

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUSSELL D. RUDE and DEPARTMENT OF VETERANS AFFAIRS,
HARRY S. TRUMAN MEMORIAL VETERANS HOSPITAL, Columbia, Mo.

*Docket No. 96-1993; Submitted on the Record;
Issued December 16, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant sustained an injury in the performance of duty.

On July 18, 1994 appellant, a dental lab technician, filed a claim asserting that he developed irritable bowel syndrome while in the performance of duty as a result of stress "from the negative attitude and harassment by Dr. McElroy and condoned by my former immediate supervisor, Dr. Gary Lange." On November 9, 1994 the Office of Workers' Compensation Programs requested additional factual information, including identification of the incidents or events, any witness statements and any findings or decisions resulting from grievances, Equal Employment Opportunity complaints or other action.

In a decision dated December 14, 1994, the Office denied appellant's claim on the grounds that the evidence of record failed to support fact of injury. The Office explained that appellant failed to provide sufficient details as to the factors of employment he believed were responsible for his condition.

On December 11, 1995 appellant requested reconsideration. He submitted a one-inch thick log book or journal of implicated incidents and observations from November 21, 1985 through November 17, 1995. He also submitted medical opinion evidence from Dr. Catherine M. Van Voorn, a specialist in internal medicine, who reported that appellant had severe irritable bowel syndrome. She reported that this was a permanent condition and that the level of stress in appellant's job had exacerbated the condition greatly. Dr. Van Voorn explained that appellant's condition caused disabling diarrhea and abdominal pain and that appellant had many sick days and medical leave of absences due to this condition. The record shows that appellant took disability retirement effective October 31, 1995.

In a decision dated March 7, 1996, the Office granted appellant's request and reviewed the merits of his claim. The Office modified its prior decision to reflect that appellant had met his burden of proof to establish fact of injury but denied appellant's claim on the grounds that the

factors accepted as having occurred were not compensable work factors. The Office found that a review of the implicated events indicated that “there are no circumstances that are within the scope of his employment.”

The Board finds that this case is not in posture for a decision on whether appellant sustained an injury in the performance of duty.

The Federal Employees’ Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.¹ The phrase “sustained while in the performance of duty” is regarded as the equivalent of the coverage formula commonly found in workers’ compensation laws, namely, “arising out of and in the course of performance.”² “Arising in the course of employment” relates to the elements of time, place and work activity. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in his master’s business, at a place where he may reasonably be expected to be in connection with his employment, and while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto. This alone is not sufficient to establish entitlement to compensation. The employee must also establish an injury “arising out of the employment.” To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration.³

As the Board observed in the case of *Lillian Cutler*,⁴ however, workers’ compensation law does not cover each and every illness that is somehow related to the employment. When an employee experiences emotional stress in carrying out her employment duties, or has fear and anxiety regarding her ability to carry out her duties, and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee’s disability resulted from her emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of her work. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers’ compensation law because they are not found to have arisen out of employment, such as when disability results from an employee’s fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.

The Board has held that 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 employment. But error or abuse by the employing establishment in an

¹ 5 U.S.C. § 8102(a).

² This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers’ compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

³ See *Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

⁴ 28 ECAB 125 (1976).

administrative or personnel matter, or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.⁵

Appellant has implicated a factor, however, that warrants further development of the evidence. Appellant asserts that he was exposed to asbestos when engineering drilled through the material, filling the lab with haze. He asserts that he was exposed to metal and porcelain dust, which he generally described as a “lab dust problem.” He also indicates, at least indirectly, that he was exposed to phosphoric acid fumes prior to the appearance of warning labels on the Prevox bottles. Such exposures, if established, occurred in the course of appellant’s employment and constitute compensable factors of employment. Although a claimant has the burden to establish entitlement to compensation benefits, the Office shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.⁶ Because environmental exposure data or information is of a character normally obtained from the employing establishment, the Office should further develop is aspect of appellant’s claim by endeavoring to obtain confirmation of these exposures from the employing establishment.

Appellant asserts that on July 13, 1993 Dr. McElroy cursed at him in front of a witness, Dr. Rahner. The Board has reviewed the account of this event in appellant’s log and finds that the alleged remarks, if established, would be inappropriate and sufficiently derogatory that they would constitute a compensable factor of employment.⁷ However, this incident has not been factually established as having occurred.

Based on many of appellant’s log entries, he is implicating his work load, production pressure and time demands (“wanting me to produce more work Faster! Faster! type attitude”). As the Board stated in *Cutler*, when an employee experiences emotional stress in carrying out her employment duties, or has fear and anxiety regarding her ability to carry out her duties, and the medical evidence establishes that the disability resulted from her emotional reaction to such a situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. If appellant experienced stress or anxiety in attempting to meet production quotas or in attempting to perform lab procedures within prescribed time limits, such allegations would relate directly to his regularly assigned duties and are compensable factors of employment.⁸ However, appellant has not established these allegations with any corroborating evidences.

⁵ *Margreate Lublin*, 44 ECAB 945 (1993).

⁶ *Robert A. Redmond*, 40 ECAB 796 (1989).

⁷ See *Abe E. Scott*, 45 ECAB 164, 173 (1993) (supervisor called apprentices “apes”).

⁸ *James W. Griffin*, 45 ECAB 774 (1994); *Daryl R. Davis*, 45 ECAB 907 (1994) (finding that the claimant cited a compensable work factor when he alleged pressure from supervisors to hurry up and finish his work); *Edward F. Kellerman*, 36 ECAB 385 (1984) (where the claimant alleged that the nature of his work, including the pressure he was under, contributed to the development of his emotional condition, and the existence of these factors was confirmed by both the claimant’s supervisor and the medical evidence of record, the Board remanded the case to the Office for further development).

If, after further development of the evidence, the Office determines that these compensable factors of employment are established as factual, the Office should then prepare a statement of accepted facts specifying the factors that are both compensable and established and should further develop the medical evidence to determine whether these compensable and established factors caused or contributed to appellant's diagnosed condition.⁹ The present medical opinion evidence from Dr. Van Voorn, although supportive of appellant's claim, is too vague in referring to "stress at work" to establish the critical element of causal relationship.¹⁰

The March 7, 1996 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.
December 16, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁹ See *Kellerman*, *supra* note 8.

¹⁰ See *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete); *Katherine W. Brown*, 10 ECAB 618, 620 (1959) (finding that the actual circumstances upon which the physician predicated his conclusion that the claimant was concerned with job insecurity and that "this insecurity could have been the cause of the ulcer" were not determinable because the report did not contain a recital of those circumstances).