U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ERIC HARRIS and DEPARTMENT OF THE NAVY, NORFOLK NAVAL BASE, Norfolk, Va.

Docket No. 96-427; Submitted on the Record;
Issued March 19, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, BRADLEY T. KNOTT

The issue is whether appellant sustained an emotional condition within the performance of duty.

On February 24, 1994 appellant, then a 41-year-old tools and parts attendant, filed a claim for major depression which he attributed to harassment at work by his supervisor. In a September 29, 1994 decision, the Office of Workers' Compensation Programs rejected appellant's claim on the grounds that the evidence of record failed to demonstrate that the claimed injury occurred in the performance of duty. In an August 10, 1995 decision, an Office hearing representative found that appellant related his emotional condition to job reassignment and disciplinary actions imposed by his supervisor. She indicated that these actions were administrative actions of the employing establishment and concluded that there was no evidence of record to show that the actions of the employing establishment were in error or abusive to appellant. She therefore affirmed the decision of the Office.

The Board finds that appellant did not sustain an injury in the performance of duty.

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 Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes with the coverage of the Act. On the other hand, the disability is not covered where it results from such factors as an employee's 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 the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning

of the Act.[1] 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.[2] 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.[3]

Appellant identified three factors in the cause of his emotional condition; his reassignment from a position as a hazardous waste handler to that of a tools and parts attendant, his dispute with his supervisor over his work restrictions which he characterized as harassment, and the disciplinary actions that arose out of his dispute with his supervisor. Appellant's dissatisfaction with the job reassignment shows that he wanted a different job. That factor is not considered compensable. The job reassignment was an administrative action by the employing establishment and therefore cannot be considered a compensable factor of employment unless it can be shown that the reassignment was in error or abusive. There is no such evidence here. The disciplinary actions taken against appellant also are considered to be administrative actions and therefore would not be compensable unless appellant showed that the disciplinary actions were in error or abusive. A consideration of that point rests on a consideration of whether the dispute over appellant's work restrictions, which gave rise to the disciplinary actions, would be considered a factor of appellant's employment and whether the employing establishment's actions in that dispute were erroneous or abusive.

On August 15, 1993 appellant was reassigned from a detail assignment in which he gathered and complied information on the hazardous material kept and used at the employing establishment.[4] He was assigned to the position of tools and parts attendant, a position from which he had been assigned to the detail. In a September 13, 1993 report, Dr. Robert K. Neal, Jr., a Board-certified neurosurgeon and appellant's treating physician, stated that appellant had pinched nerves in his back due to his July 22, 1986 employment injury and had continued pain. He indicated that appellant should permanently perform light-duty work with no lifting over 10 pounds, no manual physical work, no bending, stooping, squatting and no working in an awkward position. The employing establishment requested clarification from Dr. Neal on what he meant by "no manual labor." In a September 20, 1993 note, Dr. Neal repeated his statement of appellant's work restrictions, deleting the restriction of "no manual labor."

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

[2] *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

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

[4] Appellant was on light duty due to the effects of a prior accepted, employment-related back condition.

The evidence of record shows that on September 7, 1993 appellant's supervisor ordered appellant to assist his work leader by filling out issue tickets while the work leader got the materials requested. Appellant refused, complaining of back pain. The supervisor directed appellant to go to the dispensary or go home on sick leave. Appellant used sick leave. On September 10, 1993 the supervisor asked appellant to get a dust pan to help a coworker to pick up trash he had swept up. Appellant did not respond to repeated requests by the supervisor and then accused the supervisor of harassing him and stated that his back continued to hurt. He was escorted off the employing establishment by the base police and placed on enforced annual leave. Appellant received a letter of reprimand for these incidents. On September 28, 1993 appellant refused to clean a gas-powered saw on the grounds that doing so would be against his work restriction of no manual work. The supervisor indicated that Dr. Neal's September 20, 1993 note did not contain any specific work restriction against manual labor. Appellant and his supervisor had several arguments during the course of that day on the matter of appellant's work restrictions with appellant again accusing his supervisor of harassment. The supervisor proposed to suspend appellant for this incident. In these incidents, appellant's supervisor was instructing appellant to perform specific tasks which appellant refused to perform on the grounds that the tasks exceeded his work restrictions. These matters, therefore, do not concern appellant's performance of his assigned duties but a dispute between appellant and his supervisor on the specific nature and extent of his assigned duties as permitted by his work restrictions, with a disagreement on the interpretation of those work restrictions. This matter therefore is administrative in nature as it concerns a matter of the assignment of duties to appellant before he entered into the performance of specifically assigned duties. The assignment of specific duties to appellant therefore cannot be considered a compensable factor of employment unless appellant can show that the actions of the employing establishment were in error or abusive. The work restrictions submitted by Dr. Neal shows that the duties being assigned to appellant were within his work restrictions. This shows that there was no error or abuse in the supervisor's actions in the dispute with appellant over his duties as a tools and parts attendant.

Appellant made a general allegation that his emotional condition was due to harassment by his supervisor. The actions of a supervisor which an employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act. However, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perception of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.[5] Appellant contended that the actions of his supervisor constituted harassment. There is no evidence of record that establishes that the actions of appellant's supervisor constituted harassment.

[5] *Joan Juanita Greene*, 41 ECAB 760 (1990).

The decision of the Office of Workers' Compensation Programs, dated August 10, 1995, is hereby affirmed.

Dated, Washington, D.C.
March 19, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member