

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of STEPHEN E. HOLLICH and NATIONAL AERONAUTICS & SPACE  
ADMINISTRATION, MARSHALL SPACE FLIGHT CENTER,  
Huntsville, Ala.

*Docket No. 96-2383; Submitted on the Record;  
Issued July 27, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he sustained an emotional condition while in the performance of duty.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet his burden of proof to establish that he sustained an emotional condition while in the performance of duty.

On December 6, 1993 appellant, then a structural materials laboratory lead man, filed a claim for an occupational disease (Form CA-2) alleging that on August 21, 1992 he first realized that his stroke was due to employment-related stress. Appellant stopped work on August 20, 1992 and returned to work on August 24, 1992. Appellant's claim was accompanied by a December 5, 1993 narrative statement alleging that certain stressful employment incidents caused his stroke.

By letter dated February 18, 1995, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish his claim. The Office also advised appellant to submit factual and medical evidence supportive of his claim.

By decision dated March 31, 1994, the Office found the evidence of record insufficient to establish that an injury occurred in the performance of duty.

In an April 12, 1994 letter, appellant requested reconsideration of the Office's decision accompanied by medical evidence.

By decision dated July 20, 1994, the Office denied appellant's request for reconsideration without a review of the merits of the claim on the grounds that the evidence submitted was cumulative and thus, insufficient to warrant review of the prior decision. In a March 29, 1995 letter, appellant requested an oral hearing before an Office representative.

In a July 6, 1995 narrative letter, appellant requested reconsideration of the Office's decision accompanied by medical evidence.

In a narrative letter dated December 2, 1995, appellant requested reconsideration of the Office's decision.

By decision dated December 15, 1995, the Office denied appellant's request for reconsideration as untimely filed pursuant to 20 C.F.R. § 10.138(b)(2).

In a January 26, 1996 letter, appellant advised the Office that he had submitted a timely request for reconsideration on July 6, 1995 and that he had not received any response regarding his request.

By decision dated February 7, 1996, the Office denied appellant's request for modification based on a merit review of the claim.<sup>1</sup>

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment. To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) 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.<sup>2</sup>

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 illness has some connection with the employment, but nevertheless does not come within the coverage of workers' compensation law. When an employee experiences an emotional reaction to his or her regular or specially assigned work duties or to a requirement imposed by the employment, or has fear and anxiety regarding his or her ability to carry out his or her duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability comes within the scope of the Federal Employees' Compensation Act. On the other hand, where the disability results from an employee's emotional reaction to employment matters that are not related to the employee's regular or specially assigned work duties or requirements of the employment, the disability does not fall within the coverage of the Act.<sup>3</sup> Disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a

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<sup>1</sup> Subsequent to the Office's February 7, 1996 decision, appellant submitted a July 11, 1996 letter disagreeing with the Office's decision accompanied by additional evidence. In a July 17, 1996 response letter, the Office advised appellant that the newly submitted evidence was placed in his file and that it was unclear as to whether he wished to exercise his appeal rights. The Office then advised appellant to exercise his appeal rights if he disagreed with its decision.

<sup>2</sup> *Wanda G. Bailey*, 45 ECAB 835 (1994); *Kathleen D. Walker*, 42 ECAB 603, 608-09 (1991).

<sup>3</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990); *Lillian Cutler*, 28 ECAB 125 (1976).

particular position. 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.<sup>4</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors 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.<sup>5</sup> Therefore, the initial question presented in the instant case is whether appellant has alleged compensable factors of employment that are substantiated by the record.

Regarding appellant's allegations that the employing establishment eliminated his position causing uncertainty about his future,<sup>6</sup> engaged in bureaucratic foot dragging in refusing to take action on his discrimination complaints and to resolve the complaints by utilizing alternative dispute resolution techniques, unfairly denied him a promotion,<sup>7</sup> wrongly reprimanded him for going to the bathroom when a customer needed assistance,<sup>8</sup> and repeatedly requested that he justify his membership in a technical society to determine whether to pay for his travel expenses to the society meeting, the Board finds that these allegations relate to administrative or personnel matters unrelated to appellant's regular or specially assigned work duties and do not fall within the coverage of the Act.<sup>9</sup> 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 must examine whether the employing establishment acted reasonably. Appellant has not shown that the employing establishment committed error or abuse in handling these matters as to come within the coverage of the Act. Therefore, the Board finds that appellant has failed to establish a compensable employment factor.

