

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LYLE K. YOUNG and DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION, Sacramento, CA

*Docket No. 98-1985; Submitted on the Record;
Issued May 24, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met his burden of proof in establishing that he developed an emotional condition due to factors of his federal employment; and (2) whether the Branch of Hearings and Review properly denied appellant's request for an oral hearing as untimely.

The Board has duly reviewed the case on appeal and finds it not in posture for decision.

Appellant, a power systems electrician, filed a claim on November 20, 1996 alleging that he developed an emotional condition due to harassment by his supervisor and threats by coworkers. The Office of Workers' Compensation Programs developed appellant's claim and accepted several employment factors. The Office referred appellant for a second opinion evaluation. By decision dated November 26, 1997, the Office denied appellant's claim finding that his emotional condition was not due to the accepted employment factors. Appellant requested an oral hearing by letter postmarked December 27, 1997. By decision dated February 18, 1997, the Branch of Hearings and Review denied appellant's request as untimely.

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 concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment to hold a particular position.¹

In this case, appellant attributed his emotional condition to actions by a coworker, Chuck Craig beginning in 1984. Appellant stated that Mr. Craig threatened to kill him and that Mr. Craig stated that he carried a gun. He stated that Mr. Craig returned to the employing

¹ *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

establishment on a regular basis. Appellant submitted a statement from a coworker, Michael W. Louder, supporting the threats against appellant and that Mr. Craig stated that he carried a gun. Appellant's supervisor, Dennis McComb, confirmed that friction between appellant and Mr. Craig existed. He stated that Mr. Craig retired in 1993 and returned to the employing establishment six times since then and had not returned in the year preceding January 9, 1997. The Board finds that the Office properly accepted that appellant had substantiated the incidents regarding Mr. Craig and that these incidents occurred in the performance of duty.

Appellant alleging that his supervisor, Randy Shepard, made a serious safety error on December 4, 1995 which endangered appellant. This statement was confirmed by Mr. McComb. He has substantiated this factor of employment. On December 15, 1995 an elevator became lodged at the employing establishment resulting in dangerous working conditions. Appellant had to take safety measures. Mr. McComb confirmed that this event occurred as alleged. The Board finds that the Office properly considered these events as factors of appellant's federal employment.

Appellant alleged that Mr. Shepard improperly removed danger tags placed by appellant on August 16, 1993 and November 21, 1995. Mr. McComb stated that appellant used annual leave on August 16, 1993 and that Mr. Shepard properly removed the November 21, 1995 tag. Therefore, appellant has not substantiated these employment factors.

Appellant alleged that he was subject to disparate treatment by Mr. Shepard. Mr. Louder agreed that he and appellant were treated differently. However, as Mr. Louder did not confirm the occurrence of any specific events alleged by appellant, appellant has failed to substantiate this factor of employment.

Appellant also attributed his emotional condition to administrative actions by his supervisors including disciplinary actions, meetings, investigations and instructions. As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. But 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, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.² In this case, appellant has submitted no evidence to substantiate his allegations that the employing establishment was abusive or unreasonable in its administration.

Appellant alleged that Mr. Shepard required him to remove his truck from where he had parked it prior to a temporary change of duty station. Mr. Louder agreed that appellant was asked to move his truck. Appellant alleged that another coworker parked in the same spot and that Mr. Shepard did not ask the coworker to move. There is no indication that appellant's employment is impacted by his parking space, therefore, these events are not considered to have occurred in the performance of duty.

Appellant alleged that he had a confrontation with Mr. Shepard on January 24, 1996 which involved yelling and finger pointing. There is no evidence in the record substantiating

² *Martha L. Watson*, 46 ECAB 407 (1995).

that this event occurred as alleged. Therefore appellant has not establish this factor of employment.

To establish appellant's occupational disease claim that he has sustained an emotional condition in the performance of duty appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.³ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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 specific employment factors identified by the claimant.⁴

Dr. Janak Mehtani, a Board-certified psychiatrist, completed a report dated March 4, 1997 diagnosing major depressive disorder and post-traumatic stress disorder. Dr. Mehtani attributed appellant's condition to his employment.

In this case, the Office referred appellant for a second opinion evaluation with Dr. V. Meena Meenakshi, a Board-certified psychiatrist. Dr. Meenakshi reviewed the statement of accepted facts and diagnosed major depression, moderately severe. He noted the accepted employment factors and stated:

"Taking all these issues objectively, it would be reasonable to state that the precipitating factors of his depressive disorder are the numerous items that are not within the performance of duty and those that are not factual, according to he statement of accepted facts. *However, this is not to say that the other two incidents which occurred in 1995 which are found to be within the performance of duty, did not contribute at all to the development of his depressive disorder.*" (Emphasis added.)

³ *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

⁴ *Id.*

The Office requested a supplemental report from Dr. Meenakshi on October 8, 1997. On October 20, 1997 he responded and stated:

“The incidents of December 4, 1995 and December 15, 1995 were perceived by the patient as significant stressors and because he realized the possible consequences, it caused him to have a significant degree of psychological distress.

“Therefore, in review of the case, I would conclude that the compensable incidents are contributory factors, as well, to the precipitation of the patient’s depressive disorder.”

Proceedings before the Office are not adversarial in nature and the Office is not a disinterested arbiter; in a case where the Office “proceeds to develop the evidence and to procure medical evidence, it must do so in a fair and impartial manner.”⁵ The Board finds that the medical evidence from Dr. Meenakshi while not sufficiently rationalized to establish appellant’s claim, requires further development on the part of the Office as he opines that appellant’s emotional condition is due in part to the accepted employment factors.

On remand, the Office should request a supplemental report from Dr. Meenakshi regarding the extent and degree of disability due to the accepted employment factors and medical rationale in support of his opinion. After this and such other development of the medical evidence as the Office deems necessary, the Office should issue an appropriate decision.⁶

The November 26, 1997 decision of the Office of Workers’ Compensation Programs is hereby set aside and the case remanded for further development consistent this opinion.

Dated, Washington, D.C.
May 24, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985).

⁶ Due to the resolution of this issue, it is not necessary for the Board to consider whether the Branch of Hearings and Review properly denied appellant’s request for an oral hearing.