U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KEVIN FRANCIS MALOOF and DEPARTMENT OF VETERANS AFFAIRS, WEST ROXBURY VETERANS HOSPITAL, West Roxbury, MA

Docket No. 00-139; Submitted on the Record;
Issued January 11, 2001

DECISION and ORDER

Before DAVID S. GERSON, PRISCILLA ANNE SCHWAB,
VALERIE D. EVANS-HARRELL

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 May 23, 1999 appellant, then a 46-year-old registered nurse, filed an occupational disease claim alleging that his stress and extreme fatigue were caused by his federal employment because the employing establishment was short staffed and he had not had a continuous week of leave since "last summer." Appellant stopped work on May 24, 1999 and returned on June 3, 1999.

Appellant submitted a May 23, 1999 note in which Dr. Arnoux Blanchard, Board-certified in cardiovascular disease and internal medicine, stated:

> "I [have] known [appellant] for more than one year. I am concerned for him since I noticed a great amount of stress [from] his work here. I believe that he would benefit from a time of rest to replenish his strength and moral energy. At least 10 days would be helpful."

In its statement dated June 6, 1999, the employing establishment described appellant's emergency room work environment and job duties and stated that he had not submitted a request to transfer to another unit. The employing establishment added that, after receiving Dr. Blanchard's note, it approved appellant's leave request through June 20, 1999.

By letter dated June 24, 1999, the Office of Workers' Compensation Programs advised appellant that the evidence of record was insufficient and requested additional factual and medical evidence in support of his claim.

Appellant submitted a statement dated June 27, 1999 in which he described his nursing duties. He alleged that the employing establishment's emergency room was understaffed, but that he worked a 40-hour week without overtime. He asserted that he did not experience stress

outside of work and that one of his immediate supervisors harassed and intimidated him. Appellant also submitted a statement dated July 8, 1999 in which his supervisor stated:

> "The emergency room is a stressful area of nursing practice by nature of the patients seen and their medical status. Patients do not come to the emergency room, as a rule, for routine health care and staff working in the emergency room are aware of this. [Appellant] made no complaints to me about his feeling excessively stressed or fatigued prior to this situation. He works a compressed work schedule to meet the needs of the emergency room and his personal needs. [Appellant] had not and has not to this date, made me aware of a change in his acceptance and agreement with this schedule."
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> "Once I was aware of appellant's complaint, he was approved for sick leave, which immediately preceded his scheduled two weeks of annual leave. I have also suggested he request leave on a regular basis to avoid long periods without a vacation. He has not in the past, not at present, requested a change in assigned duties or a reassignment to another area due to 'stress and fatigue.'"

Appellant's supervisor also stated that appellant performed his duties according to her expectations without conduct problems.

By decision dated September 7, 1999, the Office denied appellant's occupational disease claim on the grounds that the medical evidence of record failed to state a diagnosis of his alleged emotional condition; therefore, it was insufficient to establish fact of injury. Additionally, the Office found that appellant did not declineate factors of employment to which he attributed his emotional condition.

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

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.[1] 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.[2]

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

[1] *Blondell Blassingame*, 48 ECAB 130, 131 (1996).

[2] *Id.*; *see Donna Faye Cardwell*, 41 ECAB 730 (1990).

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 to secure a promotion. On the other hand, where disability results from an employee's emotional reaction to her 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.[3]

In this case, Dr. Blanchard's May 23, 1999 note does not contain a clear diagnosis of an emotional or psychiatric disorder. Dr. Blanchard merely noted that he was concerned for appellant because of stress and opined that he would benefit from time off. Without a diagnosis of an emotional condition, appellant's claim must be denied as he has not established one of the essential elements of a *prima facie* case.[4]

The decision of the Office of Workers' Compensation Programs dated September 7, 1999 is hereby affirmed.

Dated, Washington, DC
January 11, 2001

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

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

[4] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.2 and 3 (April 1993) for a discussion of the evidence needed to establish a *prima facie* case.