Appellant has alleged that the employing establishment was biased in its hiring practices. Appellant has also alleged that there was a conflict between himself and Tony Berry, a coworker, who was the only remaining employee working in appellant's laboratory. Appellant

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<sup>4</sup> *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *Lillian Cutler*, *supra* note 3.

<sup>5</sup> *Margaret S. Kryzcki*, 43 ECAB 496, 502 (1992); *Lillian Cutler*, *supra* note 3.

<sup>6</sup> *Thomas D. McEuen*, *supra* note 4; *Raymond S. Cordova*, *supra* note 4; *Lillian Cutler*, *supra* note 3; *see also Walter Asberry*, 36 ECAB 686 (1985) (actual termination of employment is not covered under the Act).

<sup>7</sup> *Michael Thomas Plante*, 44 ECAB 510 (1993).

<sup>8</sup> *Barbara E. Hamm*, 45 ECAB 843 (1994); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

<sup>9</sup> *See Jimmy Gilbreath*, 44 ECAB 555 (1993); *Michael Thomas Plante*, *supra* note 7; *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

stated that Mr. Berry had a strong personality and felt that since he was the only one left he should be in charge of the laboratory. Appellant also stated that according to the employing establishment's rules, Mr. Berry could not become the lead man. Appellant then stated that when Mr. Berry found out that he was going to fill that position, Mr. Berry confronted him in an aggressive manner which almost resulted in a physical conflict. Appellant noted that he discovered that Mr. Berry was running his home business during work hours, that Mr. Berry was using and taking the employing establishment's equipment, and that Mr. Berry was interfering with his efforts to get the laboratory under control by intentionally concealing records, work requests, specification, procedures and reports.

The Board has held that mere perceptions of discrimination or harassment do not constitute a compensable factor of employment and that there must be evidence that discrimination or harassment did in fact occur.<sup>10</sup> In this case, there is no evidence corroborating appellant's allegation that the employing establishment discriminated against him during the hiring process. Appellant's dissatisfaction with the fact that he did not receive a particular position amounts to a frustration from not being permitted to work in a particular environment or to hold a particular position and does not constitute a compensable factor of employment.<sup>11</sup> In addition, there is no evidence corroborating appellant's allegation that he was harassed by Mr. Berry. Thus, the Board finds that appellant has failed to establish a compensable employment factor.

Additionally, appellant has alleged that he was required to perform the work that was usually performed by a staff of five employees who either left the employing establishment or were reassigned to different positions within the employing establishment. Appellant stated that he had to answer the telephone, which rang unceasingly from 7:30 a.m. until 5:00 p.m. with calls from customers, while attempting to perform other work duties. Appellant further stated that many times he voluntarily stayed late, without any compensatory time, to assure that all the customers were serviced and that the work was queued up for the next day. Appellant also stated that he did not receive any full-time staff to help him complete the work. The Board finds that these allegations constitute compensable employment factors which arose in the performance of appellant's employment duties. While a heavy workload may constitute a compensable factor of employment, there must be sufficient evidence to substantiate an allegation of overwork.<sup>12</sup> Appellant has not submitted evidence to support his allegations. Therefore, the Board finds that the compensable factors of employment as alleged by appellant are not established as having occurred by evidence present in the case record. Accordingly, appellant has not met his burden of proof to establish that he sustained an emotional condition while in the performance of duty. Therefore, the Board finds that it is unnecessary to address the medical evidence in this case record.<sup>13</sup>

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<sup>10</sup> *Jack Hopkins, Jr.*, 42 ECAB 818 (1991); *Donna Faye Cardwell*, *supra* note 3.

<sup>11</sup> *Thomas D. McEuen*, *supra* note 4; *Raymond S. Cordova*, *supra* note 4; *Lillian Cutler*, *supra* note 3.

<sup>12</sup> *Frank A. McDowell*, 44 ECAB 522 (1993).

<sup>13</sup> *Margaret S. Kryzcki*, *supra* note 5.

The February 7, 1996 and December 15, 1995 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.  
July 27, 1998

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member