

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMIE ROSADO and DEPARTMENT OF THE AIR FORCE,  
SAN ANTONIO AIR LOGISTICS CENTER, KELLY AIR FORCE BASE,  
Tex.

*Docket No. 95-1495; Submitted on the Record;  
Issued March 17, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained an emotional condition due to factors of his federal employment.

The Board has duly reviewed the case on appeal and finds that appellant has not met his burden of proof in establishing that he developed an emotional condition due to factors of his federal employment.

In this case, appellant filed a claim on April 22, 1994 alleging that he developed chronic anxiety due to a stressful situation. The employing establishment terminated appellant for cause on July 1, 1993. The Office of Workers' Compensation Programs denied appellant's claim on January 12, 1995 finding that he failed to establish that his current emotional condition was causally related to accepted employment factors. Appellant requested reconsideration on January 23, 1995 and by decision dated January 31, 1995, the Office denied modification of its January 12, 1995 decision.

To establish appellant's occupational disease claim that he has sustained an emotional condition in the performance of duty appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.<sup>1</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty,

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<sup>1</sup> Donna Faye Cardwell, 41 ECAB 730, 741-42 (1990).

and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>2</sup>

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 concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment to hold a particular position.<sup>3</sup>

Appellant attributed his emotional condition to pain in both hands and wrists. An accepted employment injury can constitute factors of employment contributing to an emotional condition.<sup>4</sup> However, the Office has not accepted that appellant sustained a hand or wrist condition due to factors of his federal employment. Furthermore, appellant has not submitted medical evidence establishing that a physician restricted his duties to limit his use of his hands and wrists. Therefore, appellant has not established that his hand and wrist pain was a factor of his federal employment.

Appellant alleged that his emotional condition was due to working in a dead-end job which lacked prospects for advancement and to receiving no promotions. The failure to be promoted is not compensable under the Federal Employees' Compensation Act because the lack of promotion does not involve an employee's ability to perform his or her regular or specially assigned duties but rather constitutes the employee's desire to work in a different position.<sup>5</sup>

Appellant attributed his emotional condition to receiving two years of college education for which he was not compensated and alleged that the employing establishment terminated him in violation of his civil rights. As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. 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. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>6</sup> In this case, appellant has submitted no evidence that the employing establishment acted abusively in failing to compensate him for higher education or in terminating his employment. The employing establishment submitted documentation that appellant was terminated due to his failure to perform the duties of his position.

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<sup>2</sup> *Id.*

<sup>3</sup> *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

<sup>4</sup> *Clara T. Norga*, 46 ECAB 473 (1995).

<sup>5</sup> *Peggy Ann Lightfoot*, 48 ECAB \_\_\_\_ (Docket No. 95-1676, issued May 2, 1997).

<sup>6</sup> *Martha L. Watson*, 46 ECAB 407 (1995).

Appellant alleged that he was harassed by coworkers and management and that he was discriminated against. For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>7</sup> In this case, appellant has submitted no evidence in support of this allegation of harassment and discrimination. Furthermore, appellant's supervisors, Glyndon I. Burkhart and Jose A. De La Garza, denied appellant's allegation.

Appellant attributed his emotional condition to rotating work shifts from 1981 through 1988. The employing establishment has substantiated appellant's claim of rotating work shifts and the Board finds that it is an accepted factor of employment as it relates to the requirements of appellant's position.<sup>8</sup>

In support of his claim of an emotional condition resulting from this employment factor, appellant submitted a note dated October 26, 1981 from Dr. E.T. Ximenes noting appellant's condition of nervousness since 1979 and stating that working shift changes contributed to anxiety. In a note dated December 11, 1981, Dr. Don McNeal, Jr. stated appellant was unable to perform rotation of shifts on a permanent basis. Dr. Z.W. Winsor diagnosed anxiety with depression and restricted appellant to no rotation of shifts.<sup>9</sup> In a report dated April 9, 1986, Dr. Delio G. Romeu, a general practitioner, noted appellant's history of anxiety and stated he should change to either one of the shifts. On January 20, 1995 Dr. Romeu stated that he had treated appellant for chronic anxiety and emotional stress since November 1980.

Although appellant has submitted medical evidence diagnosing an emotional condition and has established a compensable factor of employment, changing work shifts, appellant has not submitted the necessary rationalized medical opinion evidence to establish that his current disabling condition is causally related to his changing work shifts which ended in 1988. The only report providing an opinion on the causal relationship between appellant's accepted employment factor and his emotional condition is the October 26, 1981 note from Dr. Ximenes. As Dr. Ximenes did not explain how he reached this conclusion his report is not sufficient to meet appellant's burden of proof.

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<sup>7</sup> *Alice M. Washington*, 46 ECAB 382 (1994).

<sup>8</sup> *Donna J. Dibernardo*, 47 ECAB \_\_\_\_ (Docket No. 94-1317, issued August 20, 1996).

<sup>9</sup> The above-mentioned physicians were not listed in the physician's reference guides.

The decisions of the Office of Workers' Compensation Programs dated January 31 and January 12, 1995 are hereby affirmed.

Dated, Washington, D.C.  
March 17, 1998

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member