

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD FREEMAN and DEPARTMENT OF HOUSING & URBAN
DEVELOPMENT, FAIR HOUSING ASSISTANCE PROGRAM, San Francisco, CA

*Docket No. 99-2196; Submitted on the Record;
Issued February 9, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an emotional condition causally related to compensable work factors.

Appellant filed a claim on February 14, 1997, stating in an accompanying statement that, after many months of intimidation and reprisals, he had been ordered to "commit illegal and fraudulent acts intended to defraud" the United States Government.¹ By decision dated June 9, 1997, the Office of Workers' Compensation Programs denied the claim, finding no compensable work factors had been established. In a decision dated June 1, 1999, an Office hearing representative affirmed the prior decision.

The Board finds that appellant has not established an emotional condition causally related to compensable work factors.

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.² 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.³

¹ The claim filed was a traumatic injury claim (CA-1) for injury on February 7, 1997; it appears that, based on appellant's allegations of incidents occurring over more than one workday, the Office developed the claim as an occupational disease claim. See 20 C.F.R. § 10.5(q).

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

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. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or 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 Federal Employees' Compensation Act.⁴

In the statement accompanying appellant's claim form, he alleged that he was subject to reprisals and was ordered to commit illegal acts to defraud the federal government. With respect to reprisal, it appears from appellant's testimony before an Office hearing representative that he believed certain actions of his supervisor were taken in reprisal for appellant's actions in regard to a 1996 employment injury.⁵ The record contains a letter dated January 10, 1997 from appellant to the Office of Special Counsel alleging various acts of reprisal, as well as violations of personnel practices. There is no evidence that any specific findings were made by the Office of Special Counsel. The Board notes that, in a January 30, 1997 letter, appellant indicated that he was filing an Equal Employment Opportunity (EEO) complaint for discrimination. Again, the record contains no findings with respect to an EEO complaint. The Board finds no probative evidence that is sufficient to establish a claim based on harassment, discrimination or reprisal.

It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.⁶ The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.⁷

With respect to the incidents on February 7, 1997, which appellant has characterized as requiring him to commit illegal acts, there is no probative evidence of error or abuse by the employing establishment. The record contains a February 7, 1997 memorandum from appellant's supervisor indicating that arrangements had been made for his attendance at a computer class, that his request for an advance for transportation costs had been denied, but she would advance appellant \$4.10 because the Imprest Fund was closed. To the extent that appellant alleges that being required to attend a computer class was erroneous, there is

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

⁵ Appellant has an accepted claim for allergic conjunctivitis; based on a complaint by appellant, Occupational Safety and Health Administration conducted an investigation in April 1996 that revealed bacteria in the building water system.

⁶ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

⁷ See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

insufficient evidence of record. A February 3, 1999 letter from a retired coworker opines that the order to begin using a computer was contrary to the labor management agreement because of appellant's employment injury, but this is not sufficient to establish error. It is not clear whether appellant filed a grievance on this issue; there is no finding or admission of error with respect to use of a computer screen, or attendance at a computer class, nor is there any probative evidence of record sufficient for the Board to make a finding of error by the employing establishment.

In summary, although appellant has alleged error by the employing establishment, there is no probative and reliable evidence in the record that is sufficient to establish a claim based on error or abuse. The Board finds that appellant has not alleged and substantiated a compensable work factor in this case. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.⁸

The decision of the Office of Workers' Compensation Programs dated June 1, 1999 is affirmed.

Dated, Washington, DC
February 9, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).