

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SAHAG TCHAKMAKJIAN and DEFENSE LOGISTICS AGENCY,
Glendale, Calif.

*Docket No. 97-2297; Submitted on the Record;
Issued June 7, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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 April 19, 1996 appellant, then a 46-year-old quality assurance specialist, filed an occupational disease claim alleging that he sustained severe anxiety, emotional stress, and depression due to factors of his federal employment. By decision dated July 22, 1996, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence did not establish an injury in the performance of duty. The Office found that appellant had not alleged any compensable factors of employment.

Appellant requested a hearing before an Office hearing representative, which was held on April 8, 1997. In a decision dated June 20, 1997, the Office hearing representative affirmed the Office's July 22, 1996 decision.

The Board has duly reviewed the case record and finds that the case is not in posture for a 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 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 or her 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

¹ 5 U.S.C. §§ 8101-8193.

factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.²

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.³ 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.⁴

Many of appellant's allegations of employment factors that caused or contributed to his condition fall into the category of administrative or personnel actions. In *Thomas D. McEuen*,⁵ the Board held that an employee's emotional reaction to administrative actions or personnel matter taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.⁶ Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. The incidents and allegations made by appellant which fall into this category of administrative or personnel actions include: the denial of a promotion; the denial of a security clearance; not being able to enter the worksite of a contractor; and delay in a 1992 performance appraisal. Appellant has presented no evidence of administrative error or abuse in the performance of these actions and therefore they are not compensable under the Act.

Appellant further contends that he experienced harassment and discrimination from his supervisor, Randy Sawlsville, and from his coworkers. Appellant related that he was unjustly accused of being a threat to a female coworker and of showing hostility toward contractors and other coworkers. Appellant also generally maintained that he was called crazy by a coworker, that he was blamed for lack of quality control, that he was unfairly reprimanded, and that he was physically threatened by Mr. Sawlsville. Regarding the allegations of harassment, for harassment to give rise to a compensable factor of employment, there must be evidence that

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

³ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁴ *Id.*

⁵ See *supra* note 2.

⁶ See *Richard J. Dube*, 42 ECAB 916 (1991).

harassment did, in fact, occur. Mere perceptions are not compensable.⁷ In support of his claim for harassment, appellant submitted two statements from coworkers who stated that they heard Mr. Sawlsville speak in a raised voice to appellant. The coworkers' statements, however, did not describe in any detail the incidents which appellant claimed caused his emotional condition and thus are not of sufficient probative value to establish appellant's claim for harassment.⁸ Further, the record contains a decision by the Equal Employment Opportunity Commission denying appellant's complaint of discrimination. Appellant, therefore, has not submitted sufficient evidence corroborating his allegations of harassment and discrimination and thus has not established a compensable factor of employment.

Appellant additionally attributed his emotional condition to the general nature of his work, which required him to visit contractor sites and perform inspections to ensure conformance with requirements of the employing establishment. He related that he encountered hostility from contractors because he found that they were not complying with standards and that he uncovered problems. The record contains evidence that several contractors requested that appellant be removed as inspector from their worksite due to personality conflicts. The record also contains letters from appellant to the contractors citing improper practices. Appellant also states, and the record supports, that he was accused by a contractor's sales manager of delaying shipments. In *Lillian Cutler*,⁹ the Board explained that, where an employee experiences emotional stress in carrying out the employment duties, or has fear and anxiety regarding his or her ability to carry out such duties, and the medical evidence establishes that the disability resulted from his or her reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of the employment, and would therefore come within the coverage of the Act. The Board stated in *Pauline Phillips*,¹⁰ that this is true where the employee's disability resulted from his or her emotional reaction to the regular day-to-day to specially assigned work duties or to a requirement imposed by the employment.¹¹

The Board finds that appellant's contact with contractors during the course of his inspecting and enforcing regulations of the employing establishment constitute the performance of his regularly assigned duties and therefore any stress arising from these activities would be compensable.

As appellant has alleged compensable factors of employment the issue then become whether he has submitted sufficient medical evidence to establish that any identified compensable factors resulted in his emotional condition. In support of his claim, appellant submitted a report dated May 2, 1996 from Dr. Karen Crocker-Wensel, who diagnosed severe major depression and stated that appellant related "increased stresses related to his attempts to

⁷ *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁸ *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995).

⁹ 28 ECAB 125 (1976).

¹⁰ 36 ECAB 377 (1984)

¹¹ *Larry J. Thomas*, 44 ECAB 291 (1992).

deal with enforcing the requirements of a work-related contract that led to allegations of threats by [appellant] towards this contractor.”

The Board finds that, although Dr. Crocker-Wensel did not provide sufficient medical rationale explaining how these accepted factors caused or contributed to appellant’s emotional condition, her report is generally supportive of appellant’s claim and sufficient to require further development by the Office. The case, therefore, must be remanded to the Office for preparation of a statement of accepted facts and further development of the medical evidence.

The decision of the Office of Workers’ Compensation Programs dated June 20, 1997 is hereby set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, D.C.

June 7, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member