

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JONATHON WILD and DEPARTMENT OF THE NAVY,
NAVAL OCEAN SYSTEMS CENTER, San Diego, Calif.

*Docket No. 96-2076; Submitted on the Record;
Issued July 2, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

Appellant an administrative assistant, filed a claim on July 11, 1993 alleging that he had sustained a major depressive episode due to his federal employment. In a supplemental statement, appellant explained that when he began his federal employment he was not given an employee orientation and did not receive a job description for more than one year, appellant alleged that he had conflicts with his supervisor and sought aid through the Civilian Employee Assistance Programs; appellant stated that he was transferred to a new position, but that his previous supervisor informed his new supervisor that he was a "troublemaker," even though he had never received any formal reprimand letter of warning, or punishment. Appellant stated that he received satisfactory performance ratings and cash awards, even though he was harassed by his supervisor; and appellant alleged that he was granted advanced leave in December 1992, which was retracted in January 1993."

In support of his claim, appellant submitted several reports from Dr. Marc E. Sternberg, a Board-certified psychiatrist, who diagnosed major depressive episode. Dr. Sternberg summarized appellant's alleged employment factors and concluded that "with a premorbid history of competency and adequate functioning despite characterologic difficulties of a narcissistic nature, he had shown a progressive deterioration of functioning since initiating his current job. It is my opinion that his expressive illness was certainly aggravated if not overtly caused by his employment.

The Office of Workers' Compensation Programs denied appellant's claim by decision dated June 23, 1995, on the grounds that the evidence did not establish that appellant's condition arose out of the performance of his federal employment.

The Board finds that this case is not in posture for decision.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding his ability to carry out his duties and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of the employment. The same result is reached when the emotional disability resulted from the employee's emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of the work. In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Federal Employees' Compensation Act.¹

An emotional condition arising from appellant's performance of day-to-day or specially assigned duties is compensable pursuant to the Act.² Thus, if an employee develops an emotional condition while trying to meet the requirements of a position, such emotional condition is generally compensable.³ Appellant has not alleged that he could not perform his day-to-day or specially assigned duties and, therefore, developed an emotional condition. Rather, appellant has alleged that administrative and personnel actions taken by the employing establishment or harassment by his supervisors caused his emotional condition.

Generally, actions of the employing establishment in administrative or personnel matters are not considered compensable employment factors. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage.⁴ Regarding appellant's allegations that the employing establishment erred in actions taken during his transfer, or in revoking his advanced leave in January 1993, appellant has not submitted any evidence to establish that such administrative actions were done in error or were abusive. Such allegations would, therefore, not be compensable under the Act.

The Office has accepted as factually true that appellant did not receive orientation information as a new employee in April 1989 and did not receive a position description of his employment duties until June 1990. The Office found that as these events did not relate to the performance of appellant's employment duties, they were not compensable pursuant to the Act. While these allegations generally pertain to appellant's awareness of his employment duties, they do not pertain to the actual performance of appellant's employment duties. The failure to provide a proper orientation and performance standards pertain to administrative action or inaction taken by appellant's employer.

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

² *Clara T. Norga*, 46 ECAB 473 (1995).

³ *Elizabeth W. Esnil*, 46 ECAB 606 (1995).

⁴ *Gregory N. Waite*, 46 ECAB 662 (1995).

The Board finds that the employing establishment has not denied and, therefore, the Office has accepted as factually true that appellant did not receive orientation as a new employee and did not receive a position description until June 1990. The Office has not, however, in this case evaluated whether the evidence is sufficient to establish whether such actions constituted error or abuse on behalf of the employing establishment. The case will, therefore, be remanded to the Office for further development regarding this allegation.

Finally, the Board notes that appellant has alleged harassment by his superiors. An employee's charge that he was harassed or discriminated against is not determinative of whether or not harassment or discrimination occurred.⁵ For harassment to give rise to a compensable disability under the Act,⁶ there must be some evidence that acts alleged or implicated by the employee did, in fact, occur.⁷ Appellant has not, however, submitted the necessary evidence to substantiate that any specific act of harassment did occur.

On remand, the Office determine whether the employing establishment erred or acted abusively in failing to provide appellant orientation and a position description. After such further development as necessary, the Office shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated June 23, 1995 is hereby set aside and this case is remanded to the Office for further proceedings consistent with this opinion.

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

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁵ *O. Paul Gregg*, 46 ECAB 624 (1995).

⁶ 5 U.S.C. § 8101 *et. seq.*

⁷ *Elizabeth Pinero*, 46 ECAB 123 (1994).