

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY K. BING *and* DEPARTMENT OF DEFENSE,
REUTILIZATION & MARKETING SERVICE, Battle Creek, Mich.

*Docket No. 96-903; Submitted on the Record;
Issued January 22, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On January 3, 1994 appellant, then a 41-year-old classifier, filed a claim alleging that he sustained stress, anxiety, high blood pressure, major depression and diabetes causally related to his federal employment. By decision dated October 20, 1994, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he did not establish that he sustained an injury in the performance of duty. In a decision dated February 10, 1995, an Office hearing representative affirmed the Office's October 20, 1994 decision and by merit decision dated November 1, 1995, the Office denied appellant's request for modification of the prior decision.

The Board has duly reviewed the case record and finds that appellant has not established that he sustained an emotional condition in the performance of duty.

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 or her 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 or her frustration from not being permitted to work in a particular environment or to hold a particular position.²

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

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, 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.³ 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.⁴

In the present case, appellant attributed his emotional condition, in part, to “being passed over for two supervisory positions.” In response to appellant’s allegations, Ms. Sarah Mayer, appellant’s second-line supervisor, indicated that he did not receive a promotion because he was not the best qualified candidate for the positions. The Board has held that the denial of a promotion is not a compensable factor of employment as it is administrative in nature and does not arise from the employee’s duties.⁵ Rather, it is considered self-generated as it amounts to frustration over not being able to hold a particular position, or to work in a particular environment.⁶

Appellant further attributed his stress to receiving a poor performance appraisal in 1991. However, reactions to performance appraisals, without more, are not covered by the Act.⁷ Where the evidence demonstrates that the employing establishment has neither erred nor acted abusively in the administration of personnel matters coverage will not be afforded.⁸ In the instant case, appellant’s supervisor, Mr. Calvin Lewis, related that appellant received a minimal rating on a critical element because he was not fulfilling the requirements of the element. Ms. Mayer related that she concurred with Mr. Lewis’ rating of appellant’s performance as minimally acceptable in 1991. Appellant has submitted no evidence to establish that the employing establishment committed error or abuse in rating his performance in 1991.

Appellant also maintained that Ms. Mayer urged his supervisor to unfairly charge him with improper actions. Specifically, appellant related that Ms. Mayer accused him of inaccurately describing the weight of two shipments of cupronickel. Appellant related that an

ECAB 125 (1976).

³ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁴ *Id.*

⁵ *Frederick D. Richardson*, 45 ECAB 454 (1994); *Donald E. Ewals*, 45 ECAB 111 (1993).

⁶ *Id.*

⁷ *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁸ *Id.*

investigation by his supervisor revealed that he was not at fault and that the weight had been incorrectly recorded by the saleswriter. Investigations are an administrative function of the employing establishment and do not involve an employee's regularly or specially assigned employment duties. Thus, an investigation into possible improper conduct by an employee by the employing establishment is not an employment factor unless the evidence discloses error or abuse on the part of the employing establishment.⁹ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁰

In response to appellant's allegation, his supervisor related that inventories "appeared to indicate mistakes by [appellant]" but that an investigation revealed that the majority of the errors were not caused by appellant but rather by mistakes in documentation. Mr. Lewis stated that, regarding the investigation, "there was no malice intended; only the will for quality work." Appellant has not submitted any corroborating evidence which would establish that the employing establishment erred or acted abusively in investigating the discrepancies in inventory, or that Ms. Mayer "singled him out" for disciplinary action, and thus has not established a compensable employment factor.

Appellant further reveals frustration over not receiving praise from Ms. Mayer and concomitant rewards for his work. Appellant related that he volunteered for overtime but that the employing establishment did not recognize his extra effort; that he reutilized valuable property but received no commendation; and that he received no monetary reward for his superior performance. In this regard, however, appellant's stress was self-generated as it resulted from his frustration in not being recognized as he believed appropriate, and thus is not compensable under the Act.¹¹

Appellant additionally contends that he performed additional supervisory functions in the absence of his immediate supervisor, Mr. Lewis. In response, Mr. Lewis stated that he placed appellant in charge in his absence because of appellant's experience. Ms. Mayer related that appellant was the "point of contact when Mr. Lewis was on leave" but denied that he performed supervisory functions. Appellant, however, is not claiming that his emotional condition arose because he could not perform his regularly or specially assigned duties or because he was overworked in Mr. Lewis' absence but rather because he did not receive adequate recognition for the additional responsibilities. As discussed above, this is a self-generated frustration and is not compensable under the Act.¹²

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

¹⁰ *Jimmy B. Copeland*, 43 ECAB 339 (1991).

¹¹ *Tanya A. Gaines*, 44 ECAB 923 (1993).

¹² *Lillian Cutler*, *supra* note 2 .

For the foregoing reasons, appellant has not established any compensable factors of employment under the Act and, therefore, has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty.¹³

The decisions of the Office of Workers' Compensation Programs dated February 10, 1995 and November 1, 1994 are hereby affirmed.

Dated, Washington, D.C.
January 22, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹³ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki, supra* note 3.