

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DAVIDSON MOMAH and EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION, INDIANAPOLIS DISTRICT OFFICE, Indianapolis, IN

*Docket No. 02-317; Submitted on the Record;  
Issued November 14, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant established that he suffered an emotional condition while in the performance of duty.

On November 1, 2000 appellant, then a 42-year-old administrative law judge, filed a notice of occupational disease alleging that factors of his federal employment aggravated his preexisting heart condition. He stated that he suffered chest pains, depression, lack of sleep, weight loss, numbness, burning skin and dizziness. Appellant claimed that the main cause of his condition was his agency's continuous refusal to grant him a hardship transfer from his permanent workstation in Memphis to the Detroit District Office so that he could take care of his sick daughter. Appellant also claimed that he was harassed and discriminated against by his supervisors and that there was a conspiracy between the managers to prevent him from transferring to Detroit. Further, appellant alleged that his supervisor in Indianapolis contributed to his emotional condition and attempted to slow his job performance in order to make him ineligible for a transfer. He stated that he was not given appropriate credit for case closures, his work was returned for format and stylistic changes, he was "bombarded" with email, he was closely watched, monitored and questioned, his supervisor inappropriately discussed the quality of his work with others and she questioned his work hours.

By decision dated June 26, 2001, the Office of Workers' Compensation Programs denied appellant's claim finding that there was no evidence of abuse or error on the part of appellant's agency and that a desire to work at a specific location was not a compensable factor of employment.

By letter dated July 13, 2001, appellant requested reconsideration and submitted a legal brief in support of his request. Appellant also requested an oral hearing on July 1, 2001.

By decision dated October 16, 2001, the Office denied appellant's request for modification of the previous decision.

An oral hearing was held on April 30, 2002. By decision dated July 3, 2002, the hearing representative affirmed the Office's June 26, 2001 decision, finding that appellant did not establish any compensable factors of employment.

The Board finds that appellant has not established that he suffered an emotional condition while in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>2</sup>

To establish appellant's claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and substantiating employment factors or incidents alleged to have caused or contributed to his emotional 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.<sup>3</sup>

Workers' compensation law is not applicable 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 Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not compensable where it results from such factors as an employee's fear of a reduction-in-force, his or her frustration from not being permitted to work in a particular environment or to hold a particular position, or his failure to secure a promotion, transfer or training. 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.<sup>4</sup> 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.<sup>5</sup> In these cases, the feelings are

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<sup>1</sup> 5 U.S.C. §§ 8101-8093.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>4</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> *Artice Dotson*, 41 ECAB 754 (1990).

considered to be self-generated by the employee as they arise in situations not related to his or her 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.<sup>6</sup>

In this case, appellant did not allege that his disability resulted from an emotional reaction to his regular or specially assigned work duties or to a requirement imposed by his employment. Appellant alleged that the main cause of his emotional condition was his agency's continuous refusal to grant him a hardship transfer to the Detroit District Office.

The Board has found that a disability is not compensable where it results from appellant's frustration from not being able to work in a particular environment or not being able to secure a transfer to a different location.<sup>7</sup> Appellant's desire to work in the Detroit District Office is an administrative matter and is not a compensable factor under the Act. The Board also finds that appellant's reason for wanting to transfer to a different office is personal in nature and is irrelevant to the case at hand. The Board has found, however, where the evidence demonstrates that the employing establishment erred or acted abusively in the administration of a personnel matter, any condition arising in reaction to such abuse may be compensable.<sup>8</sup> Appellant did not submit any evidence showing that the agency erred or abused its discretion in denying his transfer to the Detroit District Office. The record contains letters from the agency to appellant citing their reasons for the denial of the transfer. By letter dated February 3, 1998, appellant's agency stated that due to the current workload and staffing levels in the Memphis District Office, they were unable to grant his request for reassignment, as such action would not serve their operational needs. They indicated that they would be happy to reconsider his transfer request if there was a change in the Office's workload and staffing situation. Also, by letter dated September 8, 1998, the agency stated that a reassignment to the Detroit District Office at that time did not commensurate with the District's needs. Other evidence of record indicates that the Washington, D.C. Office informed appellant that the transfer was not possible due to budget concerns. Appellant has submitted no evidence to suggest that his agency acted abusively in denying his requests to transfer to Detroit. On the contrary, the agency cited valid reasons such as workload, staffing needs and budget as reasons for the denial. Appellant stated that he did not believe the agency's reasons for the denial, however, he submitted no evidence to show that the reasons for the denial were false.

Appellant also generally alleged that he was discriminated against and harassed. He stated that other employees had been transferred because of family hardships and his transfer request was denied because of his race and gender. He also alleged that there was a conspiracy against him between the managers in different offices to keep him from transferring to Detroit.

