

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KEVIN GORTON and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Bath, NY

*Docket No. 00-637; Submitted on the Record;  
Issued January 9, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, PRISCILLA ANNE SCHWAB,  
VALERIE D. EVANS-HARRELL

The issue is whether appellant has met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

The Board has duly reviewed the case record and finds that appellant has failed to meet his burden of proof.

On March 24, 1998 appellant, then a 36-year-old psychology technician, filed an occupational disease claim alleging that his bipolar disorder, hypermania, and post-traumatic stress disorder (PTSD) were caused or aggravated by his employment. Appellant stopped work on February 2, 1998 and returned on March 23, 1998.

By letter dated December 4, 1998, the Office of Workers' Compensation Programs informed appellant that the evidence submitted was insufficient to establish his claim. The Office advised appellant to submit additional factual and medical evidence supportive of his claim. In response, appellant submitted factual and medical evidence by letter dated December 28, 1998.

In an August 5, 1999 decision, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition in the performance of duty.

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 the Federal Employees' Compensation Act.<sup>1</sup> Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.<sup>2</sup>

Perceptions and feelings alone are not compensable. 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.<sup>3</sup> 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; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.<sup>4</sup>

Appellant attributed his emotional condition to a January 1997 incident involving a threat on his life from a patient and threats received by mail on February 24, 1995. In an undated narrative statement, appellant described the January 1997 incident where a patient threatened to kill him. Appellant stated that the statement was not made to him directly, but to Ruth Lysyczyn, a patient representative, who initiated a report of contact regarding this threat. Appellant, however, has not submitted evidence to substantiate his allegation that he was threatened by a patient or by mail.

Appellant alleged that his emotional condition was caused by his reassignment to a different job area by the employing establishment. Appellant filed a complaint regarding this action. He also indicated in an August 24, 1994 narrative statement that his performance rating was lowered from exceptional to fully successful and that he was required to perform tasks outside his job description. Appellant stated that his suggestion to allow patients to decline alcohol severity index testing, which was a nonreimbursable activity, in favor of the type of psychological testing he performed, which was reimbursable, was turned down by the employing establishment. Appellant added that Bonita Rudolph Carlson, a "CAC," told him that it was none of his concern in response to his request that the treatment team initiate the request or personality testing when indicated. Appellant filed a complaint against Ms. Carlson regarding her alleged unethical misconduct.<sup>5</sup>

The reassignment of an employee to a different position,<sup>6</sup> appellant's reaction to his performance appraisal<sup>7</sup> and the filing of complaints regarding his reassignment and the behavior

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<sup>2</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>4</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>5</sup> The Board notes that the Office of Alcoholism and Substance Abuse accepted a recommendation of a "no finding" concerning appellant's complaint of ethical misconduct by Ms. Rudolph Carlson.

<sup>6</sup> *James W. Griffin*, 45 ECAB 774 (1994).

<sup>7</sup> *Harriet J. Landry*, 47 ECAB 543, 547 (1996).

of Ms. Carlson<sup>8</sup> constitute an administrative or personnel matter and are not compensable factors of employment absent evidence of error or abuse. Inasmuch as appellant failed to establish that the employing establishment committed error or abuse in handling these matters, appellant has not established a compensable factor of employment under the Act.

Appellant alleged that he was pressured to fill beds in February 1997, and having to do addiction severity indices on top of scheduled clinics starting in September 1997 exacerbated his emotional condition. Appellant further alleged that there were many unreasonable response time frames to be in different locations and the job itself was one which put him at high risk for exposure to stressful situations because he was dealing with people with personality disorders, alcoholics and making judgments regarding whether these people needed inpatient medical attention or to be followed on an outpatient basis.

Overwork can be a compensable factor of employment if substantiated by the record since it relates to assigned work duties,<sup>9</sup> and appellant submitted evidence in support of his claim of overwork. Katharine Ainsworth, an employing establishment registered nurse, on February 11, 1998, stated:

“When [appellant] was assigned to work with myself, he was providing group coverage on the inpatient unit as well as providing substance abuse evaluations and psychiatric testing for the outpatient clinic.

“As the stress of this position increased, it was apparent that [appellant] was experiencing increased difficulties. His mood and behavior was unpredictable. [Appellant] displayed paranoia tendencies or thought processes at times. This was demonstrated by his carrying a pocket tape recorder on himself and taping conversations of his peers.

“[Appellant] became even more inflexible and rigid in personality as he performed his job as assigned. He did not behave in the friendly, outgoing style that I knew as my peer. At one point he even became suspicious of my motives, thus, displaying more paranoia.

“I personally and professionally feel that [appellant] has not ‘been himself’ for approximately the past year.”

In a March 11, 1998 letter, Ester Kwulich-Covell, president of appellant’s union, indicated that appellant’s unit was closed, which caused uninterrupted stress for appellant. Ms. Kwulich-Covell added that appellant “had extensive contact with patients; interviews were intense; threats were received; time frames were tight and [appellant] received minimal cooperation from coworkers.”

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<sup>8</sup> *Diane C. Bernard*, 45 ECAB 223, 228 (1993).

<sup>9</sup> *See Georgia F. Kennedy*, 35 ECAB 1151 (1984).

The record contains several copies of appellant's job description as a psychology technician; appellant was responsible for the assessment and evaluation of a treatment plan for patients and he was required to have personal contact with people, including patients.

