging that on June 28, 1995 he was confronted and screamed at by an angry coworker, David McGregor, who allegedly had a clenched fist and got "all up in [his] face" for approximately 15 minutes and told appellant not to call him a liar anymore. A coworker witness stated that Mr. McGregor screamed and yelled at appellant "with a very hostile action." Appellant alleged that he sustained chest pains, for which he stopped work and sought medical treatment eight days later on July 6, 1995.

An August 3, 1995 medical report from Dr. W. Delo, an osteopath, noted a history of complaints as "chest pressure [for] five days" preceding the July 6, 1995 examination, noted a negative cardiac examination, and reported a diagnosis of "anxiety reaction." Appellant was cleared to return to work as of July 8, 1995. However, appellant was examined by Dr. K. Scott, a Board-certified family practitioner, on July 7, 1995 and was found to be disabled through July 14, 1995. On a Form CA-16 Dr. Scott noted "counseling increased stress at work causing atypical chest pain."

By letter dated October 10, 1995, the Office of Workers' Compensation Programs requested that appellant submit further detailed information regarding the alleged incident.

In an October 19, 1995 response, appellant, noted he had been the Palm Springs union representative and stated that he had had prior problems with Mr. McGregor. On June 28, 1995, 20 minutes before the confrontation, he had spoken with the San Diego union representative, Juan Delrio, who advised appellant that he was going to be replaced by Mr. McGregor as the new Palm Springs union representative, and that he discussed his dissatisfaction with this decision with Mr. Delrio and threatened to resign from the union if it occurred. Mr. Delrio

responded that he was sorry appellant felt that way. Appellant claimed that he had been assigned to give Mr. McGregor training, but alleged that Mr. McGregor had never accepted any training from him. Appellant alleged that during the confrontation Mr. McGregor made statements about how appellant became union representative, and that appellant told him that they were lies and that anyone who said those things was a liar. Appellant alleged that at that time Mr. McGregor approached him with clenched fists and yelled at appellant telling him never to call him a liar again. Appellant also alleged that Mr. McGregor yelled about backstabbers, and alleged that at some other time he had heard that Mr. McGregor had made some derogatory racial remarks concerning blacks. Appellant alleged that after the confrontation he was treated like he was not there, and he speculated that all of this was just intangible retaliation by the employing establishment for his filing grievances and racial discrimination reports.

By decision dated February 29, 1996, the Office rejected appellant's claim finding that he failed to establish that he sustained an injury in the performance of duty. The Office found that replacing appellant with Mr. McGregor as union representative was an administrative decision which, absent evidence of error or abuse, did not fall within the performance of duty. The Office further found that, while emotional conditions arising from union representational functions may be covered, the situation in this case did not deal with appellant acting in his union representational capacity, and hence any condition arising from the encounter in question would not be covered.

On March 15, 1996 appellant requested reconsideration and submitted multiple medical progress notes. Appellant also alleged that as this incident did occur during duty hours, it came within the performance of duty, and that the reason Mr. McGregor was mad at appellant was because of a racist attitude. He argued that the union issue was not the cause of what happened in the shop.

By decision dated March 21, 1996, the Office denied appellant's application for a merit review finding that the evidence submitted was repetitious, and therefore, was not sufficient to warrant a merit review, and that appellant's argument that he had been on duty at the time of the incident had been previously considered.

The Board finds that this case is not in posture for decision.

To establish appellant's claim that he has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.¹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of

¹ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

the relationship between the diagnosed condition and the specific employment factors identified by appellant.²

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not compensable where it results from such factors as an employee's fear of a reduction-in-force, his frustration from not being permitted to work in a particular environment or to hold a particular position, or his failure to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.³ When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.⁴ In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties.

One of appellant's allegations of the employment factors that caused or contributed to his condition pertains to an internal union activity. This action was the internal administrative removal by the union of appellant from his role as union representative, and the appointment of Mr. McGregor to that position. With regard to union activities in general, the Board has adhered to the principle that union activities are personal in nature and are not considered to be within the course of employment.⁵ Appellant has alleged that the union acted unfairly in replacing him as union representative. His removal as the local union representative relates to an internal union matter rather than to the duties required of his federal employment. Therefore, this allegation does not constitute a compensable factor of employment because it falls within the general rule that union activities are not considered to be within the course of employment.

Appellant, however, also alleges that a hostile confrontation with a coworker occurred in the workplace which caused his anxiety reaction. It is well established that verbal altercations, difficult relationships or abuse in the workplace, if proven, may constitute a compensable factor

² See *Martha L. Watson*, 46 ECAB 407 (1995); *Donna Faye Cardwell supra* note 1.

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Artice Dotson*, 41 ECAB 754 (1990); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984).

⁵ *Marie Boylan*, 45 ECAB 338 (1994); *Jimmy E. Norred*, 36 ECAB 726 (1985).

of employment.⁶ This includes exchanges between an employee and his supervisor, or between coworkers.⁷ This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.⁸ In the context of disputes or difficult relationships alleged between coworkers, mere perceptions or generally stated assertions of dissatisfaction with coemployees will not support a claim for an emotional disability. However, in the instant case, the evidence supports that there was an exchange between appellant and a coworker. Appellant provided a witness' statement indicating the fact that a loud verbal exchange took place between appellant and Mr. McGregor. The evidence of record indicates that a hostile verbal confrontation, accompanied by an assaultive gesture, occurred in the workplace. Mr. McGregor has not disputed such an occurrence as alleged. The case will be remanded to the Office for further development of the factual evidence and to ascertain whether or not a compensable factor of employment caused or contributed to the development of appellant's claimed emotional condition.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated March 21 and February 29, 1996 are hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, D.C.
August 20, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

⁶ See, e.g., *Herman W. Thornton*, 39 ECAB 875 (1988).

⁷ *Id.*; see also, *David W. Shirey*, 42 ECAB 783 (1991).

⁸ *Leroy Thomas, III*, 46 ECAB 946 (1995); *Mary A. Sisneros*, 46 ECAB 155 (1994).