

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NORMAN M. PERRAS and DEPARTMENT OF THE NAVY,
PUGET WOUND NAVAL SHIPYARD, Bremerton, Wash.

*Docket No. 96-1713; Submitted on the Record;
Issued June 10, 1998*

DECISION and ORDER

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

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty causally related to factors of his federal employment.

On February 10, 1995 appellant, then a 46-year-old supervisory supply management representative, filed an occupational disease claim alleging that he sustained stress, major depression, anxiety, an unspecified somataform disorder, porphyria attacks, gastrointestinal disorders, and severe weight gain causally related to his federal employment.

In statements submitted in support of his claim, appellant primarily attributed his conditions to harassment by Mr. Don L. Remington, his supervisor from 1980 to 1987, performing the work of two jobs for two years beginning in 1993 and handing out reduction-in-force (RIF) notices to 18 employees during the course of one day.

By decision dated October 4, 1995, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he did not establish that he sustained an injury in the performance of duty. In the accompanying memorandum to the Director, incorporated by reference, the Office found that appellant had not alleged any compensable factors of employment.

Appellant requested a review of the written record. By decision dated April 18, 1996, an Office hearing representative affirmed the Office's October 4, 1995 decision. The hearing representative found that appellant's allegation of harassment by Mr. Remington were not compensable as it was not substantiated by the record. The hearing representative further found, however, that appellant established that he had an increase in work duties and responsibilities in 1993 and handed out RIF notices to 18 people. The hearing representative found that these incidents occurred in the course of appellant's regular or specially assigned duties and thus constituted compensable employment factors. He found, however, that the medical evidence

was insufficient to establish that the identified compensable employment factors caused appellant's emotional disability.

The Board has duly reviewed the case record and finds that the case is not in posture for decision.

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 comes within the coverage of the Federal Employees' Compensation Act.¹ 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.²

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 employment factors.³ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, 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.⁵ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates the factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

In the present case, appellant attributed his emotional condition to harassment and verbal abuse by his supervisor, Mr. Remington, from 1980 to 1987.⁷ The Board has held that for

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

⁶ *Id.*

⁷ Appellant stated that Mr. Remington has since retired.

harassment to give rise to a compensable disability or condition under the Act, there must be some evidence that such implicated acts of harassment did, in fact, occur.⁸ Mere perceptions of harassment are not compensable under the Act.⁹ In the present case, appellant's allegations are not supported by any substantial, reliable or probative factual evidence of record.

Specifically, appellant related that Mr. Remington had mood swings related to his alcohol abuse; that on August 3, 1983 he swore at appellant for calling the safety office to report a violation, that he swore at appellant when he tried to obey an order from the safety office, that he repeatedly changed his mind regarding orders given appellant, and that he moved problem employees to appellant's division. Appellant further related that at one time Mr. Remington became angry and threw a stack of papers into the air. In support of his claim of harassment, appellant submitted a statement dated April 24, 1994 from Mr. Bates, a coworker. Mr. Bates verified that Mr. Remington had mood swings and that "the statements made by [appellant] concerning our mutual experiences are factual." However, Mr. Bates does not discuss any of the specific instances of the alleged harassment described by appellant, and thus his statement is insufficient to corroborate appellant's allegations. In the absence of specific incidents of harassment that are substantiated by the record, the Board finds that appellant has not alleged a compensable factor of employment.

Appellant also generally attributed his condition to harassment by Mr. Gordon, his supervisor beginning in 1987. Appellant stated that Mr. Gordon ordered him to cease his attempt to upgrade his position, and criticized his inventory even though the problems arose before appellant took charge. Appellant, however, has not submitted any independent evidence to substantiate his allegation, and thus it does not constitute a compensable factor of employment.

Appellant further maintains that he incurred stress when he worked two different jobs beginning in 1993. Appellant related that in 1989 the employing establishment promoted him to deputy material superintendent, at which time he began working for Mr. Emilio DeLucia, the material superintendent. Appellant stated that when Mr. DeLucia retired in 1993 he "was expected to do his job as well as my own everyday for nearly two years. I was not given Mr. DeLucia's rate of pay but retained my old rate." In a statement from the employing establishment, Mr. M. L. Mitchell, appellant's supervisor in 1993, indicated that appellant worked in a high level position that was downgraded after a review and encountered stressful situations in the course of performing his duties. A statement from the employing establishment dated June 6, 1995 indicated that, after Mr. DeLucia's retirement, appellant performed his own duties and acted as Mr. DeLucia's replacement. Appellant has further submitted multiple statements from coworkers verifying that he was given the work of two positions and that he had difficulty completing the work. Appellant, thus, has substantiated his allegations that he

⁸ *Ruth C. Bordon*, 43 ECAB 146 (1991).

