

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHNNY L. MILLER and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION REGIONAL OFFICE, St. Petersburg, Fla.

*Docket No. 97-635; Submitted on the Record;
Issued December 1, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that he developed a disabling emotional condition due to aggravation of his preexisting emotional disorder in the performance of duty, causally related to compensable factors of his federal employment.

The Board has given careful consideration to the issue involved, the contentions of appellant on appeal and the entire case record. The Board finds that the November 20, 1995 decision of the Office of Workers' Compensation Programs hearing representative is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.

By letter dated October 25, 1996, appellant through his representative, requested reconsideration. In support of his request appellant submitted a medical discharge summary from an employing establishment medical center at Bay Pines. The medical discharge summary provided appellant's diagnoses, a history of his illness, examination results and his hospital course. The medical discharge summary did not provide further factual information regarding implicated employment factors, or discuss the specific factors' impacts upon appellant.

By decision dated November 19, 1996, the Office denied modification of the hearing representative's decision finding that the evidence submitted was not sufficient to warrant modification. The Office found that the evidence submitted did not address the specific factors of employment previously identified by appellant as aggravating his preexisting post-traumatic stress disorder and it reviewed the hearing representative's analysis and findings with respect to the identified implicated factors not being compensable factors of his federal employment. The Office concluded that appellant had still failed to demonstrate or substantiate compensable factors of his employment as being causally related to or aggravating of his preexisting post-traumatic stress disorder causing the claimed disability.

The Board finds that appellant has failed to establish that he developed a disabling emotional condition due to aggravation of his preexisting emotional disorder in the performance of duty, causally related to compensable factors of his federal employment.

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 she 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 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 or her frustration from not being permitted to work in a particular environment or to hold a particular position, or his or her 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 or her assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel

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

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).

matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.⁵

When working conditions are alleged as factors in causing 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 When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁷ When the matter asserted is a compensable factor of employment, and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.⁸

The hearing representative found that several of the factors alleged by appellant as aggravating his preexisting post-traumatic stress syndrome were not compensable factors of employment; including war stories told by a coworker, his supervisor's handling of his promotion requests, his performance review at levels higher than that of his supervisor, his not receiving a performance award, his pursuit of an increase in his Veterans Administration service-connected disability rating and the taking away for one day of his identification badge while an administrative investigation was undertaken. The hearing representative also found that other allegations of supervisory harassment were not supported by the factual record and hence were not proven to be compensable factors of employment and that settlement of his discrimination complaints without fault did not prove anything. As the hearing representative's analysis of these alleged factors was correct under the facts and the law of the case, the Board adopts her findings and conclusions.

Thereafter, upon reconsideration request appellant submitted only medical evidence, which did not address the alleged implicated factors of his employment or provide any new factual evidence to support his contentions. Accordingly, the Office was correct in finding that the evidence submitted was insufficient to warrant modification of the hearing representative's decision, which denied appellant's claim for his failure to implicate any compensable factors of his employment.

⁵ *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991).

⁶ *See Barbara Bush*, 38 ECAB 710 (1987).

⁷ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁸ *See Gregory J. Meisenberg*, 44 ECAB 527 (1993).

Consequently, the Office of Workers' Compensation Programs decision dated November 19, 1996 is hereby affirmed.

Dated, Washington, D.C.
December 1, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member