

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JESSE KNIGHT and DEPARTMENT OF THE AIR FORCE,
EGLIN AIR FORCE BASE, FL

*Docket No. 00-173; Submitted on the Record;
Issued January 25, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition in the performance of duty.

On September 27, 1997 appellant, then a 64-year-old sports specialist, filed a claim for major depression and pain disorder, chronic arthritis, stomach problems, muscle cramps, insomnia and gout. He indicated that he could not satisfy management despite all his efforts. In an accompanying statement, appellant indicated that he worked from 8:00 a.m. to 9:00 p.m. to keep the employing establishment's community center in operation. He commented that on many nights he worked the food service operation, filling in for sick or absent workers. Appellant indicated that he began to have trouble after a new supervisor, Captain Kathy Mudrock, arrived at the base. She gave him a performance evaluation grade of two out of five, which was contrary to his former evaluations ranging from fully successful to superior. Appellant contended that the evaluation was based on perception rather than productivity. He indicated that he worked his regular shift, often filled in at the community center's pizza parlor until closing, cleaned up the facility and made bank deposits on the way home. Appellant noted that Captain Mudrock stated that his rating was due to his inability to get along with one staff member. He filed a grievance on the rating and was removed from his position and replaced by a white male with no experience in community centers.

Appellant alleged that he was reassigned to the fitness center as a sports specialist and outside maintenance supervisor. He noted that he worked from 4:30 a.m. to 3:00 p.m. Appellant stated that he picked up federal prisoners at 6:00 a.m. and monitored their work until 2:00 p.m. He described his workday, indicating that he opened the field houses to ensure the saunas were operational. Appellant checked the fitness equipment for safety and inspected the facility for cleanliness and sanitation. He inventoried all resale items and checkout equipment. Appellant would prepare a work schedule for the prison inmates, pick up the inmates and assign them work. He checked the maintenance of all vehicles and sports equipment and inspected the sports complex. Appellant prepared work requests, checked purchasing agreements and budget

balances, and evaluated program and instructional classes. He would check on the prison inmates to ensure work was done correctly. Appellant would return the inmates to the prison and then prepare time cards for the employees he supervised. He indicated that he was informed that he would be reassigned to be a WG-5 food service worker in the pastry shop. Appellant contended that this act was discriminatory. He indicated that his stress level increased and headaches and joint pain intensified to the point that he was depressed and physically ill. Appellant stopped working in August 1996 on the advice of his doctor. In a separate statement, he was informed in July 1996 that an inmate was seen entering the mechanical room of the women's field house. It was reported that several items were found in the room, including a rice cooker, ice chest, clock and various tools. Appellant indicated that after this incident he was informed that he was being transferred to food service because his superior did not want him to supervise inmates and assumed appellant was providing contraband to the inmates. He noted that his supervisor, Master Sergeant Dorsey, told him that the reassignment was due in part to the situation and to protect him. Appellant reported that, when Sergeant Dorsey was sent on an assignment to Saudi Arabia, a GS-7 female employee with no relevant experience was placed in charge of the fitness center, even though appellant was a GS-9 employee and had more experience. He noted that his superior indicated that appellant's transfer to the pastry shop was a "done deal." Appellant related that several coworkers concluded that his superior had a vendetta against him.

In a July 16, 1998 decision, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he had failed to establish that his emotional condition was due to an injury sustained in the performance of duty.¹

The Board finds that appellant has not established that his emotional condition was sustained within the performance of duty.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. 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. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.² When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.³ In these cases, the

¹ The Board notes that, subsequent to the Office's decision, the Office received evidence concerning appellant's claim. The scope of the Board's review is limited to the evidence that was before the Office at the time it issued its final decision. 20 C.F.R. § 501.2(c). The Board, therefore, cannot review this evidence on appeal.

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB

feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.⁴

Appellant cited a performance evaluation as a factor in causing his depression. The Board has held that a performance evaluation is an administrative function that is not part of appellant's assigned duties and, therefore, is not a compensable factor of employment. Appellant has also cited his transfer from the community center position to the sport specialist position and the proposed transfer from the latter position to a food service position as factors causing his condition. The transfers are also administrative actions that are not part of appellant's assigned duties. Appellant's reaction to the transfers was a fear of job security and a reflection of his frustration in not being permitted to stay in a particular position. He noted that the second transfer was, in effect, a disciplinary action related to his supervision of prison inmates working under his direction. A disciplinary action is also an administrative action that is not related to appellant's assigned duties. Appellant made a general allegation that his emotional condition was due to harassment and discrimination by his supervisors. He stated that his replacement at the community center was a white male with no experience for the position. Appellant indicated that the person intended to supervise the fitness center after his supervisor went on detail was a white female with no managerial experience and a lower grade level. The actions of a supervisor which an employee characterizes as harassment or discrimination may constitute factors of employment giving rise to coverage under the Act. However, there must be some evidence that such implicated acts of harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.⁵ Appellant has not submitted sufficient evidence to corroborate his claim that the actions of the employing establishment constituted discrimination or harassment. He has not demonstrated that the actions of the employing establishment in these matters were in error or abusive.

374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

⁴ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁵ *Joan Juanita Greene*, 41 ECAB 760 (1990).

The decision of the Office of Workers' Compensation Programs dated July 16, 1998 is hereby affirmed.

Dated, Washington, DC
January 25, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member