U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL GILMORE and DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, New York, N.Y.

Docket No. 97-1850; Submitted on the Record;
Issued June 16, 1999

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition in the performance of duty.

On October 4, 1994 appellant, a 41-year-old air traffic controller, filed a Form CA-1 claim for benefits based on an emotional condition.

In an October 4, 1994 statement, accompanying the form, appellant indicated he had experienced a traumatic episode caused by a supervisor while attending a crew meeting at his employing establishment on September 24, 1996, which resulted in his inability to work and a fear of physical reprisal from coworkers. Appellant specifically stated that, at the conclusion of the meeting, his supervisor told the group that one of the employees present had made a call to the inspector general which pertained to some of the workers' activities, and that appellant had been the employee rumored to have made the call. He related that following this statement, his supervisor asked him directly, in front of his coworkers, to address the rumor regarding the call to the inspector general. Appellant indicated that he was taken aback and off-guard by the question, and that he had replied by stating that if he had made the call, he would not have told anyone else about it. He acknowledged that he had in fact made the call, but had considered it confidential. Appellant stated that following the supervisor's questioning, some of his coworkers assumed that he had been the one who called the inspector general, and that he was subsequently accosted by some of his coworkers and told to "watch his back." Appellant also related that he received various "threats" from his coworkers. Appellant stated that since this meeting, he has been concerned that his work might be sabotaged by vengeful coworkers in retaliation for his making allegations to the inspector general.

In a statement dated October 8, 1994, appellant's supervisor refuted appellant's allegations, stating that his question at the September 24, 1996 meeting was not accusatory and had been misinterpreted by appellant. The supervisor stated that he spent most of the meeting discussing other administrative issues, and at the end of the meeting he felt the need to address

rumors which were undermining morale at the workplace. The supervisor stated that there had been contentiousness and factionalism among certain employees within his area of supervision, which included the refusal and requests of some people not to work with others. The supervisor noted that it had been his experience that these rumors were best dealt with when they were discussed candidly and openly among those affected, and that it was in the best interests of all the employees that they address the rumor that appellant had made the call to the inspector general, which he considered of such a serious nature that he felt professionally obligated to take such action.

The supervisor stated that he told the group that he would not tolerate any rumors because they tended to harm both the utterer and the target. The supervisor stated that he then revealed the rumor to the crew, as it was public knowledge to a great many employees at the work site, including the subject of the rumor, that it had been attributed to appellant, that he had had a private conversation with appellant previously in which appellant denied having spread the rumor to the inspector general, and that this rumor was unfounded and causing division within his area. The supervisor related that he told the group that it was his intent to prevent the establishment of a hostile work environment and a possible hindrance to appellant's future training. The supervisor stated that he then provided appellant with an opportunity to address this issue, and that he placed no requirement or obligation upon him to respond. The supervisor stated that he then informed the group that he considered the matter closed and would not tolerate any further discussion. The supervisor further stated that, subsequent to the meeting, appellant continued to function in the full range of his air traffic duties, for the rest of his shift, without incident, visible stress, or comment to him or any other supervisor regarding any difficulties he might have been experiencing.

By letter dated November 8, 1996, the Office of Workers' Compensation Programs advised appellant that the evidence he submitted was not sufficient to determine whether he was eligible for compensation benefits, and that he needed to submit a detailed description of the specific employment-related conditions or incidents he believed contributed to his illness. The Office also asked appellant to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition, and an opinion as to whether factors or incidents, *i.e.*, specific employment factors, at his employing establishment contributed to his condition.

Appellant subsequently submitted a Form CA-16 dated October 17, 1996 from Dr. Bruce Levine, a specialist in clinical psychology, who examined and treated appellant on October 17, 1996 for anxiety and "mental stress" which allegedly resulted from the September 2, 1996 work incident. Dr. Levine found that appellant was suffering from paranoid versus realistic fears and anxiety, and checked a box indicating that he believed appellant's condition was caused or aggravated by employment factors.

Accompanying the form was an October 17, 1996 report from Dr. Levine, who examined appellant on the date of his report. He stated that appellant continued to work following the September 24, 1996 work incident but was having trouble concentrating and was worried that "the other guys were going to give me deals." Dr. Levine stated that appellant complained of frequent right-sided headaches, anxiety, irritability, difficulty sleeping and some depression, and

opined that appellant appeared to be highly agitated, highly suspicious and incapable of operating the "delicate and dangerous" job of air traffic controller in a safe, cooperative manner.

Dr. Levine subsequently referred appellant to Dr. Keith C. Moss, a clinical psychologist, who examined appellant on January 2, 1997 and on two subsequent occasions, during which he provided psychotherapy to appellant. In a January 22, 1997 report, Dr. Moss indicated that appellant was unable to perform his regular job as air traffic controller and advised him to consider a different job, given that his current work environment might be too stressful to resume.

By decision dated February 1, 1997, the Office found that fact of injury was not established, as the evidence of record did not establish that an injury was sustained in the performance of duty. The Office found that appellant's supervisor had merely asked him to confirm or deny that he had spoken to the inspector general, which was purportedly "common knowledge" at the work site, and had therefore not singled him out for exposure. Thus, the Office found that appellant had sustained an emotional reaction to an administrative or personnel matter unrelated to his regular or specially assigned work duties, and that therefore any alleged disability was not covered under the Federal Employees' Compensation Act.[1] Accordingly, the Office found that appellant had failed to establish specific factors of employment to which he attributed his disability, and it therefore denied appellant compensation for his alleged emotional condition.

