U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE D. FOOTE and DEPARTMENT OF AGRICULTURE, FOREST SERVICE, Duluth, MN

Docket No. 98-275; Submitted on the Record;
Issued August 24, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty; and (2) whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

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.[1] 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.[2]

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 employment factors.[3] This burden includes the submission of a detailed

[1] 5 U.S.C. §§ 8101-8193.

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

[3] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[4]

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.[5] 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.[6]

In the present case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated May 31, 1996, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. By decision dated December 2, 1996, the Office denied appellant's request for merit review and, by decision dated July 14, 1997, the Office denied modification of its May 31, 1996 decision. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that his supervisors, Karol Lundquist and Wayne Glembin, constantly criticized him even when he performed work tasks according to instructions; that he was reprimanded when he asked questions; that he was given inadequate training particularly with respect to computer and accounting matters; that he was not given a calendar to track work tasks; that he was made to correct travel vouchers which usually were filed without corrections; that he was made to feel guilty as a burden to coworkers after his work load was reduced; that Mr. Glembin refused his request to have his job grade reduced; that he received unfair performance evaluations; and that he was wrongly terminated from the employing establishment. Regarding appellant's allegations that the employing establishment unreasonably monitored and criticized his activities at work, mishandled training and work assignments and issued unfair disciplinary letters and performance evaluations, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.[7]

Although the handling of disciplinary actions and evaluations, the monitoring of activities and the management of training and work assignments at work are generally related to the employment, they are administrative functions of the employer and not duties of the

[4] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

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

[6] *Id.*

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

employee.[8] 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.[9] In the present case, appellant did not present any evidence showing that the employing establishment committed error or abuse with respect to the above-noted claims. In fact, the record contains journals and other records which show that the employing establishment took great care in attempting to accommodate appellant's needs. Moreover, appellant's assertions regarding conditions and incidents at work are essentially of a vague and nonspecific nature. Thus, appellant has not established a compensable employment factor under the Act with respect to these administrative or personnel matters.

Appellant suggested that he sustained stress because he was subjected to unreasonable deadlines at work. The Board has held that emotional reactions to situations in which an employee is trying to meet his position requirements are compensable.[10] The Board notes, however, that appellant has not established the factual aspect of this claim. The record contains evidence which indicates that the employing establishment reduced the work load for appellant's position well below the normal level. Regarding appellant's allegation that he developed stress due to insecurity about maintaining his position, the Board has previously held that a claimant's job insecurity, including fear of a reduction-in-force, is not a compensable factor of employment under the Act.[11]

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.[12]

The Board further finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[13] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.[14] To be entitled to a merit review of an Office decision denying or

[8] *Id.*

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

[10] *See Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

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

[12] 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).

[13] Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

[14] 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[15] When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.[16]

In support of his August 29, 1996 request for reconsideration of the Office's May 31, 1996 decision, appellant submitted a June 25, 1996 report of an attending psychiatrist. The submission of this report was not sufficient to reopen appellant's claim because it did not relate to the main issue of the present case which is factual nature, *i.e.*, whether appellant submitted sufficient factual evidence to establish a compensable employment factor. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[17]

In the present case, appellant has not established that the Office abused its discretion in its December 2, 1996 decision by denying his request for a review on the merits of its May 31, 1996 decision under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, that he advanced a point of law or a fact not previously considered by the Office or that he submitted relevant and pertinent evidence not previously considered by the Office.

The decisions of the Office of Workers' Compensation Programs dated July 14, 1997 and December 2, 1996 are affirmed.

Dated, Washington, D.C.
August 24, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member

[15] 20 C.F.R. § 10.138(b)(2).

[16] *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

[17] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).