

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KEITH CARTER and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Long Beach, Calif

*Docket No. 96-2066; Submitted on the Record;
Issued June 26, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

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

On March 14, 1996 appellant, a 43-year-old custodial worker, filed a claim for employment-related emotional stress, which he stated he first became aware of on February 15, 1996. Accompanying the claim was a handwritten statement from appellant wherein he alleged that he became angered and upset after having a disagreement with his supervisor regarding whether he had requested annual leave in the appropriate manner and through the appropriate channels to cover a day when he had not reported to work. Appellant asserted that as a result of this incident he became emotionally stressed, and began experiencing physical pain, difficulty sleeping, and "snapping at" people with whom he lived and worked.

Appellant also submitted a March 14, 1996 treatment note from FHP Health Care, which indicated he had been treated on that date for gastrointestinal upset, agitation, palpitations, and stress from his employment situation which caused somatic complaints. The note was signed by Dr. Osmundo Sagui, a physician with FHP Health Care, who placed appellant off work from March 14 to March 29, 1996.

In response to appellant's allegations, appellant's supervisor submitted a handwritten statement dated March 6, 1996 which contradicted appellant's account of the alleged employment incident. The supervisor asserted that when he spoke to appellant on March 6, 1996 to determine the reason he did not report to work on February 15, 1996, appellant responded that it was a misunderstanding because he had been looking at the 1995 leave calendar. The supervisor stated that appellant claimed he had talked with another supervisor regarding whether it was appropriate for him to take annual leave, but had not attempted to contact him in accordance with proper procedure at the worksite. The supervisor stated that he then told appellant that his explanation was not acceptable and that he was being charged with leave without pay.

In letters to the Office dated April 2 and 3, 1996, the employing establishment controverted the claim, stating that based on the supervisor's statement it had upheld his imposition of leave without pay and had imposed a disciplinary action against appellant.

By letter dated April 25, 1996, the Office advised appellant that the evidence he submitted was not sufficient to determine whether he was eligible for compensation benefits, and that he needed to submit a detailed description of the specific employment-related conditions or incidents he believed contributed to his illness. The Office also asked appellant to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition, and an opinion as to whether factors or incidents, *i.e.*, specific employment factors, at his employing establishment contributed to his condition.

In response to the Office's April 25, 1995 letter, appellant submitted an undated, handwritten letter in which he reiterated and expanded on his previous allegations. Appellant claimed that subsequent to the March 6, 1996 employment incident, his supervisor had harassed him, treated him in an unfair and discriminatory manner, and transferred him to work alone in an area which required the services of two people. Accompanying appellant's letter were handwritten statements from two coworkers and a typed letter from appellant's union steward.

In addition, appellant submitted a May 8, 1996 letter from Dr. Saguil, who stated that he had been treating appellant since January 1996. Dr. Sagui stated that when he examined appellant on March 14, 1996 he was upset and distraught because of a conflict with his supervisor for which he felt he was specifically targeted. Dr. Sagui stated that appellant had diffuse myalgias from fibromyalgia which were made worse as well as gastrointestinal upset. Dr. Sagui diagnosed work-related stress and fibromyalgia worsened by stress, and stated that in light of appellant's emotional upset he had advised appellant to avoid work for two weeks, or to "relocate" his work positions.

By decision dated May 31, 1996, the Office found that fact of injury was not established, as the evidence of record did not establish that an injury was sustained in the performance of duty. In an accompanying memorandum to the Director, the claims examiner stated that the sole incident to which appellant attributed his emotional condition was not a compensable work factor. The claims examiner noted that appellant had been charged with being absent with leave by his supervisor, a disciplinary action which was upheld by the supervisor's management chief, and that there had been no determination by an empowered body that the employing establishment erred or acted abusively in its handling of the matter.

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty.

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition, and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.¹ There must be

¹ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.²

The first issue to be addressed is whether appellant has cited factors of employment that contributed to his alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act.³ On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.⁴

The Board finds that appellant alleged factors of employment which may have resulted in a compensable emotional condition; *i.e.*, his alleged harassment, discriminatory treatment, and retaliatory transfer by the employing establishment. Appellant's assertion that he experienced a specific employment incident, in which he and his supervisor verbally clashed over his alleged failure to report for duty without adequate leave, was corroborated by the March 6, 1996 statement from the supervisor. Appellant contended that this incident and the subsequent unfair treatment on the part of his supervisor, as alleged above, caused him to become extremely upset, emotionally stressed, and suffer sleepless nights, and that his condition became sufficiently severe to the point that he required a prescription for Prozac. Appellant also submitted statements from two coworkers and a union steward. However, these statements are general in nature and do not support with specificity the allegations made by appellant in this case.⁵ Therefore appellant's burden of proof is not discharged by the fact that he has merely identified an employment factors which may give rise to a compensable disability under the Act. Appellant has not established unfair treatment or harassment as alleged.

The Board finds that appellant has failed to submit rationalized, probative medical evidence to support his allegation that he sustained a specific injury due to accepted verbal altercation with his supervisor. The only medical evidence appellant submitted was the March 14, 1996 treatment note and May 8, 1995 medical report from Dr. Saguil, in which Dr. Saguil merely stated that appellant's conflict with his supervisor had resulted in "work-related stress", caused him to become distraught and emotionally upset, and aggravated his fibromyalgia. Dr. Sagui's note and report did not contain a detailed analysis of how employment factors caused any specific condition or disability, or an indication of how appellant was affected by or treated for any such emotional condition or disability. Accordingly, appellant has failed to meet her burden of showing that she suffered an emotional condition in the performance of duty.

² See *Ruth C. Borden*, 43 ECAB 146 (1991).

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Id.*

⁵ See *Jose L. Gonzalez - Garced*, 46 ECAB 559 (1995).

The decision of the Office of Workers' Compensation Programs dated May 31, 1996 is affirmed.

Dated, Washington, D.C.
June 26, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member