U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GORDON BOHON and DEPARTMENT OF THE AIR FORCE, WHITEMAN AIR FORCE BASE, MO

Docket No. 99-2107; Submitted on the Record;
Issued December 1, 2000

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's application for review on April 23, 1999.

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]

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[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, 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]

On May 7, 1998 appellant, then a 51-year-old industrial equipment maintenance supervisor, filed a claim for occupational disease alleging that he sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated November 20, 1998, the Office denied his emotional condition claim on the grounds that he did not establish any compensable employment factors. By letter dated February 26, 1999, appellant requested reconsideration and submitted additional evidence in support of his request. In a decision dated April 23, 1999, the Office found the newly submitted evidence insufficient to warrant reopening appellant's claim for further merit review. The Board must, therefore, initially review whether the alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

The Board finds that appellant has failed to establish that he sustained an emotional condition in the performance of duty.

Appellant's principle allegation is that his supervisor, Ray Murray, micro-managed him by changing his shop hours, rearranged his work and lunch schedules, constantly second guessed him, argued with him and overruled his decisions with respect to the assignment of specific duties to various shop personnel, failed to ask for his input before instituting changes in the workplace, showed up for surprise visits, reprimanded appellant and threatened his job. The Board has held that complaints concerning the manner in which a supervisor performed his duties as a supervisor or the manner in which the supervisor exercised his supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act absent evidence that the employing establishment acted unreasonably in the administration of a personnel matter.[7] In addition, the Board has held that, generally, an oral reprimand does not constitute a compensable work factor as it involves the administration of personnel matters[8] and that a claimant's job insecurity is not a compensable factor of employment under the Act.[9] As appellant has not provided any support for his allegation that his supervisor acted unreasonably with respect to

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

[6] *Id.*

[7] *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Abe E. Scott*, 45 ECAB 164 (1993).

[8] *Joseph F. McHale*, 45 ECAB 669 (1994).

[9] *See Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

these administrative and personnel matters, he has not established a compensable employment factor under the Act.

Appellant also alleged that Mr. Murray arranged for another employee to rifle through the personnel files in appellant's filing cabinet and then arranged for appellant to be blamed for failing to properly secure sensitive material. The Board notes, however, that appellant failed to provide any evidence in support of this allegation and as such, appellant's unsupported allegation is not sufficient to establish compensability.[10]

With respect to appellant's allegation that, while Mr. Murray was verbally reprimanded for "some of his actions," he deserved a much harsher punishment, the Board notes that appellant's dissatisfaction with what he perceived as inadequate discipline is self-generated and does not constitute a compensable factor of employment.[11]

Appellant also alleged that harassment and discrimination on the part of his supervisors and coworkers contributed to his claimed stress-related condition. He asserted that he encountered difficulty getting authorization to purchase items like hand tools for his shop, getting the "run around" and being told there were insufficient funds. He alleged Tim Alm, a liquid fuel supervisor, received a much higher level of management support and had no trouble receiving approval to purchase tools and various kinds of equipment and was even granted approval to purchase special items such as a refrigerator, stove, gas grill and fish cooker for his break room. In addition to this preferential treatment regarding purchases, Mr. Alm was named supervisor of the quarter, while appellant never received this honor. Appellant also asserted that rather than accepting these circumstances graciously, Mr. Alm delighted in teasing and tormenting and laughing at appellant, deliberately coming over to his shop to show off his latest equipment acquisition. The Board has held that, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[12] In the present case, appellant alleged that supervisors and coworkers made statements and engaged in actions which he believed constituted harassment and discrimination, but he provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.[13] Thus, he has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Finally, while appellant stated that his work environment could be very tense, as his shop was located in a secure area with restricted access and even noted that he himself was once arrested for wandering into the wrong area without the proper credentials, he specifically noted that all the employees joked about this fact, saying that "you better watch where you go or you [are] gonna be eating cement." Although appellant did state that he disliked one of Mr. Murray's

[10] *Leroy Thomas, III*, 46 ECAB 946 (1995).

[11] *Mary A. Sisneros*, 46 ECAB 155 (1994).

[12] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[13] *See William P. George*, 43 ECAB 1159, 1167 (1992).

lunch rules because it meant appellant had to go in and out of this secure area to eat lunch, appellant's reaction to such conditions at work must be considered self-generated in that it resulted from his frustration in not being permitted to work in a particular environment.[14]

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 an emotional condition in the performance of duty.[15] As no compensable factor of employment has been established, the Board will not address the medical evidence.[16]

The Board also finds that the Office did not abuse its discretion by denying appellant's application for review on April 23, 1999.

Following the decision dated November 20, 1998, appellant requested that the Office reconsider his case. In support of his request, appellant submitted additional medical evidence from his treating physicians.

Section 10.606 of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of his or her claim under 5 U.S.C. § 8128(a) by written request to the Office identifying the decision and the specific issues within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.[17] Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.[18]

The Office, in denying appellant's application for review, properly noted that appellant's claim had been denied on the grounds that the incidents and work factors which he alleged were the cause of his emotional condition were not found to be in the performance of duty. As the newly submitted medical evidence is irrelevant to the issue of whether the incidents and work factors alleged by appellant to have caused his condition were in the performance of duty within the meaning of the Act and as appellant did not submit any additional evidence or arguments in

[14] *Tanya A. Gaines*, 44 ECAB 923, 934-35 (1993).

[15] 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).

[16] *Margaret S. Krzycki*, *supra* note 15.

[17] 20 C.F.R. § 10.606(b).

[18] 20 C.F.R. § 10.608(b).

support of his request, the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.[19]

The decisions of the Office of Workers' Compensation Programs dated April 23, 1999 and November 20, 1998 are hereby affirmed.

Dated, Washington, DC
December 1, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[19] *See James A. England*, 47 ECAB 115 (1995)*; James E. Salvatore, 42 ECAB 309 (1991); Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).