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<sup>6</sup> *Thomas D. McEuen*, 41 ECAB 387 (1990).

<sup>7</sup> *Supra* note 4.

<sup>8</sup> *Supra* note 6.

It is a well-established principle that for harassment, discrimination or retaliation to give rise to a compensable disability under the Act, there must be some evidence that the implicated incidents of harassment, discrimination or retaliation did, in fact, occur. Mere perceptions of harassment, discrimination or retaliation are not compensable.<sup>9</sup> An employee's allegations that he or she was harassed or discriminated or retaliated against are not determinative of whether or not harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>10</sup> Such incidents and allegations may rise to the level of compensable harassment if they are established to have occurred.

In this case, appellant did not cite any specific examples of discrimination or harassment regarding his request to transfer to Detroit or regarding the alleged conspiracy. He submitted two witness statements from Dr. Ikechukwu Ofomato dated November 4, 2000 and March 87, 2001, indicating that appellant had spoken to him about the alleged harassment and intimidation he endured at work. The fact that appellant advised Dr. Ofomato of the alleged mistreatment, the physician was not a witness to these alleged events in the workplace. His statements, therefore, are of little probative value in establishing that any events regarding discrimination or harassment actually occurred. Appellant also submitted a copy of an Equal Employment Opportunity complaint filed by him against his agency on May 10, 2001 yet there is no final decision of record. The Board finds that appellant has failed to submit probative and reliable evidence to establish that his supervisors discriminated or conspired against him in his efforts to transfer to the Detroit District Office.

Appellant also alleged that his condition was caused by discrimination, harassment and retaliation by his supervisor in Indianapolis. He claimed that she attempted to slow his job performance in order to make him ineligible for a transfer to Detroit. Appellant stated that he was not given appropriate credit for case closures, that his work was returned for format and stylistic changes, he was bombarded with email, he was closely watched and monitored and questioned, that she inappropriately discussed the quality of his work with others and she questioned his work hours.

An employee's complaints about the manner in which supervisors perform supervisory duties or the manner in which supervisors exercise supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor must be allowed to perform his or her duties and that employees will at times dislike actions taken. For example, the Board has held that discussions of job performance do not fall under coverage of the Act absent a showing of error or abuse.<sup>11</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing

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<sup>9</sup> *Helen Casillas*, 46 ECAB 419 (1995).

<sup>10</sup> *Anthony A. Zarcone*, 44 ECAB 751 (1993).

<sup>11</sup> *Donald E. Ewals*, 45 ECAB 111 (1993).

establishment acted reasonably.<sup>12</sup> To support such a claim, a claimant must establish a factual basis by providing probative and reliable evidence.<sup>13</sup>

In this case, while appellant submitted numerous examples of work product returned to him by his supervisor for stylistic and/or grammatical changes, these documents alone do not support the contention that his supervisor abused her discretion or was unreasonable in requesting his work to be submitted in a particular format or style. Appellant also did not submit any evidence indicating that he was not given appropriate credit for case closures, nor did he submit evidence showing that the manner in which his supervisor gave him credit for his completed cases was unreasonable. While he submitted copies of numerous emails and alleged that he was “bombarded” with these messages, the emails only support the fact that his supervisor communicated with him through email and there is no evidence to support that this method of communication was unreasonable. In addition, appellant never stated exactly how many emails were sent to him, nor did he explain how these emails amounted to harassment. Lastly, the Board notes that monitoring employees at work is a function of a supervisor and absent any evidence that the action was unreasonable is not a compensable factor of employment. Appellant submitted no evidence showing that the way in which his supervisor monitored and watched him was an abuse of discretion or was unreasonable. The Board has also held that discussions of job performance do not fall under the coverage of the Act absent a showing of error or abuse.<sup>14</sup> As appellant has submitted no evidence of error or abuse regarding discussions of his job performance, this is also not a compensable factor of employment.

In general, appellant’s alleged work factors do not pertain to his regular or specially assigned work duties, which are usually found to be compensable under the Act. Rather, appellant’s allegations are primarily administrative matters on the part of the agency and his supervisor and are not compensable factors of employment absent a showing of abuse. Although appellant claimed that he was discriminated against regarding his request for a transfer, he did not provide any probative evidence establishing these allegations as factual. Appellant also did not submit any substantial, reliable and probative evidence, such as a detailed and supporting witness statement, to corroborate the allegations of abuse by his agency. As appellant has failed to establish any compensable factors of his federal employment, the medical evidence need not be considered.

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<sup>12</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>13</sup> *Barbara J. Nicholson*, 45 ECAB 843 (1994).

<sup>14</sup> *Supra note 11*.

Accordingly, the July 3, 2002, October 16 and June 26, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
November 14, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member