U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHING S. HART (claiming as widow of MICHAEL M. HART) and DEPARTMENT OF THE INTERIOR, FISH & WILDLIFE SERVICE, Portland, Oreg.

Docket No. 96-1910; Submitted on the Record;
Issued August 11, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON, MICHAEL E. GROOM

The issue is whether appellant met her burden of proof to establish that the employee's suicide on December 8, 1994 occurred in the performance of duty.

The Board has duly reviewed the case record in the present appeal and finds that appellant did not meet her burden of proof to establish that the employee's suicide on December 8, 1994 occurred in the performance of duty.

Appellant has the burden of proving by the weight of the reliable, probative and substantial evidence the existence of a causal relation between the employee's suicidal death and factors of his employment. This burden includes the necessity of furnishing medical opinion evidence, based on a complete factual and medical history, sufficient to establish the existence of causal relationship.[1] In determining whether an employee's suicide is causally related to employment factors, the Office of Workers' Compensation Programs has adopted the "chain-of-causation" test.[2] However, there is no basis on which to apply the chain-of-causation test unless there was a work-related injury or condition which allegedly gave rise to sufficient pain and despair to result in the suicidal compulsion.[3]

In the present case, appellant alleged that a work-related emotional condition, stress, led to the suicide on December 8, 1994 of her husband, the employee, and claimed that, she was entitled to survivor's benefits from the Office. By decision dated June 21, 1995, the Office

---

[1] *Tess Mazer (Louis Mazer)*, 29 ECAB 582, 583 (1978).

[2] *See Carolyn King Palermo (Travis Palermo)*, 42 ECAB 435 (1991). In *Palermo* the Board provided an extensive discussion regarding the burden of proof in a suicidal death claim; *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.15 (March 1994).

[3] *See Elaine D. Brewer (John F. Brewer)*, 42 ECAB 929, 933 (1991).

denied appellant's claim on the grounds that she did not meet her burden of proof to establish that the employee's suicide on December 8, 1994 occurred in the performance of duty. The Office indicated that appellant did not establish that the employee sustained an employment-related emotional condition in that no compensable employment factors were established. By decision dated May 14, 1996, the Office denied modification of its June 21, 1995 decision.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[4] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction in force or his frustration from not being permitted to work in a particular environment or to hold a particular position.[5]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.[6] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[7]

Appellant alleged that a supervisor, Ernest Mayer, harassed the employee on September 12, 1994 by calling him a liar and telling him not to take telephone messages for certain people; she also indicated that Mr. Mayer harassed the employee on a later date by not allowing him access to the phone message system. To the extent that disputes and incidents alleged as constituting harassment by supervisors are established as occurring and arising from the employee's performance of his regular duties, these could constitute employment factors.[8] However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.[9] In the present case, the employing establishment denied that the employee was

[4] 5 U.S.C. §§ 8101-8193.

[5] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[6] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[7] *Id.*

[8] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[9] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

subjected to harassment and appellant has not submitted sufficient evidence to establish that he was harassed by Mr. Mayer.[10] Appellant alleged that Mr. Mayer made statements and engaged in actions which she believed constituted harassment, but she provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.[11] Thus, appellant has not established a compensable employment factor under the Act in this respect.[12]

Appellant alleged that on November 29, 1994 the employing establishment unfairly issued the employee a letter of proposed adverse action for providing false and misleading information in connection with an investigation of Mr. Mayer. The Board finds that this allegation relates to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and does not fall within the coverage of the Act.[13] Although the handling of disciplinary actions is generally related to the employment, it is an administrative function of the employer, and not a duty of the employee.[14] However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[15] Appellant did not submit any evidence showing that the employing establishment committed error or abuse in connection with its disciplinary action of the employee. Regarding appellant's allegation that the employee developed stress due to insecurity about maintaining his position, the Board has previously held that a person's job insecurity, including fear of a reduction-in-force, is not a compensable factor of employment under the Act.[16] Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant alleged that the employee developed stress due to making statements to officials performing investigations in connection with grievances filed by a coworker, Francis Chaveste-White, and a former supervisor, Carroll Cox. She also indicated that the employee developed stress in connection with the above-noted investigation of Mr. Mayer. The Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regularly or specially assigned employment duties are not

[10] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[11] *See William P. George*, 43 ECAB 1159, 1167 (1992).

[12] Appellant also alleged that on September 22, 1994 an Equal Employment Opportunity counselor made hostile statements to the employee over the telephone but she did not provide any further explanation of this allegation.

[13] *See Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[14] *Id.*

[15] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[16] *See Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

considered to be employment factors.[17] However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[18] Although appellant has made allegations that the employing establishment erred and acted abusively in conducting its investigations, appellant has not provided sufficient evidence to support such a claim. Appellant suggested that the investigators made abusive statements to the employee during the course of the investigations, but she provided no corroborating evidence, such as witness statements, to establish that the statements were actually made.[19] Moreover, appellant did not adequately articulate how these investigations, which were not directed towards the employee, were related to the employee's regular or specially assigned duties. Thus, appellant has not established a compensable employment factor under the Act in this respect.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not shown that the employee sustained an emotional condition in the performance of duty.[20] She has not shown that there is a basis to apply the above-noted chain-of-causation test because she has not established that there was a work-related injury or condition which allegedly gave rise to sufficient pain and despair to result in the suicidal compulsion. For these reasons, appellant did not meet her burden of proof to establish that the employee's suicide on December 8, 1994 occurred in the performance of duty.

[17] *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

[18] *See Richard J. Dube*, *supra* note 15 at 920.

[19] *See Larry J. Thomas*, 44 ECAB 291, 300 (1992).

[20] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

The decisions of the Office of Workers' Compensation Programs dated May 16, 1996 and June 21, 1995 are affirmed.

Dated, Washington, D.C.
August 11, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member