

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD A. COLBERT, JR. and DEPARTMENT OF THE NAVY,
NAVAL AIR STATION, Jacksonville, FL

*Docket No. 00-405; Submitted on the Record;
Issued February 27, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an emotional condition causally related to compensable factors of his federal employment.

Appellant filed a claim on October 14, 1998, alleging that he sustained stress and depression causally related to his federal employment as a firefighter/driver operator. By decision dated December 16, 1998, the Office of Workers' Compensation Programs denied the claim. In a decision dated June 4, 1999, the Office denied modification of the prior decision. In a decision dated October 5, 1999, the Office reviewed the case on its merits and again determined that appellant had not established an emotional condition causally related to compensable employment factors.¹

The Board finds that appellant has not established an emotional condition causally related to compensable work factors.

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 factors of his federal employment.² To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder;

¹ The Office stated that the June 4, 1999 decision was modified to reflect that appellant established "fact of injury"; but the claim remained denied because no compensable work factors had been established. The term "fact of injury," is generally associated with traumatic injury claims and requires that a claimant submit sufficient factual and medical evidence to establish an injury in the performance of duty. *See, e.g., Gary L. Fowler*, 45 ECAB 365 (1994); *Thelma Rogers*, 42 ECAB 866 (1991). The Office has not accepted that appellant sustained an injury in the performance of duty, and therefore appellant has not established "fact of injury."

² *Pamela R. Rice*, 38 ECAB 838 (1987).

and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.³

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 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.⁴

In a statement dated November 14, 1998, appellant indicated that his claim was based on discrimination and reprisal for filing a discrimination claim. The record indicates that appellant alleged racial discrimination in not being selected for paramedic training. Appellant also filed an Equal Employment Opportunity (EEO) complaint alleging reprisal for filing an informal EEO racial discrimination complaint.

With respect to the claim of racial discrimination, the evidence of record indicates that the employing establishment agreed to investigate the allegation. There are no findings of discrimination, or other probative evidence establishing a claim based on racial discrimination. There is a January 25, 1999 statement from a coworker asserting that the coworker had been denied promotions, but this does not provide probative evidence on racial discrimination in the specific instance alleged by appellant.

As to the allegation of reprisal, the record contains an EEO counselor's report dated August 19, 1998. The counselor indicated that appellant felt he was being treated differently by a supervisor since he contacted the EEO; the specific incidents alleged included being told that disciplinary action would be taken because of appellant's comments to a coworker. There is also a July 31, 1998 memorandum from an EEO specialist, discussing specific incidents from April to June 1998, including a June 16, 1998 incident in which appellant alleged a coworker was allowed to conduct personal business, but a similar request by appellant was refused. The EEO specialist's memorandum reports that appellant's supervisors denied the specific allegations of error.

The Board finds that the evidence of record is not sufficient to establish a compensable factor based on harassment, discrimination, or reprisal, nor is there probative evidence of error or abuse in an administrative matter. Appellant's own belief that he was harassed or discriminated against is not sufficient, the witness statements are of limited probative value, and no finding of

³ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

harassment, discrimination or reprisal has been submitted. In the absence of probative evidence, the Board finds that appellant has not substantiated his allegations in this case.

The decisions of the Office of Workers' Compensation Programs dated October 5 and June 4, 1999, and December 16, 1998 are modified to reflect that fact of injury has not been established and affirmed as modified.

Dated, Washington, DC
February 27, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member