

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROLAND C. JACKSON and DEPARTMENT OF THE ARMY,
DIRECTORATE OF COMBAT DEVELOPMENTS, Fort Bliss, Tex.

*Docket No. 96-726; Submitted on the Record;
Issued January 8, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

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

The Board has duly reviewed the case record in the present appeal and finds that appellant has failed to meet his burden of proof to establish that he sustained an emotional condition while in the performance of duty.

On September 28, 1988 appellant, an equipment specialist, alleged that he first became aware that his situational stress condition was caused or aggravated by his employment on September 9, 1988. Appellant stopped work on September 8, 1988 and resigned from the employing establishment on September 30, 1988. Appellant's claim was accompanied by a narrative statement identifying incidents which he alleged caused his emotional condition and medical evidence. Appellant's claim was also accompanied by a September 19, 1988 memorandum from Curtis B. Tatum, an employing establishment division chief, advising the employing establishment's personnel office that appellant had been experiencing performance problems and that appellant had sought medical treatment, and recommending that appellant undergo a fitness-for-duty examination.

By letter dated November 3, 1993, the Office of Workers' Compensation Programs advised appellant to submit factual and medical evidence supportive of his claim.

By letter dated December 10, 1993, the Office again advised appellant to submit additional evidence supportive of his claim. Appellant did not respond.

By decision dated January 6, 1994, the Office found the evidence of record insufficient to establish that appellant sustained an injury as alleged accompanied by a memorandum.

In a letter dated February 2, 1994, appellant, through his counsel, requested an oral hearing before an Office representative.

By decision dated May 22, 1995, the hearing representative affirmed the Office's January 6, 1994 decision.

In an August 18, 1995 letter, appellant, through his counsel, requested reconsideration of the hearing representative's decision accompanied by responses to a list of specific questions from Gregory E. Tabb, appellant's coworker.

By decision dated September 26, 1995, the Office denied appellant's request for reconsideration without reviewing the merits of the claim based on the grounds that the evidence submitted was cumulative. The Office's decision was accompanied by a memorandum.

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 illness has some connection with the employment, but nevertheless does not come within the coverage of the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as 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 Act.¹

Perceptions and feelings alone are not compensable. 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 factors of his federal employment.² To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) 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.³

In this case, appellant has alleged that he sustained an emotional condition due to various incidents and conditions at work. Specifically, appellant has alleged that several statements made and action taken by Mr. Tatum caused his emotional condition. Appellant alleged that during a hospital stay for Cocci, a possible life threatening pulmonary condition, Mr. Tatum visited him and told him that he had better get out of the hospital soon because his work was piling up. Appellant stated that the knowledge of having a possible life threatening disease combined with the stress became highly unbearable. Appellant provided a description of a meeting that took place with Mr. Bobbin Green, appellant's immediate supervisor, and two individuals whose names he could not recall, subsequent to his return to work. He stated that he

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

told Mr. Green about his scheduled appointments in response to Mr. Green's question regarding his upcoming events and that Mr. Green stopped the meeting to tell Mr. Tatum his response. Appellant then stated that Mr. Tatum told him that if he was going to be sick, then he should go to the hospital, but if he could not go to the hospital, then he should die. Appellant further stated that upon completion of a project that he and Mr. Harper, appellant's coworker, worked on during June 1 through July 13, 1988, Mr. Tatum told him that based on his sources, they did not perform their job, rather they sat under shade trees and inside a van. He noted that this conversation took place at least once a week for six weeks. Appellant also stated that during the week of August 22 and 26, 1988, he was called to the work table by Mr. Green who told him that Mr. Tatum said that he better keep his mouth shut about things that go on in the division. Additionally, appellant stated that on September 9, 1988, he was called into the office by Mr. Tatum and Mr. Green. He then stated that Mr. Tatum told him that he was not performing his job, and that the next time he was called in, a union representative would be present and that he would be fired. Appellant recalled that after Mr. Green left the meeting, he told Mr. Tatum that he could not concentrate, that he had headaches and that he worried excessively, and that Mr. Tatum replied that it sounded like stress and that he should see a physician. Appellant stated that his ideas were sabotaged by his supervisors to make him look bad and that his supervisors took credit for his ideas.

