

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DUANE L. SALVO and DEPARTMENT OF THE NAVY,
NAVAL AIR SYSTEMS COMMAND, Point Mugu, CA

*Docket No. 98-874; Submitted on the Record;
Issued November 10, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has met his burden of proof in establishing that he developed an emotional condition due to factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits on December 2, 1997.

The Board has duly reviewed the case on appeal and finds that appellant has not met his burden of proof in establishing that he developed an emotional condition due to factors of his federal employment.

Appellant filed a claim on April 11, 1997 alleging that he developed stress due to factors of his federal employment. The Office denied appellant's claim by decision dated September 24, 1997 finding that he had not submitted sufficient rationalized medical opinion evidence. Appellant requested reconsideration on October 16, 1997 and by decision dated December 2, 1997, the Office declined to reopen appellant's claim for consideration of the merits.

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 is compensable. 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 or to hold a particular position.¹

In this case, appellant attributed his emotional condition to difficulties with a supervisee, Judith Barron. Appellant stated that Ms. Barron did not cooperate with counseling and took

¹ *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

notes during the session. The employing establish responded and stated that appellant was not responsible for Ms. Barron's actions at the counselors office. As this allegation does not relate to appellant's regular or specially assigned duties, it is not an established factor of employment. Appellant alleged that Ms. Barron was abusing the system. Ms. Barron's actions regarding her Equal Employment Opportunity complaint and worker's compensation claims are not related to appellant's regular or specially assigned duties and his reaction thereto is not covered by the Federal Employee's Compensation Act.

Appellant alleged that Ms. Barron's representative, John Hart, prepared a fallacious, defamatory, libelous document against him. Appellant has submitted no evidence in support of this allegation.

Appellant also alleged that upper management was not providing adequate support. The employing establishment responded to these allegations and denied that appellant received inadequate support. As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.² In this case, appellant has submitted no evidence that the employing establishment erred in failing to provide him with support and the employing establishment has denied this allegation.

Appellant noted that Ms. Barron made accusations regarding coworkers which were disputed and which required appellant to conduct an internal investigation. Ms. Barron did not cooperate with the investigation. Appellant also noted that Ms. Barron had not properly completed her time cards. After several conversations, appellant had to issue Ms. Barron a direct order to require her to attend counseling. Appellant stated that other employees were afraid to work with Ms. Barron. He stated that other employees felt that they did not have a safe work environment. The employing establishment substantiated that these events occurred and that appellant, as part of his regular duties, was required to carry out investigations, tasking and scheduling. Therefore, appellant has established compensable factors of employment. The Board must next consider whether there is adequate medical evidence to establish appellant's claim.

To establish appellant's occupational disease claim that he has sustained an emotional condition in the performance of duty appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.³ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the

² *Martha L. Watson*, 46 ECAB 407 (1995).

³ *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

In support of his claim, appellant submitted a report from Dr. Sherif Henein, a Board-certified internist, dated April 11, 1995. Dr. Henein stated that appellant had increased anxiety problems at work with a coworker who had filed several letters of complaint against him. He stated that appellant was unable to perform his job adequately and unable to obtain help from management. Dr. Henein stated, "I believe this anxiety and his work situation have increased his stress and have deleterious effects on his general health."

This report is not sufficient to meet appellant's burden of proof as Dr. Henein did not clearly identify the accepted employment factors and also attributed appellant's condition to abusive actions by the employing establishment which have not been accepted as factual.

In a report dated July 2, 1997, Dr. Henein diagnosed stress at work and stated that appellant's symptoms were much better. This report is not sufficient to meet appellant's burden of proof as Dr. Henein did not indicate that he was aware of the specific accepted employment factors and did not provide any medical rationale explaining how appellant's condition resulted from these factors.

The Board further finds that the Office abused its discretion by refusing to reopen appellant's claim for consideration of the merits on December 2, 1997.

Following the Office's September 24, 1997 decision, appellant requested reconsideration and submitted additional evidence.

Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁵ Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.⁶

The Board finds that appellant submitted relevant and pertinent evidence not previously considered by the Office in support of his request for reconsideration. Appellant submitted a report from Dr. Henein dated September 22, 1997. Dr. Henein stated that he had reviewed the statement of accepted facts provided by the Office and that he noted the difference between

⁴ *Id.*

⁵ 20 C.F.R. § 10.138(b)(1).

⁶ 20 C.F.R. § 10.138(b)(2).

employment and nonemployment-related factors. He stated, "My previous diagnosis of anxiety disorder related to the factors of federal employment. During his conversation with me, [appellant] did specifically reference the compensable factors as sources of his stress."

As this report is relevant to the issue for which the Office denied appellant's claim, medical evidence based on a proper factual background offering an opinion on the causal relationship between appellant's diagnosed condition and his employment factors, this report is sufficient to require the Office to reopen appellant's claim for consideration of the merits. On remand, the Office should review appellant's claim on the merits and issue an appropriate decision.

The September 24, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed. The December 2, 1997 decision is set aside and remanded for further development consistent with this opinion.

Dated, Washington, D.C.
November 10, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member