U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LIONEL J. ROLLAND and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATIVE MEDICAL CENTER, New Orleans, LA

*Docket No. 02-1697; Submitted on the Record;*
*Issued December 16, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
MICHAEL E. GROOM

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

On June 19, 2001 appellant, then a 47-year-old supervisor, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that his supervisor caused him to become stressed and depressed in the course of his federal employment. He stopped work on March 2, 2001 and did not return.

In an August 23, 2001 letter, the Office of Workers' Compensation Programs advised appellant of the additional factual and medical evidence needed to establish his claim. He was allotted 30 days to submit the requested evidence.

In an undated letter received by the Office on September 20, 2001, appellant indicated that he was called "slow Lionel" by his supervisor during a supervisor's meeting on January 9, 2001, resulting in embarrassment and humiliation. He stated that his supervisor, Cassandra Holiday, caused him major and unbearable stress. Appellant further indicated that Ms. Holiday assigned him to an inappropriate shift change in order to make him undergo more stress. Appellant stated that he had to take numerous medications and enclosed copies of the names and uses.

In a June 13, 2001 report, Dr. Anthony G. Johnson, a Board-certified psychiatrist, indicated that he was requesting extended medical leave for a period of six to eight weeks due to appellant's present illness. He stated that appellant would not be able to perform adequately in any sense his duties for which he was currently employed at the employing establishment. Dr. Johnson indicated that his current plan was to treat appellant with "the appropriate medication and psychotherapy." He indicated that his hope was to have appellant mentally and physically ready to resume his duties and requested a flexible work schedule upon return to allow him a smooth transition back to his usual responsibilities. Further, Dr. Johnson indicated

that he would provide a written clearance to return to his duties but indicated that an immediate return to work would cause great emotiona1 and physical damage to appellant and "place coworkers in an unnecessary and potentially difficult situation on their job."

In a September 27, 2001 report, Dr. Johnson noted that appellant continued to have emotional instability secondary to job-related issues and more recently with his family. He stated that he was unable to release appellant for any work at present and would continue to work with appellant and his psychotherapist, opining that it was possible appellant could return to work in about eight to ten weeks.

On November 6, 2001 appellant filed a Form CA-7.

By letter dated January 23, 2002, the Office requested additional information from the employing establishment.

On February 26, 2002 the Office received additional information from the employing establishment controverting appellant's claim. The employing establishment indicated that there was no evidence of any verbal abuse toward appellant by Ms. Holliday, in the May 9, 2001 supervisors meeting. When Ms. Holliday was asked if she referred to appellant as "slow Lionel," she replied, "I do not recall any situation where those words would have been said by me during our limited interactions. The assertion that I referred to him as 'Lionel' in making the statement, is equally implausible as I rarely address the supervisors by their first name and would have addressed him as Mr. Rolland." Additionally, the employing establishment indicated that efforts were made to discuss appellant's work situation; however, he failed to appear at several scheduled meetings. In response to the shift changes, the employing establishment indicated that tour changes were being effected to improve the efficiency of the essential services provided.

In an undated letter received by the Office on March 19, 2002, appellant indicated that since the receipt of the Office's letter, the employing establishment had taken personnel actions against him without just cause, including removing him for excessive absenteeism.

In an April 2, 2002 decision, the Office found that the evidence was insufficient to establish that appellant sustained an emotional condition in the performance of duty.

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the course of employment.

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[1] On the other hand, the disability is not covered where it results from such factors as an

[1] 5 U.S.C. §§ 8101-8193.

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.[2]

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 employment factors.[3] This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[4]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or 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.[5] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[6]

In the present case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated April 2, 2002, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

In the instant case, appellant alleged that he was referred to as "slow Lionel"; however, this was denied by the employing establishment. The Board has recognized the compensability of verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.[7] Appellant has not submitted witness statements or other evidence to establish his allegation that he was referred to as "slow Lionel."

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[2] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[3] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[4] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[5] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[6] *Id.*

[7] *See Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991).

Appellant has also alleged that harassment and discrimination on the part of his supervisors and coworkers contributed to his claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[8] However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[9] In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors or coworkers.[10] Appellant alleged that his supervisors and coworkers made statements and engaged in actions which he believed constituted harassment and discrimination, but he provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.[11] Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Appellant alleged that the employing establishment improperly proposed to change his work shift from the daytime to the nighttime. As noted above, disability is not covered where it results from such factors as frustration from not being permitted to work in a particular environment or to hold a particular position. On the other hand, the Board has held that a change in an employee's work shift may under certain circumstances be a factor of employment to be considered in determining if an injury has been sustained in the performance of duty.[12] Appellant's assertion that the proposed change in work shift was made contrary to the relevant policy relates to an administrative function of the employing establishment. To show that an administrative action such as the proposed change in work shift implicated a compensable employment factor appellant would have to show that the employing establishment committed error or abuse.[13] In the instant case, the employing establishment indicated that the shift changes were made to improve efficiency of services. Appellant has not provided sufficient evidence to establish that such action was an error or abuse on the part of the employing establishment. Thus, appellant has not established a compensable employment factor under the Act with respect to the proposed change in work shift.

An employee's emotional reaction to an administrative or personnel matter is generally not covered under the Act because it is not considered to arise out of and in the course of

[8] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[9] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[10] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[11] *See William P. George*, 43 ECAB 1159, 1167 (1992).

[12] *See Gloria Swanson*, 43 ECAB 161, 165-68 (1991); *Charles J. Jenkins*, 40 ECAB 362, 366 (1988).

[13] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

employment. But error or abuse by the employing establishment in an administrative or personnel matter or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.[14] Appellant has not shown error or abuse in the instant matter.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.[15]

The April 2, 2002 decision of the Office of Workers' Compensation Programs is affirmed.[16]

Dated, Washington, DC
December 16, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

[14] *Margreate Lublin*, 44 ECAB 945 (1993).

[15] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

[16] The Board notes that, subsequent to the Office's February 12, 1999 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).