U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of DONALD J. HOSMER and DEPARTMENT OF DEFENSE, DEFENSE LOGISTICS AGENCY, CAMP PENDLETON, CA

*Docket No. 99-409; Submitted on the Record;*
*Issued October 16, 2000*

---

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to factors of his employment.

The Board has given careful consideration to the issue involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the Office of Workers' Compensation Programs hearing representative, dated and finalized July 10, 1998, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.

Following the issuance of the Office hearing representative's July 10, 1998 decision, appellant, by letter dated August 12, 1998, requested reconsideration of the denial of his claim and submitted additional evidence and argument. By decision dated September 10, 1998, the Office denied modification of its July 10, 1998 decision.

The Board finds that the evidence submitted by appellant with his August 12, 1998 reconsideration request was not sufficient to establish that he sustained an emotional condition causally related to compensable factors of his employment. Therefore, the Office, in its September 10, 1998 decision, properly denied modification of the July 10, 1998 hearing representative's 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 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]

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]

In his August 12, 1998 request for reconsideration, appellant alleged that harassment on the part of his supervisors contributed to his claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[7] However, 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.[8]

In this case, appellant alleged that his supervisor harassed him by frequently calling him on a two-way radio and by denying his request for assistance in moving a heavy desk.

---

[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 (1987).

[4] *Effie O. Morris*, 44 ECAB 470 (1993).

[5] *See Margaret S. Krzycki*, 43 ECAB 496 (1992); *Norma L. Blank*, 43 ECAB 384 (1992).

[6] *Id.*

[7] *David W. Shirey*, 42 ECAB 783 (1991); *Kathleen D. Walker*, 42 ECAB 603 (1991).

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

Regarding the two-way radio, the record contains several statements from appellant's co-workers in which they stated that appellant was loud and disrespectful when his supervisors called him on the two-way radio. They did not indicate that the supervisors spoke to appellant in an abusive manner. There is also insufficient evidence of record to establish that the supervisors harassed appellant by calling him on the two-way radio more than was necessary to monitor his work activities. Although a witness at the hearing testified that appellant seemed to receive more calls on the two-way radio than other workers, there is no evidence that the supervisors were calling appellant to harass him rather than simply to monitor or coordinate his assignments during the workday. The Board finds that monitoring of appellant's work activities by two-way radio relates to administrative or personnel matters is unrelated to the employee's regular or specially assigned work duties and does not fall within the coverage of the Act.[9] Although the handling of such matters as the monitoring of activities at work is generally related to his employment, it is an administrative function of the employer and not a duty of the employee.[10] However, 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.[11] Where the evidence demonstrates that the employing establishment has neither erred nor acted abusively in the administration of personnel matters, coverage will not be afforded.[12] In this case, there is insufficient evidence that the employing establishment erred or acted abusively in its monitoring of appellant's work activities by two-way radio. Thus, this allegation cannot be deemed a compensable factor of employment.

Regarding appellant's allegation that the employing establishment harassed him or acted abusively by denying his request for assistance in moving a heavy desk, appellant testified at the hearing that his supervisor "refused to give me any help at this time." The words "at this time" indicate that the supervisor may have had no one to assign to help appellant at the particular time that he called requesting assistance. There is no evidence that the employing establishment required appellant to move the desk by himself rather than wait until assistance might be available for him. A witness at the hearing testified that appellant called a supervisor requesting assistance and later called to report that he had injured himself moving the desk, but this testimony does not establish that the Office required appellant to move the desk by himself. Thus, appellant has not established a compensable employment factor in this respect.

Regarding appellant's allegation that the Office violated his medical restrictions by forcing him to work in a dirty and dusty environment, the record shows that a physician stated in a December 26, 1995 note that appellant was allergic to dust mites and felt better when he worked outside. He recommended that appellant work in a dust-free environment. However, the physician provided no findings on examination or test results regarding the allergic condition. Even though appellant provided insufficient medical evidence regarding his alleged allergic condition, the employing establishment indicated that he was usually placed in assignments that

[9] *See Michael Thomas Plante*, 44 ECAB 510 (1993).

[10] *Id.*

[11] *Id.*

[12] *Thomas D. McEuen, supra* note 2.

permitted him to work outdoors, where he preferred to work, but that some of his tasks could be performed only indoors. Thus, there is insufficient evidence of record that the employing establishment violated appellant's medical restrictions and this allegation is not deemed a compensable factor of employment.

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.[13]

The decisions of the Office of Workers' Compensation Programs dated September 10 and July 10, 1998 are affirmed.

Dated, Washington, DC
October 16, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

[13] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, *supra* note 5.