U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES E. RUST and FEDERAL DEPOSIT INSURANCE CORP., Newport Beach, Calif.

Docket No. 97-569; Submitted on the Record;
Issued October 19, 1998

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 causally related to his federal employment.

In the present case, appellant, an FDIC asset specialist, filed a claim on June 2, 1996 alleging that he had sustained job-related stress. Appellant explained that he sustained stress in his employment on May 3, 1996 when he was ordered to immediately fire a contract employee, Sharon Ottilige. Appellant thereafter authorized a payment of one week's severance pay for Ms. Ottilige. Appellant's employment was terminated on May 31, 1996, allegedly for his authorization of pay for Ms. Ottilige after May 3, 1996. Appellant has also alleged that he was discriminated against by the employing establishment due to his acquired immunodeficiency syndrome (AIDS) condition and homosexuality. The Office of Workers' Compensation Programs denied appellant's claim, by decision dated October 24, 1996, on the grounds that the medical evidence of record did not establish that appellant sustained an emotional condition causally related to factors of his federal employment.

The Board has duly reviewed the case record and finds that appellant has not met his burden of proof in this case.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. When an employee experiences emotional stress in carrying out his employment duties or has fear and anxiety regarding his ability to carry out his duties, and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of the employment. The same result is reached when the emotional disability resulted from the employee's emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of the work. In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a personal injury sustained in the performance of duty within the meaning

of the Federal Employees' Compensation Act. Nor is disability covered when it results from such factors as an employee's frustration in not being permitted to work in a particular environment or to hold a particular position.[1]

In cases involving emotional conditions, the Board has held that, when working conditions are related as factors in causing a condition or disability, the Office must first as part of its adjudicatory function make findings of fact regarding which working conditions are deemed compensable factors of employment and which working conditions are not deemed factors of employment. Only if appellant has alleged a compensable factor of employment will the Office further review the medical evidence and evaluate the claim.[2]

The Office has accepted in the present case that appellant has alleged a compensable factor of employment and that on May 3, 1996 he was directed by his supervisor to advise Ms. Ottilige that her employment was terminated. The Board affirms the Office's finding that the requirement that appellant fire Ms. Ottilige did relate to a specially-assigned duty that appellant was required to perform and therefore this act was within the performance of his federal employment.

The Office also properly determined, however, that appellant had not established that he sustained discrimination or that his employment was improperly terminated in the course of his federal employment. An employee's charge that he was harassed or discriminated against is not determinative of whether or not harassment or discrimination occurred.[3] For harassment to give rise to a compensable disability under the Act,[4] there must be some evidence that acts alleged or implicated by the employee did, in fact, occur.[5] While appellant has alleged that he was discriminated against due to his homosexuality and AIDS condition, appellant has not submitted any corroborating evidence that discrimination did in fact occur. Appellant has not provided any evidence of any specific action taken towards him by the employing establishment which was discriminatory in nature. While appellant's complaint centers around the termination of Ms. Ottilige's and his own employment, there is no evidence of record that the employing establishment's actions in this regard were taken due to appellant's sexual orientation. Mere perceptions of harassment are not compensable under the Act.[6]

Appellant also has not established that the termination of his employment was a compensable factor of employment. The Board has previously held that termination of employment is an administrative action and therefore does not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or

[1] *See Elizabeth Pinero*, 46 ECAB 123 (1994).

[2] *See Gregory J. Meisenberg*, 44 ECAB 527 (1993).

[3] *O. Paul Gregg*, 46 ECAB 624 (1995).

[4] 5 U.S.C. § 8101 *et seq.*

[5] *Elizabeth Pinero, supra* note 1.

[6] *Ronald C. Hand*, 47 ECAB ____ (Docket No. 95-1909, issued October 1, 1997).

acted abusively in the handling of administrative matters, coverage may be afforded.[7] The evidence of record indicates that in this case appellant's employment appointment was to expire on May 31, 1996. While on May 9, 1996 appellant had been offered future employment in a "GC" position until December 31, 1996, which appellant accepted on May 9, 1996, this offer was revoked on May 30, 1996. Appellant's employment terminated on May 31, 1996. Appellant was notified that his employment would not be extended due to his handling of Ms. Ottilige's termination and his falsification of her timecard. While appellant disagreed with the termination of his employment, appellant has not submitted the necessary corroborating evidence to establish that the termination was in fact in error or abusive. Appellant has not submitted any documentation which would indicate that the employing establishment was precluded from terminating his employment for the reason given on May 31, 1996. Appellant therefore has not established that the termination of his employment constitutes a compensable factor of employment.

As the Office did accept that appellant had established a compensable factor of employment, his required termination of Ms. Ottilige's employment, to establish entitlement to compensation benefits appellant was required to submit medical evidence substantiating that this factor of employment caused or contributed to his emotional condition.

In support of his claim, appellant submitted an attending physician's supplemental report from Dr. Allen Green, a family practitioner, dated June 11, 1996 and a number of progress notes from the Institute of Holistic Treatment dating from December 14, 1994 to June 11, 1996. In his June 11, 1996 report, Dr. Green stated a diagnosis of adjustment reaction with depression and anxiety, as well as myofascitis and AIDS and indicated that appellant was disabled from work. Dr. Green did not, however, provide a rationalized medical opinion explaining how the accepted factor of employment either caused or contributed to the diagnosed conditions. Causal relationship is a medical issue, and the medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's reasoned opinion on whether there is a causal relationship between the claimant's diagnosed condition and the incidents or factors of employment established as occurring in the employment. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 established incident or factor of employment.[8] As such, Dr. Green's report is of limited probative medical value as it did not offer any explanation as to how the accepted employment factor caused appellant's diagnosed emotional condition. Similarly, the progress notes from the Institute of Holistic Treatment do not contain a history of the accepted employment factor and did not offer any opinion regarding the

[7] *Sharon K. Watkins*, 45 ECAB 290 (1994).

[8] *Gary L. Fowler*, 45 ECAB 365 (1994).

cause of appellant's emotional condition. These progress notes are therefore of limited probative value.[9]

On August 23, 1996 the Office referred appellant to Dr. David J. Sheffner, a Board-certified psychiatrist, for a second opinion evaluation to determine the causal relationship between the accepted factor of employment and his diagnosed condition. Dr. Sheffner reviewed appellant's medical history and employment history. In a report dated September 30, 1996, Dr. Sheffner diagnosed adjustment disorder with mixed features. Dr. Sheffner noted that appellant had stated that his work function was good prior to the termination of his employment and that he planned to stay working at the employment establishment at the time he was terminated. Dr. Sheffner stated that appellant's unhappiness or distress over the termination of Ms. Ottilige's employment did not produce an emotional reaction of the nature and magnitude to constitute disabililty and did not require treatment. Dr. Sheffner concluded that while appellant did require treatment for symptoms of depression, such condition was not causally related to the accepted factor of employment.

As appellant has not established that he sustained an emotional condition causally related to his federal employment the Office properly denied his claim for compensation benefits.

The decision of the Office of Workers' Compensation Programs dated October 24, 1996 is hereby affirmed.

Dated, Washington, D.C.
October 19, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

[9] It is unclear whether appellant was seen by a physician at the Institute of Holistic Treatment and if so whether the treatment notes were signed by a physician. The Board has held that medical reports must be prepared by a physician and that treatment notes which are unsigned or which lack proper identification can not be considered as probative evidence. *Merton J. Sills*, 39 ECAB 572 (1988).