

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM L. BROWN, JR. and DEPARTMENT OF THE NAVY,
PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

*Docket No. 00-1532; Submitted on the Record;
Issued May 25, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty, causally related to compensable factors of his federal employment.

On October 29, 1998 appellant, then a 44-year-old rigger, filed a claim alleging that he developed stress and depression, causally related to factors of his employment. He alleged that he was harassed and discriminated against by multiple people, that Mr. Lott, the rigger foreman, treated him abusively, that he had arguments with multiple people, that he and his family were wrongly investigated by the Naval Investigative Service (N.I.S.), that he was interrogated by the Federal Bureau of Investigation (FBI) about being a member of the George Jackson Bombing Brigade and that he was investigated about his comments regarding "going postal." Appellant alleged that his reputation was discredited as union steward, that union busting occurred, that he was unfairly charged with disorderly conduct and an assault on a coworker, that he received an unwarranted letter of reprimand and that he received a letter of misconduct for being disrespectful. He alleged that he had to pick up cigarette butts and trash, that his sound monitoring job was mysteriously taken away, that he was yelled at, that his job assignments were demeaning and degrading, and that the jobs were not within his physical restrictions. Appellant alleged that he was set up to be busted for marijuana possession and paraphenalia possession; that he was accused of having weapons; that his locker was searched; that his badge was confiscated and he was banned from the shipyard; that he was punched in the stomach twice by a coworker after he had hernia repair surgery with 17 staples; that he was called an asshole; that a guy tried to push him out of the way with his truck; and that "they all just want to provoke me." He alleged that he was threatened with termination for making threats, disrespectful conduct and unlawful possession of marijuana and paraphenalia; that he was stressed about his neck claim; and that he was directed to go for counseling.

In response to appellant's claim the employing establishment noted that he was apprehended with marijuana and paraphenalia; and that laboratory testing was positive for the drug; that after appellant filed a grievance his removal was changed from being removed for cause to being removed for "disability." Appellant confronted a foreman in a threatening

manner and witnesses thought he would strike the foreman, that he exhibited very agitated, hostile, threatening behavior towards multiple people, that when appellant stated that "death was looking pretty good" he alarmed coworkers, that he refused permission to have his locker searched and that he had become progressively more uncooperative, disrespectful and antagonistic towards officers. The employing establishment stated that appellant failed to attend a preinvestigation meeting as directed, that appellant's proposed removal was for personal behaviors which were prohibited by regulations, that there was no evidence to substantiate any of appellant's allegations of abuse by Mr. Lott, that appropriate action was taken regarding the altercation where appellant assaulted a coworker, that appellant's claim about being pushed by a truck was unsupported, and that there was no evidence that appellant had hernia surgery or that he was punched in the stomach twice. The employing establishment noted that appellant became belligerent when questioned by proper authorities without provocation, that at no time did any shipyard worker act inappropriately with appellant, that appellant was discharged under a "no fault" agreement following a Merit Systems Protection Board (MSPB) hearing, and that appellant had a history of violence in the workplace and had admitted to the use of illegal substances in the past.

By decision dated May 21, 1999, the Office of Workers' Compensation Programs rejected appellant's emotional condition claim finding that he failed to establish any compensable factors of employment for his emotional condition. The Office found that appellant's allegations regarding confrontation with Mr. Lott and threatening to "go postal," that his allegations about being punched in the stomach following hernia surgery, and that his story about being set up for the marijuana bust were all unsupported by the record as having occurred. The Office further found that the rest of the factors alleged by appellant were not compensable factors of his employment.

By letter dated June 23, 1999, appellant requested reconsideration of the May 21, 1999 decision and claimed that he would be submitting some affidavits from witnesses who saw how he was being treated. He further alleged that the foreman and his secretary had had a restraining order placed on him, that he was barred from the shipyard, and that they were just trying to provoke him because they knew he had a mental condition.

In support of the claim, the employing establishment submitted an involuntary commitment decision regarding appellant on the basis that, due to being gravely disabled from a mental disorder, he presented a likelihood of serious harm to others. The attached affidavits noted that appellant was committed following a conversation with a physician during which he stated that he would blow up the shipyard, that he dreamed about making bombs, that he actually made a bomb which was detonated at a rock quarry and that he admitted having difficulty distinguishing between dreams and reality. These reports noted that appellant was delusional, that his delusions interfered with rational processes and that he did not recognize that he had a mental disorder.

By decision dated October 25, 1999, the Office denied modification of the May 21, 1999 decision finding that the evidence submitted in support was insufficient to establish any compensable factors of employment. The Office noted that no witness statements regarding appellant's alleged mistreatment were received. The Office also noted that appellant's neck claim, originally filed as a recurrence claim, had been converted to a new occupational claim as

it involved new factors of employment and indicated that it had been denied on October 18, 1999.

The Board finds that appellant has failed to establish that he sustained an emotional condition in the performance of duty, causally related to compensable factors of his federal employment.

