

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CHRIS RAFTER and DEPARTMENT OF LABOR,  
San Francisco, CA

*Docket No. 98-175; Submitted on the Record;  
Issued September 21, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof to establish that he sustained an emotional condition in the performance of duty on April 24, 1996.

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 in the performance of duty on April 24, 1996. By decision dated October 10, 1996, the Office rejected appellant's claim. Following oral argument on June 4, 1997, an Office hearing representative affirmed the denial of appellant's claim in a July 9, 1992 decision.

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>1</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. Distinctions exist as to the type of situations giving rise to an emotional condition, which will be covered under the Federal Employees' Compensation Act. Disability is not covered where it results from an employee's frustration over not being permitted

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<sup>1</sup> *Wanda G. Bailey*, 45 ECAB 835 (1994); *Kathleen D. Walker*, 42 ECAB 603, 608-09 (1991).

to work in a particular environment or to hold a particular position, or to 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 Act.<sup>2</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 of Workers' Compensation Programs, 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>3</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.<sup>4</sup>

In this case, appellant has alleged that his April 24, 1996 telephone conversation with Stacey Bloom,<sup>5</sup> a congressional aide in the office of Congressman William Thomas, regarding her request that he provide written authorization to a claimant for knee surgery caused his emotional condition. As this telephone conversation occurred while appellant was in the performance of his regular or specially assigned duties, this constitutes a compensable factor of employment.

Appellant has further alleged that his telephone conversation on April 24, 1996 with Billie Jo Medders, a congressional aide in the office of Congressman William Thomas, regarding her eavesdropping on his earlier telephone conversation with Ms. Bloom, her threat to report him to Ed Bounds, District Director of region IX of the employing establishment and her tone of voice during the conversation caused his emotional condition. The Board finds that appellant's telephone conversation with Ms. Medders occurred while he was in the performance of his regular or specially assigned job duties.

The Board, however, finds that appellant has failed to submit any evidence to substantiate his allegation that Ms. Medders eavesdropped on his telephone conversation. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his allegations with probative reliable evidence.<sup>6</sup> Appellant indicated that there were witnesses to his conversation with Ms. Medders, but he failed to submit statements from these witnesses. In an April 25, 1996 letter, Ms. Medders noted that appellant had called Congressman Thomas' office and stated, "I wish to clearly state that I did not listen in on the conversation. We do sit nearby and I overheard the conversation." In addition, Mr. Bounds

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<sup>2</sup> *Marie Boylan*, 45 ECAB 338 (1994); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Margaret S. Kryzcki*, 43 ECAB 496, 502 (1992); *Lillian Cutler*, *supra* note 2.

<sup>4</sup> Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence; *see Margaret S. Kryzcki*, *supra* note 3.

<sup>5</sup> Appellant mistakenly indicated that the congressional aide's name was Stacey Lynne.

<sup>6</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

indicated in his July 24, 1996 narrative statement that Ms. Medders specifically denied listening to appellant's conversation with the aide. The Board finds that appellant has failed to substantiate his allegation that Ms. Medders' eavesdropped on his telephone conversation with Ms. Bloom. As appellant has failed to substantiate his allegations that Ms. Medders eavesdropped on his telephone conversation with Ms. Bloom, or that she used an inappropriate tone of voice during their telephone conversation he has not established compensable factors of employment.

Although Ms. Medders discussed her conversation with appellant with a senior claims examiner at the employing establishment, appellant's reaction to Ms. Medders' contacting Mr. Bounds is not compensable. The record indicates that appellant expressed concern about his employment, his career as an attorney and ability to financially care for his family.<sup>7</sup> A disabling condition resulting from an employee's feeling of job insecurity does not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.<sup>8</sup>

Appellant has alleged that Mr. Bounds' request that he send a letter to a claimant regarding authorization for the requested knee surgery caused his emotional condition. The record establishes that Mr. Bounds requested that appellant provide written authorization to the claimant for knee surgery. In his July 24, 1996 narrative statement, Mr. Bounds indicated that during a fire drill appellant told him to expect a telephone call from Ms. Medders because she wanted him to send a claimant written authorization for surgery, but that he had already spoken to the claimant's physician. Mr. Bounds further indicated that he told appellant "[w]hy don't you just go ahead and send the authorization? It will be simpler and quicker." As this was in the performance of his regular or specially assigned duties, it constitutes a compensable factor of employment.

The fact that appellant has established compensable factors of employment does not establish entitlement to compensation. Appellant must submit rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.<sup>9</sup>

The medical evidence of record in this case, is insufficient to establish appellant's claim. Appellant submitted a May 7, 1996 medical note, from Dr. Larry Stewart, a Board-certified psychiatrist, revealing that he had seen appellant for therapy for an adjustment disorder with mixed emotions. Dr. Stewart stated that appellant had substantially improved and that he was able to return to his regular duties on May 15, 1996. Dr. Stewart's medical note failed to address any causal relationship between appellant's emotional condition and specific compensable factors of his employment.

Appellant also submitted Dr. Stewart's June 10, 1996 medical report indicating a history of the incidents that appellant alleged caused his emotional condition. Dr. Stewart's report also

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<sup>7</sup> At the hearing, appellant contended that he had no feelings of job insecurity.

<sup>8</sup> *Sharon K. Watkins*, 45 ECAB 290 (1994).

<sup>9</sup> *Wanda G. Bailey and Kathleen D. Walker*, *supra* note 1.

indicated appellant's social and medical histories and his findings on examination. Dr. Stewart stated that appellant "appeared" to have an adjustment disorder with anxiety. Dr. Stewart opined that appellant's telephone conversation with Ms. Medders "produced a torrent of reactions and emotions in [appellant], which escalated to the point that he could not function at work." Dr. Stewart also opined it appeared that appellant's intense reaction was a mixture of anger and anxiety on one level, catastrophic thinking on another level and a tendency to have his thinking polarized when he was in emotional distress. He further opined that appellant may have already been at a somewhat higher-than-average emotional state for himself because of tensions at home, consisting of a divorce action. He then stated that nonetheless, it appeared that appellant was functioning adequately at work and handling matters in a routine manner. Dr. Stewart concluded that "[i]t appears that the events, as described by [appellant], are the direct cause of the emotional turmoil which rendered him unable to work temporarily." Dr. Stewart's opinion on causal relationship is insufficient to establish appellant's claim as his opinion as to a diagnosis and casual relation appears speculative in nature and, therefore, of diminished probative value.<sup>10</sup>

The July 9, 1997 and October 10, 1996 decisions of the Office of Workers' Compensation Programs are hereby affirmed, as modified.

Dated, Washington, D.C.  
September 21, 1999

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

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<sup>10</sup> See *Jennifer Beville*, 33 ECAB 1970 (1982); *Leonard J. O'Keefe*, 14 ECAB 42 (1962).