U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM H. FORTNER and DEPARTMENT OF THE NAVY, HUMAN RESOURCES OFFICE, Norfolk, Va.

Docket No. 96-1108; Submitted on the Record;
Issued February 5, 1998

DECISION and ORDER

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

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

The Board has duly reviewed the case record in the present appeal and finds that the case is not in posture for decision.

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 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

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[1] 5 U.S.C. §§ 8101-8193.

[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).

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 of Workers' Compensation Programs, 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 on November 13, 1995 when the employing establishment advised him that he had been improperly placed under the Civil Service Retirement System rather than the Federal Employees' Retirement System. By decision dated January 30, 1996, the Office denied appellant's claim on the grounds that he did not establish any compensable employment factors. The Board must, thus, initially review whether this alleged condition of employment is a covered employment factor under the terms of the Act.

Regarding appellant's allegation that the employing establishment erred with respect to his retirement classification, the Board finds that this allegation relates to an administrative or personnel matter, unrelated to the employee's regular or specially assigned work duties and does not fall within the coverage of the Act.[7] Although the handling of such a personnel matter is generally related to the employment, it is an administrative function of the employer and not a duty of the employee.[8] However, the Board has also found that an administrative matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[9] The record contains documents in which the employing establishment acknowledged that a mistake was made when appellant was placed under the Civil Service Retirement System rather than the Federal Employees' Retirement System. The employing establishment described the effect this

[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 Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[8] *Id.*

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

mistake had on appellant's salary deductions and contributions to the Thrift Savings Plan. As appellant has shown that the employing establishment committed error with regard to this administrative matter, he has established a compensable employment factor under the Act in this respect.

As appellant has implicated a compensable employment factor with respect to his retirement classification, the Office must base its decision on an analysis of the medical evidence. As the Office found there were no compensable employment factors, it did not analyze or develop the medical evidence. Appellant submitted medical reports in which an attending physician suggested that his retirement situation contributed to his stress condition. The case will be remanded to the Office for the purpose of evaluating the medical aspect of appellant's claim.[10] After such further development as deemed necessary, the Office should issue an appropriate decision on this matter.

The decision of the Office of Workers' Compensation Programs dated January 30, 1996 is set aside and the case remanded to the Office for proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
February 5, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

[10] *See Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).