⁹ *See Ruthie M. Evans*, 41 ECAB 416 (1990).

sustained stress due to an increase in his work duties and responsibilities, and thus has established a compensable factor of employment.¹⁰

The record further substantiates, as a compensable factor of employment, appellant's allegations that he incurred stress as a result of handing out RIF notices to 18 coworkers during the course of a day in June 1993. Appellant stated, "This experience devastated me. Many employees cried, some became hysterical and others cursed me out. This procedure was required to be performed in the space of one day. I was totally depressed by the situation." Appellant submitted numerous statements from coworkers verifying that appellant handed out RIF notices and that the experience distressed him. The uncontradicted evidence of record thus establishes that the incident occurred as described. As the handing out the RIF notices was part of appellant's specifically assigned duties, it constitutes a compensable employment factor.

Although, as noted above, appellant has identified compensable employment factors, this alone is insufficient to discharge his burden of proof. To establish that an emotional condition was sustained in the performance of duty, appellant must submit rationalized medical evidence establishing that the identified compensable factors of employment are causally related to the emotional condition.¹¹

The medical evidence submitted by appellant gives some support to his claim. In a report dated March 6, 1991, Dr. Gail K. Shuler, a psychiatrist, stated:

"[Appellant] does appear to be experiencing a major depressive episode at this point with symptoms of marked insomnia, overeating, weight gain, decreased concentration, fatigue, overspending and difficulty keeping up at work. There are certainly stressors which probably exacerbated the depression he has experienced over the past several years. For one thing, he has been promoted to increasingly more responsible positions at the [employing establishment], the workload has recently increased and he tends to be a perfectionist."

In a report dated September 14, 1994, Dr. Shuler indicated that appellant had complained about the workload and a supervisor at the employing establishment but stated that she did not know why he was no longer working. Dr. Shuler discussed appellant's family history of emotional problems.

In a report dated November 30, 1994, Dr. Shuler diagnosed major depression, somatoform disorder, panic disorder, and dependent personality traits, and found that appellant's "ability to make occupational, personal and social adjustment has collapsed."

In a report dated February 17, 1995, Dr. Shuler related that when she began treating appellant in 1991 he "talked a lot about his employment and the demands made on him. Work stress certainly seemed to aggravate the major depressive disorder I originally diagnosed." Dr. Shuler stated:

¹⁰ *Carolyn King Palermo (Dwayne Palermo)*, 42 ECAB 435 (1991).

¹¹ *Debbie J. Hobbs*, 43 ECAB 135 (1991).

“To summarize, when I began to treat [appellant] his depression did seem to be aggravated by the work load at [the employing establishment. Eventually he developed anxiety symptoms (panic attacks which initially presented as chest pain.) Panic attacks can be triggered by stress, but it is not fully known what causes them. I was not aware, nor was [appellant] of any particular stress which caused him to leave work for good on May 17, 1994. [Appellant’s] psychiatric problems were not caused by his employment, but his work load did always seem to be beyond what he could handle and I did view his employment as an aggravating factor in his psychiatric symptoms.”

While Dr. Shuler’s reports provide insufficient medical rationale to establish that the identified employment factors are causally related to the claimed emotional condition, her reports are uncontradicted and are sufficient to require further development of the medical evidence by the Office.¹²

On remand, the Office should submit the medical record a statement of accepted facts to Dr. Shuler or an appropriate physician for a rationalized medical opinion as to whether the accepted factors of employment caused or aggravated appellant’s claimed emotional condition. After such further development as it considers necessary, the Office shall issue an appropriate decision on appellant’s entitlement to compensation benefits.

The decisions of the Office of Workers’ Compensation Programs dated April 18, 1996 and October 4, 1995 are hereby set aside and the case is remanded for further development consistent with this decision.

Dated, Washington, D.C.
June 10, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

¹² *Janie Lee Ryan*, 40 ECAB 812 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).