To establish appellant's occupational disease claim that he has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized 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.¹ Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.²

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 concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition, which will be covered under the Federal Employees' Compensation Act. Generally speaking, when an employee experiences an emotional reaction to his or her regular or special assigned employment duties or to a requirement imposed by his employment or has fear or anxiety regarding his ability to carry out assigned duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.³ Conversely, if the employee's emotional reaction stems from employment matters which are not related to his or her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment, and does not come within the coverage of the Act.⁴ Noncompensable factors of employment include administrative and personnel actions, which are matters not considered to be "in the performance of duty."⁵

¹ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² *Id.*

³ *Donna Faye Cardwell*, *supra* note 1, see also *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Id.*

⁵ See *Joseph DeDonato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

When working conditions are alleged as factors in causing 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.⁶ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁷ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.⁸ If the evidence fails to establish that any compensable factor of employment is implicated in the development of the claimant's emotional condition, then the medical evidence of record need not be considered.

In the present case, the Office properly found that none of the causative factors appellant alleged were compensable factors of employment.

Appellant did not allege that he developed an emotional condition arising out of his regular or specially assigned duties, or out of specific requirements imposed by his employment. He alleged, in part, that his condition was caused by supervisory and coworker harassment. The Board has held that actions of an employee's supervisor, which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.⁹ However, in order for harassment to give rise to a compensable disability under the Act, there must be some evidence that such harassment did in fact occur. Mere perceptions of harassment alone are not compensable under the Act.¹⁰ In this case, appellant alleged that he was yelled at, called names, demeaned, provoked, harassed and discriminated against by numerous people. However, appellant provided no corroborating or substantiating evidence that any of these incidents occurred as alleged. Therefore, the Board finds that appellant has failed to submit sufficient specific, reliable, probative and substantial evidence in support of his harassment allegations to establish that they occurred as alleged, and that the employing establishment denied that any such harassment occurred. Appellant has the burden of establishing a factual basis for his allegations, however, the allegations in question are not supported by specific, reliable, probative and substantial evidence and have been refuted by statements from appellant's employer. Accordingly, the Board finds that these allegations cannot be considered to be compensable factors of employment since appellant has not established a factual basis for them.

⁶ See *Barbara Bush*, 38 ECAB 710 (1987).

⁷ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁸ See *Gregory J. Meisenberg*, 44 ECAB 527 (1993).

⁹ *Sylvester Blaze*, 42 ECAB 654 (1991).

¹⁰ *Ruthie M. Evans*, 41 ECAB 416 (1990).

Many of appellant's allegations of employment factors that caused or contributed to his condition fall into the category of administrative or personnel actions. In *Thomas D. McEuen*¹¹ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.¹² Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. The incidents and allegations made by appellant which fall into this category of administrative or personnel actions include: investigation by the N.I.S. and the FBI and having his locker searched for weapons or drugs,¹³ disciplinary proceedings including letters of reprimand, letters of misconduct, and being charged with disorderly conduct,¹⁴ having his assignment changed and/or taken away,¹⁵ actions taken regarding his union role and duties,¹⁶ being busted for marijuana possession,¹⁷ being directed to go for counseling, being frustrated about his neck claim,¹⁸ having his badge confiscated after he made threats against the shipyard and was fired and banned, and appellant being directed to resign.¹⁹ Appellant has presented no evidence of administrative supervisory error or abuse in the performance of these actions, and therefore they are not compensable now under the Act.

Appellant also alleged that his job assignments were not within his physical restrictions, that he had been physically pushed out of the way with a truck, and physically assaulted and battered by a coworker, but he provided no supporting evidence that any of these physical allegations occurred as alleged. Therefore, these factors of employment have not been established as having occurred, and are not now compensable under the Act.

¹¹ 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹² See *Richard J. Dube*, 42 ECAB 916 (1991).

¹³ See *Blondell Blassingame*, 48 ECAB 130 (1997); *Sammy N. Cash*, 46 ECAB 419 (1995) (investigations by the employing establishment or other agency do not relate to appellant's assigned duties).

¹⁴ See *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara E. Hamm*, 45 ECAB 843 (1994) (disciplinary matters are not compensable absent evidence of error or abuse).

¹⁵ See *Donna J. DiBernardino*, 47 ECAB 700 (1996); *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995) (desire to work in a different position does not involve appellant's regular or specially assigned duties).

¹⁶ See *Dinna M. Ramirez*, 48 ECAB 308 (1997) (matters pertaining to union activities are not deemed employment factors).

¹⁷ See *supra* note 15.

¹⁸ See *George A. Ross*, 43 ECAB 346 (1991) (the processing of compensation claims bears no relation to appellant's regular or specially assigned duties).

¹⁹ See *Purvis Nettles*, 44 ECAB 623 (1993); *Lorraine E. Schroeder*, 44 ECAB 323 (1992); *Norman A. Harris*, 42 ECAB 923 (1991); *Artice Dotson*, 41 ECAB 754 (1990).

As appellant has failed to establish any compensable factors of employment implicated in the development of his emotional condition, he has failed to meet his burden of proof to establish his emotional condition claim.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated October 25 and May 21, 1999 are hereby affirmed.

Dated, Washington, DC
May 25, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member