U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM DALY and DEPARTMENT OF AGRICULTURE, FOOD & NUTRITION SERVICES, Boston, Mass.

Docket No. 96-1231; Submitted on the Record;
Issued February 25, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM, A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty.

On January 11, 1992 appellant, then a 54-year-old food program specialist, filed an occupational disease claim, alleging that his essential hypertension, general persistent anxiety, drug toxicity overload, recurrent panic attacks and depersonalization problems were related to factors of his federal employment. Appellant indicated that he first became aware of these conditions on December 21, 1991 and that they were causally related to his work on December 23, 1991. In a supplemental statement appellant listed the following as causative factors for his claimed condition: that he was not properly trained for his position, that his immediate and second level supervisors, Ray Ahlberg and Lynda Silva, respectively, threatened and harassed him in various incidents, that the position he received on his transfer to this section of the employing establishment was not the position he was promised when he interviewed, that he improperly received a poor performance appraisal, that the personnel office made errors in his career service forms and kept pertinent information away from him, that Ms. Silva treated him unfairly because she "had a problem with bright men," that he was given impossible goals in his work requirements and when he complained about the goals he was given "scut" work, that his work was misplaced or disappeared and that his letter of removal contained false and ambiguous information. Appellant also reported that he had previously been employed by the Food and Drug Administration in 1964 and1965. He noted that he had participated in a double blind drug test while there and had suffered from generalized anxiety thereafter. On February 27, 1992 appellant advised the Office of Workers' Compensation Programs that he had filed a claim with the Merit Systems Protection Board (MSPB) and asserted that his claimed stress condition was due to working in a hostile work environment, the ad hoc assignment of work and arbitrary reports and his supervisor's lack of knowledge in the area which appellant worked.

In a decision dated June 15, 1992, the Office denied appellant's claim on the grounds that appellant failed to establish that he sustained an injury in the performance of duty. Appellant

filed a request for reconsideration, asserting that the Office had selectively applied the applicable case law in his case. By decision dated September 16, 1993, the Office denied appellant's request for reconsideration on the grounds that it was untimely. In a decision issued September 18, 1995, the Board set aside the Office's September 16, 1993 decision and remanded the case for consideration of the merits of appellant's reconsideration request.[1] In a decision dated December 11, 1995, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to establish modification of its prior decision was warranted.

The Board finds that appellant has not established that he sustained an emotional condition while in the performance of duty.[2]

The initial question presented in an emotional condition claim is whether appellant has alleged and substantiated compensable factors of employment contributing to his condition. Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Act. Where 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. On the other hand, the disability is not covered where it results from factors such as an employees fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.[3] When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.[4] In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.[5]

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[1] Docket Number 94-679 (issued September 18, 1995).

[2] The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed his appeal with the Board on March 7, 1996, the only decision before the Board is the Office's December 11, 1995 decision. *See* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

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

[4] *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green* 37 ECAB 374 (1985).

[5] *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

In the present case, appellant has either not identified or has not substantiated any compensable factors of employment. Specifically, appellant's complaints concerning his training, or lack thereof, address administrative matters, and there is no indication that the employing establishment acted unreasonable in either the manner of training or in the appellant's removal from training to do the work of a fully-trained food specialist.[6] Appellant also asserted that his supervisor, Mr. Ahlberg, did not properly make work assignments, was arbitrary in the assignment of reports, and did not have a proper knowledge of the program in which appellant worked. Appellant's complaints are analogous to expressions of dissatisfaction with his supervisor's management style or the manner in which he exercised his supervisory discretion fall, as a rule, outside of compensable factors of employment.[7] His complaints are analogous to frustration over not being allowed to work in a particular job environment and are therefore not compensable. Similarly, appellant's complaint that the work he was doing was not what he had been promised when he interviewed is not a compensable factor under the Act since it is frustration over not being allowed to work in a particular job. Finally, appellant's assertion that he was given impossible goals and was given insignificant work in response to his complaints is not substantiated. Appellant has made a general allegation that the goals set by his supervisor were impossible without giving specific information on either the production figure required or the type of task requested and why this goal was impossible. However, Ms. Silva, appellant's second level supervisor, reported that appellant was not required to perform any overtime, was subjected to normal deadlines inherent in his position, that each assignment usually required a one page response and that appellant was not subjected to more than ten percent travel time, below the average for his position. As appellant's contention that he had too much work or that the goals set were impossible lacks specificity and is not corroborated by any other objective evidence, it is unsubstantiated and is not compensable under the Act. Appellant's complaint that he received an improper performance appraisal and that his letter of removal contained false and ambiguous information is not a compensable factor of employment as it is administrative in nature, does not arise from appellant's duties, and lacks specificity. Although performance appraisals and within-grade increases are generally related to employment, they are an administrative function, and the assessment of performance is not covered under the Act unless evidence discloses that the employing establishment acted unreasonably or abusively. The record does not contain such evidence.[8]

Appellant has also generally alleged that he was subjected to harassment or discrimination by Ms. Silva and C. Gersh. Actions by coworkers or supervisors that are considered abusive or harassing by a claimant may constitute compensable factors of employment to the extent that the implicate disputes and incidents are established as arising in and out of the performance of duty.[9] Mere perceptions or feelings of harassment, however, are not compensable. To discharge his burden of proof, a claimant must establish a factual basis for

[6] *Mildred D. Thomas*, 42 ECAB 888 (1991).

[7] *Donald E. Ewals*, 45 ECAB 111 (1993); *see also David W. Shirey*, 42 ECAB 783 (1991).

[8] *Id.*

[9] *See Marie Boylan*, 45 ECAB 338 (1944); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

his claim by supporting his allegations of harassment with probative and reliable evidence.[10] Appellant failed to provide any such probative and reliable evidence in the instant case. Appellant generally asserted that Ms. Silva had a problem with him because he is a "bright man" and she was known to have this prejudice. However, appellant has not provided any documentation, independent corroboration or alleged any specific incident in which Ms. Silva allegedly harassed him. Appellant alleged that C. Gersh kept personnel papers concerning his career status away from him and implied that his pay steps were wrong due to deliberate actions by the personnel department. These allegations are not supported by any objective evidence in the record. Thus, appellant's perceptions of harassment and discrimination are not compensable as they are unsubstantiated and any emotional condition arising therefrom is self-generated. Since appellant has not identified nor substantiated any compensable factors under the Act, he has not met his burden of proof.

The decision of the Office of Workers' Compensation Programs dated December 11, 1995 is hereby affirmed.

Dated, Washington, D.C.
February 25, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[10] *Ruthie M. Evans*, 41 ECAB 416 (1990).