The statements from appellant's coworker and union representative indicate that appellant was overworked and had difficulty performing his various duties. As these situations implicate regular or specially assigned duties, they constitute factors of employment, which may give rise to a compensable disability under the Act. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder, which is causally related to the accepted compensable employment factor.<sup>14</sup>

The medical evidence of record in this case fails to establish that appellant's emotional condition was caused by the established compensable employment factors. An October 31, 1998 report from Dr. Albert K. Chen, a Board-certified psychiatrist, revealed that appellant had been reassigned and that his department had been reorganized. Dr. Chen related that appellant had difficulty adjusting to the change and that job stress adversely affected his diagnosed bipolar disorder with psychotic feature and post-traumatic stress disorder. Dr. Chen attributed appellant's condition to his reassignment to a different job, which is not compensable work factor.<sup>10</sup> In addition, the report failed to identify the job stress that caused appellant's condition.

Dr. Chen's March 6, 1998 treatment note indicating that appellant had been discharged from the hospital also failed to address whether appellant's emotional condition was caused by the established factors of employment.

Ms. Ainsworth's February 11, 1998 statement indicating that appellant was overworked and that he had not "been himself" for approximately one year does not constitute competent medical evidence inasmuch as a registered nurse is not considered a physician under the Act.<sup>11</sup>

The record reveals a December 22, 1998 report of Dr. Norm F. Quirion, an employing establish clinical psychologist. In this report, Dr. Quirion indicated that, during his sessions with appellant from November 1997 through March 1998, appellant often brought up personal problems he was having, which impacted his job performance. Specifically, Dr. Quirion noted that appellant was having a very difficult time adapting to the many changes that were occurring in his work environment at that time. He noted that the employing establishment was undergoing a change from service lines to product lines, which often meant that lines of supervisory authority became muddled and different persons could tell appellant what to do. Appellant also noted that employees had to take on different responsibilities that were not clearly denoted in the official position description and that the employees were advised to be flexible. Dr. Quirion stated that, due to his preexisting psychiatric condition, appellant perceived these changes as creating a hostile work environment. He further stated that appellant became more

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<sup>10</sup> Disability is not covered when it results from an employee's frustration from not being permitted to work in a particular environment or to hold a particular position. See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, *supra* note 2.

<sup>11</sup> 5 U.S.C. § 8101(2); see also *Joseph N. Fassi*, 42 ECAB 677 (1991).

and more rigid, and personalized everything. Dr. Quirion also stated that appellant developed strong paranoid mentation bordering on the delusional and became very suspicious of new managers. He noted appellant's hospitalization from February 27 to March 6, 1998. Dr. Quirion opined that changes that were going on in the work setting at the time and the ensuing occupational stress directly aggravated the preexisting psychiatric condition resulting in a psychotic break with reality and necessitating hospitalization. Dr. Quirion's report failed to provide specific details of the incidents that caused appellant's emotional condition.

A March 21, 1998 hospital final summary from Dr. Pemala Pradhan, a Board-certified psychologist, indicated findings on physical, objective and psychological examination and appellant's treatment in the hospital. Dr. Pradhan provided a final diagnosis of bipolar disorder I, mixed psychotic post-traumatic stress disorder, substance abuse, alcohol and marijuana on Axis I. He diagnosed mixed personality disorder with borderline and obsessive trait on Axis II, and gastrointestinal reflux on Axis III. Dr. Pradhan failed to address whether appellant's conditions were caused by the established factor of employment.

A February 17, 1998 hospital admission assessment from a physician whose signature is illegible revealed appellant's complaint of depression due to his wife's request for a separation because of his alcohol abuse, a history of appellant's medical treatment, family and social background and findings on mental examination. The report also revealed that appellant had bipolar disorder on Axis I, personality disorder on Axis II, gastrointestinal reflux on Axis III and severe psychosocial stressors due to the separation from his wife and filing of a workers' compensation claim. The filing of a workers' compensation claim constitutes an administrative or personnel matter and there is no evidence of error or abuse by the employing establishment in handling this matter.<sup>12</sup> The February 17, 1998 assessment failed to attribute appellant's conditions to the established compensable employment factor.

Dr. Chen's March 11, 1998 medical report provided appellant's complaints, his findings on mental examination and appellant's family history and medical treatment. He noted that last fall appellant encountered some reorganization of his department and that his job description was altered. Dr. Chen stated that appellant had a great deal of stress, he became depressed and was stressed out at that point. He provided a diagnosis of bipolar I disorder with psychotic features, features of post-traumatic stress disorder and alcohol abuse on Axis I. Dr. Chen further diagnosed passive aggressive personality with features of borderline personality on Axis II and no diagnosis on Axis III. Appellant's reaction to the reorganization constitutes an administrative or personnel matter and there is no evidence of error or abuse by the employing establishment in handling this matter.<sup>13</sup> Dr. Chen did not address whether appellant's conditions were caused by the established factor of employment.

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<sup>12</sup> Matters relating to the handling of workers' compensation claims are administrative in nature and do not arise in the performance of duty. *Bettina M. Graf*, 47 ECAB 687, 689 (1996); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

<sup>13</sup> *James W. Griffin*, *supra* note 6.

The August 5, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
January 9, 2001

David S. Gerson  
Member

Priscilla Anne Schwab  
Alternate Member

Valerie D. Evans-Harrell  
Alternate Member