

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAT M. BURGE and DEPARTMENT OF THE AIR FORCE,
PATRICK AIR FORCE BASE, FL

*Docket No. 98-2637; Submitted on the Record;
Issued September 19, 2000*

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established an injury causally related to compensable factors of his federal employment.

Appellant filed an occupational disease or illness claim (Form CA-2) on March 5, 1996. Appellant described the nature of his injury as intestinal obstruction requiring hospitalization from February 18 to 21, 1996, and diverticulitis, requiring hospitalization from March 2 to 4, 1996. With respect to the cause of the injury, appellant alleged that his supervisor harassed him.

In a narrative statement dated March 5, 1996, appellant described incidents on March 1, 1996, when he was told by his supervisor to get on the scales to have his weight checked, to go to the military clinic for a physical, and that his physician's certificate was not acceptable. Appellant alleged that he was harassed about his lack of performance, unprofessional conduct and requests for leave. He indicated that he was admitted to the regional medical center on March 2, 1996, and this was the end result of previous incidents with management.

In a decision dated August 22, 1996, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that fact of injury had not been established. In a decision dated May 22, 1997, the Office reviewed the case on its merits and denied modification.

By decision dated August 20, 1998, the Office reviewed the case on its merits and determined that appellant had not established an injury in the performance of duty.¹

The Board has reviewed the record and finds that appellant has not establish an injury causally related to compensable factors of his federal employment.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.² The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and his federal employment.³ Neither the fact that the condition became manifest during a period of federal employment, nor the belief of appellant that the condition was caused or aggravated by his federal employment, is sufficient to establish causal relation.⁴

In the present case, appellant filed an occupational illness claim, alleging that his intestinal obstruction and diverticulitis were causally related to harassment by his supervisor. The Board notes that, in his July 31, 1998 request for reconsideration, appellant asserted that his injuries were “caused by the lifting and moving of heavy furniture including a huge locker,” which apparently occurred at work on February 15 and 16, 1996. The Board notes that appellant did not implicate physical activity as contributing to his condition until more than two years after filing the claim. He did not submit a detailed description of the specific work activity he believed contributed to his condition or reasoned medical evidence on establishing a causal relationship between the work factors and a diagnosed condition. In this case, appellant has not met his burden of proof with respect to an injury caused by moving furniture at work.

With respect to appellant’s allegation of harassment, he must establish that the actions of his supervisor represent a compensable factor of employment. Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s

¹ The Office stated that it was modifying the prior decisions to reflect that “fact of injury” had been established, but it is clear that the Office did not accept the claim.” In order to establish “fact of injury,” a claimant must establish both a compensable factor of employment and submit sufficient medical evidence to establish an injury causally related to the work factor. *See David M. Ibarra*, 48 ECAB 218 (1996). It is apparent from the memorandum accompanying the August 20, 1998 decision that the Office did not accept either requirement in this case.

² *Victor J. Woodhams*, 41 ECAB 345 (1989).

³ *See Walter D. Morehead*, 31 ECAB 188 (1979).

⁴ *Manuel Garcia*, 37 ECAB 767 (1986).

employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion.

On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁵ With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁶ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.⁷

In this case, appellant has not submitted sufficient probative evidence of harassment or discrimination. Appellant alleged that his supervisor harassed him about such matters as appellant's job performance and use of leave. The supervisor submitted a detailed statement explaining his actions. The record does not contain findings of harassment by an administrative agency, detailed witness statements, or other probative evidence that is sufficient to establish a compensable factor of employment with regard to a claim of harassment. Accordingly, the Board finds that appellant has not establish a compensable factor of employment with respect to the actions of his supervisor. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.⁸

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁷ *Helen P. Allen*, 47 ECAB 141 (1995).

⁸ *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

The decision of the Office of Workers' Compensation Programs dated August 20, 1998 is affirmed.

Dated, Washington, DC
September 19, 2000

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member