U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTONIO FOURQUET and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Ponce, P.R.

Docket No. 96-1238; Submitted on the Record;
Issued March 16, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

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

On December 9, 1994 appellant, then a 56-year-old public information representative, claimed that he had an emotional condition from work which caused him to have a nervous breakdown on December 5, 1994. In a June 30, 1995 decision, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that the claimed injury occurred in the performance of duty. In a February 14, 1996 decision, an Office hearing representative affirmed the Office's decision, finding that appellant's condition arose out of his belief that he had not been given adequate training which was not a compensable factor of employment. She also indicated that the change in appellant's job was an administrative action with no evidence of error or abuse by the employing establishment in the administrative action.

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

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. 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 with the coverage of the Act. 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 frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning

of the Act.[1] When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.[2] In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.[3]

Appellant indicated that he had worked at the employing establishment since 1965 and in 1972 was promoted to be a field representative. In 1976 he was promoted to be an operations supervisor but requested a demotion three and a half years later because he wanted to return to the field. Appellant stated that his emotional problems began when discussion began about abolishing the field representative position. He noted that he had a 30-minute TV program, taped 10-minute radio programs that were aired on 9 radio stations, wrote a weekly column for a local newspaper and participated in a radio talk show approximately 4 times a month. Appellant indicated that he was promoted to GS-11 in 1992 or 1993 against his wishes and was asked to work in the office two days a week. He was also asked to make a monthly trip to a contact station to handle 40 to 50 clients. On August 9, 1993 he was ordered to stay in the office five days a week which included new duties. On August 23, 1994 he requested a demotion to GS-10 to be a field representative. He claimed that the demotion was granted but more work was heaped on his desk. Appellant's supervisor stated that appellant's performance standards were changed on September 19, 1993 when he was promoted to Grade 11 which was an agency-wide change. The supervisor indicated that the only additional duty added was adjudication of claims. She reported that on September 18, 1994 appellant was demoted to GS-10. She stated that appellant did not want to adjudicate claims and never actually did so. She commented that no staffing changes occurred during the period in question. At the hearing appellant indicated that he never adjudicated a main wage-earner's claim but may have adjudicated some minor claims. He stated that when he accepted the demotion in September 1994, work was piled up on him, work that he did not know how to do and was not given the training to do. Appellant commented that when he was given the promotion he had the same duties that he had as a field representative such as giving talks, visiting employers, government agencies and the vital statistics office in his area, keeping up with his radio program, and doing live talk shows. He indicated that he had to get insurance forms from the commonwealth and process them, correcting errors by those who had done the jobs previously. Appellant stated that he was given the additional duty of working on one-third of the post-entitlement work load. He noted that his supervisor had indicated that he had been given one-fifth of the work load. He testified, however, that he was expected to do the same duties required of the two coworkers assigned to post-entitlement work. Appellant stated that he was not upset by the change in his work but by the manner in which it was done.

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

[2] *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

[3] *Thomas D. McEuen*, 41 ECAB 387 (1990) *reaff'd on recon.*, 42 ECAB 566 (1991).

He indicated that he was performing additional duties with no direction or help. Appellant commented that he preferred field work but would do adjudications if he had but only if he received training. He stated that, instead of receiving training, his supervisor piled more work on him.

Appellant therefore identified several factors of employment which he believed caused his emotional condition. The promotion and subsequent demotion are administrative matters unrelated to appellant's assigned duties. His dissatisfaction with the changes in duties caused by the promotion would be a sign of frustration in not being in a particular work environment. This factor therefore is not a compensable factor of employment. Appellant claimed that he was not given the training necessary to do his job. This is an administrative decision which is not a compensable factor of employment. However, appellant indicated that he had new job duties after his promotion and had work piled on him by his supervisor after he took a voluntary demotion. Increased work and new job duties would be directly related to appellant's assigned duties and would be a compensable factor of employment. Appellant, however, only gave general statements or confusing descriptions of the additional work duties he had after his promotion. He did not clearly delineate the difference in his job duties before the promotion and his job duties after the promotion other than noting that he was taking reports at a service center and performing post-entitlement work. Appellant also stated that his supervisor piled up work on him after he accepted a demotion. However, he did not give a more specific description of what work was assigned to him or the specific amount of work assigned to him and he did not provide a cogent explanation on why he was unable to keep up with the work assigned to him. Appellant, therefore has not provided sufficient details to show that he had additional assigned duties or an increased work load which would constitute a compensable factor of employment. Appellant therefore has not established that he had a compensable factor of employment that would demonstrate he sustained an injury in the performance of duty.

The decision of the Office of Workers' Compensation Programs, dated February 14, 1996, is hereby affirmed.

Dated, Washington, D.C.
March 16, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas

Alternate Member