The Board has held that actions of an employee's supervisor which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.⁴ Mere perceptions alone of harassment and discrimination are not compensable under the Act.⁵ To discharge his burden of proof, a claimant must establish⁶ a factual basis for his claim by supporting his allegations of harassment with probative and reliable evidence. In support of his request for reconsideration, appellant submitted answers to specific questions given by Mr. Tabb. Mr. Tabb stated that Mr. Tatum used a rude, obnoxious and demeaning tone of voice when he talked to appellant. Mr. Tabb also stated that Mr. Tatum and Mr. Green harassed appellant about his use of sick leave. The Board finds that Mr. Tabb failed to specifically identify incidents where Mr. Tatum spoke to appellant in an abusive manner. Appellant has failed to submit any corroborating evidence that he was being harassed by the employing establishment. Rather, appellant has merely presented his perception that he was being harassed by the employing establishment and has not established that harassment did, in fact, occur. Consequently, the truth or validity of the allegations of harassment are not established by the record, and they are not, therefore, found to be compensable factors of employment.

Appellant alleged that his fully successful rating rather than at least a highly successful rating given by Mr. Mathis, an employing establishment supervisor, in Mr. Tatum's absence on July 15, 1988, and Mr. Green's subsequent refusal to change the rating were employment factors that caused his emotional condition. However, the Board has held that frustration over

⁴ *Donna Faye Cardwell*, *supra* note 3; *Pamela R. Rice*, 38 ECAB 838, 843 (1987).

⁵ *Wanda G. Bailey*, 45 ECAB 835 (1994); *William P. George*, 43 ECAB 1159 (1992); *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁶ *Ruthie M. Evans*, *supra* note 5.

performance evaluations relates to administrative or personnel matters which, while generally related to the employment, are an administrative function of the employer rather than a regular or specially assigned duty of the employee, and that, unless error or abuse in the administration of a personnel matter is shown, coverage will not be afforded.⁷ Appellant has failed to submit evidence establishing that there was supervisory error or abuse in this action.

Regarding appellant's allegation that he was improperly targeted as the subject of an investigation involving a conflict of interest due to his contact with an employer about a position as a subject matter expert. The Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regularly or specially assigned employment duties are not considered to be employment factors.⁸ While appellant has alleged that the employing establishment improperly targeted him as the subject of an investigation involving a conflict of interest, appellant has failed to submit the findings of the investigation or other documents to establish error or abuse on the part of the employing establishment. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant's allegation regarding Mr. Tatum's and Mr. Green's treatment of him regarding his use of sick leave involves an administrative function of the employing establishment⁹ and appellant has failed to submit evidence establishing there was supervisory error or abuse in this action.

Appellant alleged that the lack of personnel, lack of special schools and the inability of decision makers to fully understand the action officers' problems resulted in a stressful situation. He also alleged that for a period of time, it appeared that he could not do anything right, such as, write a paper and obtain Mr. Green's approval without having to rewrite the paper at least twice. Appellant noted that Mr. Green stated that he could not write and that Mr. Tatum stated that he was too technical for the job. He has further alleged that he was unable to meet deadlines because Mr. Green had a tendency to let things sit on his desk. The Board finds that these allegations constitute compensable employment factors which arose in the performance of appellant's employment duties because, by their nature, they arose out of and in the course of appellant's assigned duties. However, a claimant must not only show that the condition arose in the performance of duty, but must also establish, by the weight of the probative, substantial, reliable weight of the medical evidence that these factors of employment caused or contributed to the cause of his emotional condition.¹⁰

Appellant submitted the September 19 and 27, 1988 medical reports of Dr. Kenneth R. Rollins, a psychologist. Dr. Rollins diagnosed generalized anxiety disorder and psychological factors affecting appellant's physical condition. Dr. Rollins opined that appellant's disorder was

⁷ *James E. Woods*, 45 ECAB 556 (1994).

⁸ *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

⁹ *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

¹⁰ *Arnold A. Alley*, 44 ECAB 912 (1993).

job related. The Board, however, finds that Dr. Rollins' opinion is insufficient to establish appellant's burden because he failed to identify the specific compensable employment factors that caused appellant's emotional condition.

A November 7, 1988 medical report of Dr. Raghava V. Charya, a Board-certified allergist and immunologist revealed that appellant had a skin rash, coccidioidomycosis and a fungal infection, and that appellant's conditions could have contributed to his psychological stress. An October 11, 1988 medical report of Dr. James L. Wallingford, a Board-certified internist, revealed that appellant had cavitory coccidioidomycosis and tobacco abuse/addiction. Dr. Wallingford concluded that although appellant appeared to be under a great deal of mental stress at work, the coccidioidomycosis infection was neither initiated nor aggravated by appellant's employment. The medical reports of Drs. Charya and Wallingford failed to discuss whether appellant's emotional condition was caused by factors of his federal employment. Therefore, they are insufficient to establish appellant's burden.

The September 26 and May 22, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
January 8, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member