

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MANUEL O. REYES and DEPARTMENT OF JUSTICE,
IMMIGRATION & NATURALIZATION SERVICE, Miami, FL

*Docket No. 98-296; Submitted on the Record;
Issued August 18, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof to establish that he sustained a stress-related condition in the performance of duty on July 21, 1997.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a stress-related condition in the performance of duty on July 21, 1997.

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ 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.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

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).

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 of Workers' Compensation Programs, 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 that 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 alleged that he sustained an angina pectoris attack on July 21, 1997 when his supervisor, Dora Sanchez, "threatened" him with an "on-the-job suspension." He alleged that Ms. Sanchez insisted that his doctor provide a form regarding his work restrictions within 24 hours or else he would be suspended from his job. By decision dated October 7, 1997, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, thus, initially review whether the alleged incident on July 21, 1997 is a covered employment factor under the terms of the Act.

Appellant alleged that Ms. Sanchez harassed him by threatening to suspend him. To the extent that disputes and incidents alleged as constituting harassment by supervisors are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.⁷ However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.⁸ In the present case, the employing establishment denied that appellant was subjected to harassment and appellant has not submitted sufficient evidence to establish that he was harassed by his supervisor.⁹ Appellant alleged that his supervisor made statements which he believed constituted harassment, but he provided no corroborating evidence, such as witness statements, to establish that the statements actually were made.¹⁰ Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's allegations that the employing establishment wrongly required him to present documentation regarding his medical condition, the Board finds that these allegations

⁵ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

⁷ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁸ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

⁹ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence). In a statement dated September 23, 1997, Ms. Sanchez denied that she threatened appellant when she explained to him the need to submit documentation regarding his medical condition. Ms. Sanchez indicated that she told appellant it was very unlikely that he would be suspended if he failed to provide the requested medical documentation.

¹⁰ See *William P. George*, 43 ECAB 1159, 1167 (1992).

relate to an administrative or personnel matter, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.¹¹ Although the handling of medical documentation is generally related to the employment, it is an administrative function of the employer, and not a duty of the employee.¹² However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹³ Appellant has not presented any evidence to show that the employing establishment committed error or abuse in requiring him to present documentation of his medical condition. Thus, appellant has not established a compensable employment factor under the Act in this respect.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained a stress-related condition in the performance of duty.¹⁴

The decision of the Office of Workers' Compensation Programs dated October 7, 1997 is affirmed.

Dated, Washington, D.C.
August 18, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

¹¹ See *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹² *Id.*

¹³ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁴ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).