

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMES O. GORDON and DEPARTMENT OF THE NAVY,  
NAVAL SUPPLY CENTER, Oakland, Calif.

*Docket No. 94-2598; Submitted on the Record;  
Issued April 2, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty on or before November 7, 1988 as alleged.

The Board has given careful consideration to the issue involved and to the entire case record, and finds that the decision of the Office of Workers' Compensation Programs' hearing representative dated May 26 and finalized May 27, 1994, correctly sets forth the law and facts of this case.

The hearing representative found that appellant set forth two factors within the performance of duty: his reaction to having equipment taken from him after he was assigned to packing duties, rendering him unable to complete his tasks; and that his former supervisors, Mr. Al Finch and Ms. Judy Lewis, interfered with appellant's employment activities in an abusive manner, as they made derogatory comments about appellant after he was no longer under their supervision. However, the hearing representative further found that appellant submitted insufficient medical evidence establishing a causal relationship between the accepted employment factors and the alleged emotional condition. He noted that Dr. Debra Tong, an attending clinical psychologist, submitted reports attributing appellant's condition to noncovered factors such as frustration in having to take a downgrade to WG-6, fear of future harassment, and assignment to a critical commander. The hearing representative also noted that appellant failed to submit records from a 1988 psychiatric hospitalization and alcohol rehabilitation program, which appellant alleged were necessitated by the deleterious effects of harassment by Ms. Lewis and Mr. Finch.

The Board finds that the decision of the hearing representative of the Office dated May 26 and finalized May 27, 1994 is in accordance with the facts and law in this case, and hereby adopts the findings and conclusions of the hearing representative.<sup>1</sup>

The decision of the Office of Workers' Compensation Programs' hearing representative dated May 26 and finalized May 27, 1994 is hereby affirmed.

Dated, Washington, D.C.  
April 2, 1998

George E. Rivers  
Member

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

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<sup>1</sup> Workers' compensation law does not apply to every injury or illness somehow related to an employee's employment. When disability results from 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 Federal Employees' Compensation Act. *Lillian Cutler*, 28 ECAB 125 (1976). Disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position, as in this case. 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. *Raymond S. Cordova*, 32 ECAB 1005 (1981). To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence. 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 can base its decision on an analysis of the medical evidence of record. *Ruthie M. Evans*, 41 ECAB 416 (1990). In this case, although the Office accepted that appellant alleged two compensable factors of employment, the Office analyzed the medical record and found that appellant submitted insufficient medical evidence to establish his claim.