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty.

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition, and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.[2] There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.[3]

The first issue to be addressed is whether appellant has cited factors of employment that contributed to his alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act.[4] On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to

[1] 5 U.S.C. §§ 8101-8193.

[2] *See Debbie J. Hobbs*, 43 ECAB 135 (1991).

[3] *See Ruth C. Borden*, 43 ECAB 146 (1991).

[4] *Lillian Cutler*, 28 ECAB 125 (1976).

secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.[5]

It is well established that mere perceptions of harassment or discrimination do not constitute a compensable factor of employment. A claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.[6] The Board has underscored that, 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 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.[7] The Office has the obligation to make specific findings with regard to the allegations raised by a claimant. 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 compensable factor of employment, the Office should then determine whether the evidence of record substantiates that factor.

The Board has held that investigations into conduct and disciplinary actions are administrative in nature and, absent evidence establishing error or abuse on the part of the employing establishment, are not compensable factors of employment.[8] An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.[9] Therefore, coverage under the Act is not afforded absent a showing of error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter.[10]

The Board finds that the administrative actions taken in this case do not reveal evidence of agency error or abuse, and are therefore not considered factors of employment. Appellant has presented no evidence that the employing establishment acted unreasonably or committed error with regard to the alleged unreasonable actions involving administrative matters on the part of the employing establishment. The statements submitted by appellant and his supervisor at the employing establishment substantiate that a meeting of employees and coworkers occurred on September 24, 1996. At the conclusion of the employee meeting both parties concurred that at this meeting appellant's supervisor asked him in front of his coworkers to discuss the matter that he had spoken to the inspector general about working conditions at the employing establishment.

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[5] *See Cutler*, *supra* note 4.

[6] *Curtis Hall,* 45 ECAB 316 (1994); *Margaret S. Krzycki,* 43 ECAB 496 (1992).

[7] *Norma L. Blank,* 43 ECAB 384 (1992).

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

[9] *Alfred Arts,* 45 ECAB 530 (1994).

[10] *See Norman A. Harris,* 42 ECAB 923 (1991); *see also Thomas D. McEuen, reaff'd on recon.,* 42 ECAB 566 (1991).

This factual scenario, however, as presented by both parties, does not constitute a factor of employment. Disciplinary matters consisting of counseling sessions, discussions or letters of warning for conduct pertain to actions taken in an administrative capacity, and are not compensable as factors of employment.[11]

Appellant's supervisor indicated in his letter that his question at the September 24, 1996 meeting was not accusatory, that he believed it necessary to openly address rumors which had been damaging morale at the workplace, and that he considered it to be in the best interests of his division to specifically address the rumor that appellant had made the call to the inspector general. The supervisor stated that he told the group he intended to prevent the establishment of a hostile work environment and a possible impediment to appellant's future training. The supervisor stated that, following his questioning of appellant, which was done in a nonconfrontational manner, he informed the group that he considered the matter closed and would not tolerate any further discussion of the rumor. Appellant did not submit any refutation of these facts. Appellant acknowledged contacting the inspector general and asserted that he was taken aback by his supervisor addressing the matter at the employee meeting. His possible embarrassment, however, is not sufficient to establish error or abuse at the meeting by his supervisor in addressing the rumor with the employees under his supervision. Nor is appellant's statement sufficient to establish any allegations that he was accosted by coworkers after the meeting. The Board's case law illustrates that, in the context of disputes or difficult relationships alleged between coworkers, mere perceptions or generally stated assertions of dissatisfaction with coemployees will not support a claim for an emotional disability. Therefore, appellant's perception that his work might, in the future, be sabotaged by vengeful coworkers does not establish that any actions were taken against him. The evidence presented by appellant is therefore insufficient to establish harassment of appellant by his coworkers.

Lastly, notwithstanding the Office's ultimate resolution of the issue of appellant's entitlement to benefits based on an emotional condition, the Board finds that appellant is still entitled to reimbursement for or payment of expenses incurred for medical treatment for the period October 17, 1996, the date the employing establishment official signed the Form CA-16, authorization for examination and/or treatment, to December 16, 1996, the date 60 days from the official's signature (as such authorization was not terminated before that period). By Form CA-16, authorization for examination and/or treatment, signed by an employing establishment official on October 17, 1996 the employing establishment authorized Dr. Levine to provide medical care for a period of up to 60 days from that date. The employing establishment's authorization for appellant to obtain medical examination and/or treatment created a contractual obligation to pay for the cost of necessary medical treatment and emergency surgery regardless of the action taken on the claim.[12]

[11] *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

[12] *Robert F. Hamilton*, 41 ECAB 431 (1990); *Frederick J. Williams*, 35 ECAB 805 (1984); 20 C.F.R. § 10.403.

The decision of the Office of Workers' Compensation Programs dated February 1, 1997 is hereby affirmed as modified.

Dated, Washington, D.C.
June 16, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member