

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMES WILLIAMS and DEPARTMENT OF THE NAVY,  
CHARLESTON NAVAL SHIPYARD, Charleston, S.C.

*Docket No. 96-1028; Submitted on the Record;  
Issued June 23, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has established that he sustained an emotional condition in the performance of his federal employment as alleged.

On January 23, 1995 appellant, then a 51-year-old fabric worker, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained chronic back pain and stress in the performance of duty.

In a letter dated March 22, 1995, the Office of Workers' Compensation Programs informed appellant that the evidence was insufficient to support his claim. The Office then advised appellant of the deficiency in his claim and the evidence he should submit in support of his claim.

By decision dated January 11, 1995, the Office denied appellant's claim on the grounds that fact of injury was not established. The Office found that employment factors cited by appellant as the cause of his emotional condition were either not supported by factual evidence or were noncompensable factors.

The Board has reviewed the record and finds that appellant has not established an injury in the performance of duty.

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.<sup>1</sup> 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;

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<sup>1</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

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. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>3</sup>

In the present case, appellant has alleged that a number of incidents which occurred at the employing establishment have contributed to his emotional condition.

Appellant alleges that he received no training when he moved to the fabric shop as a helper from work in the labor shop. Appellant also alleges that he was passed over for promotion and that he worked a lot of overtime. Regarding appellant's allegation of denial of promotions, the Board has previously held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform his regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.<sup>4</sup> Thus, appellant has not established a compensable employment factor under the Act in this respect.

It is noted that appellant alleged that he worked a lot of overtime as well as long and hard hours. While a heavy work load may be a compensable factor of employment, there must be sufficient evidence to substantiate an allegation of overwork.<sup>5</sup> Appellant has not provided detail with respect to his work load to establish a compensable factor of employment. Furthermore, there is nothing in the record to indicate that appellant was forced to work a lot of overtime.

Appellant has alleged that his supervisor punished him for his complaints by his perception that he received the lowest paying job in the shipyard which he felt was in retaliation for his writing to his Congressman for assistance with employment at the Naval Shipyard. Appellant also alleges that his supervisor discriminated against him and punished him by giving him dirty jobs to perform and lots of overtime. To the extent that appellant is alleging that his

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<sup>2</sup> See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>3</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Donald W. Bottles*, 40 ECAB 349, 353 (1988); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> *Frank A. McDowell*, 44 ECAB 522 (1993).

supervisor harassed him, the record fails to support such a claim. A claimant must substantiate a factual basis for the claim by supporting his allegations with probative and reliable evidence.<sup>6</sup> Mere perceptions of harassment are not compensable under the Act. In this case, appellant has not submitted any corroborating evidence regarding his allegations and the record contains a May 25, 1989 memorandum for the employing establishment which states that no discrimination was found and advised appellant to contact the Equal Employment Opportunity Commission (EEOC). The record contains no further evidence concerning appellant's allegation of discrimination, *e.g.*, the record indicates that appellant did not file a grievance or EEOC complaint. The Board accordingly finds that appellant has not established a compensable factor of employment with respect to his interaction with his supervisor.

As noted above, disability resulting from the performance of regularly or specially assigned duties is compensable under the Act. In this case, however, appellant has not substantiated a factor of employment related to the performance of his regular or specially assigned duties. In the absence of evidence establishing a compensable factor of employment contributing to appellant's emotional condition, the Board finds that the Office properly denied his claim.<sup>7</sup>

The decision of the Office of Workers' Compensation Programs dated January 11, 1996 is hereby affirmed.

Dated, Washington, D.C.  
June 23, 1998

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

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<sup>6</sup> See *Mary A. Sisneros*, 46 ECAB 155 (1994); see also *David W. Shirey*, 42 ECAB 783 (1991).

<sup>7</sup> Since appellant has not substantiated a compensable work factor, it is not necessary to address the medical evidence; see *Margaret S. Kryzycki*, 43 ECAB 496 (1992).