

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EARL E. HUNSLEY and DEPARTMENT OF THE NAVY,
CONSOLIDATED CIVILIAN PERSONNEL OFFICE, EMPLOYEE
ASSISTANCE DIVISION, Washington, D.C.

*Docket No. 97-1512; Submitted on the Record;
Issued April 16, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that his heart condition was caused or aggravated by emotional stress sustained in the performance of his federal employment.

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 his 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, or the desire for a different job, promotion, or transfer is not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Federal Employee's Compensation Act.¹

In the present case, appellant a deputy program manager, has explained that he sustained a heart attack in March 1977, underwent bypass surgery in April 1989, and then did well until he sustained unstable angina and recurrent chest, arm and neck discomfort during the period July 1994 to May 3, 1996. Appellant has alleged that his medical conditions from July 1994, were caused by work-related stress arising from actions taken by his superiors, Colonel Mason and Thomas Golart. Essentially, appellant has alleged that since July 1994 he was not allowed to perform the functions of his approved position description as deputy program manager for the joint program office. Appellant alleged that in 1994, he was given a performance evaluation which was inconsistent with his prior evaluations and with his actual work performance. On

¹ William E. Seare, 47 ECAB 663 (1996).

August 2, 1994 appellant and two coworkers obtained a change in the performance evaluations from 4's to 5's (outstanding). In August 1995, appellant stated he was given a performance appraisal, which was a personal insult in that it noted that his effectiveness in all areas was severely restricted by his tendency to alienate those who worked with him. Further, appellant alleged that during meetings with Spanish and Italian Officers, McDonnell Douglas representatives and U.S. representatives during trips to Spain and Italy from February 15 to March 3, 1995 and March 20 to 24, 1995, he was ridiculed by a superior, Mr. Mason and was embarrassed in front of his professional associates. Appellant also alleged that he was denied travel to meetings in Italy during November 1995. Appellant has alleged that in February 1996 he was again reassigned duties, which was stressful for him. Finally, appellant has alleged that he was required to document sick leave requests during 1996, that he was told by Mr. Golart on May 3, 1996 that he would be put on absent without leave (AWOL) if he did not return to work on May 6, 1996 and that he was left with no option but to retire under duress on May 3, 1996.

Appellant's supervisor, Mr. Golart, responded that the focus of appellant's work, but not his work load or his general duties, changed twice since he arrived at the employing establishment as program manager for the A/V Weapons Systems Program Office. Mr. Golart explained that the first reorganization which impacted appellant occurred in September 1994. He explained that as a result of the reorganization, a business/financial management group was established and the Italian and Spanish senior officers were moved to deputy positions, which reported directly to the program manager, rather than via appellant, as had been the case. He further explained that appellant's position focus changed to that of a principal adviser to both the program manager for A/V weapons systems and the program manager for coordination of international programs. Mr. Gollart stated that his first indication that appellant was confused about his new role in the organization occurred in November 1994, when appellant asked for clarification of his new responsibilities. Appellant was then given work plan objectives and specific task/responsibilities which were derivative of those objectives. Mr. Golart further explained that during a second reorganization in August 1995, appellant was assigned the position of IPT leader and deputy for new aircraft. He stated that work plan objectives pursuant to appellant's performance plan were created and appellant was afforded an opportunity to comment on them. Regarding the denial of travel, he added that appellant was allowed travel on many occasions during the time period in question, but on those occasions when travel was denied it was due to a shortage of travel funds and that appellant's presence was not necessary to complete the contracts or meetings in question.

The Office of Workers' Compensation Programs denied appellant's claim by decision dated December 30, 1996, on the grounds that the evidence of record failed to establish that the activities or employment factors occurred in the performance of duty.

The Board finds that appellant has not established a compensable factor of employment in this case.

An emotional condition arising from appellant's performance of day-to-day or specially assigned duties is compensable pursuant to the Act. Thus, if an employee develops an emotional condition while trying to meet the requirements of a position, such emotional condition is

generally compensable.² In the present case, appellant has stated that he enjoyed his work and that he performed his work well, but that he was frustrated when his duties were reassigned and his travel was restricted. The record also evidences that appellant was a good employee and received acknowledgment of his work performance, except for a 1995 performance evaluation which noted his inability to work well with others. The evidence of record thus indicates that appellant's allegations are not directed towards his inability to perform the work, or the work itself, but rather are directed towards the administrative reorganization and resulting changes in his work environment.

Rather than the actual work itself, appellant has attributed his emotional condition to alleged administrative actions and harassment by his supervisor, appellant has not, however, established the compensability of these allegations. Although administrative and personnel matters are generally related to the employment, they are functions of the employer and not duties of the employee.³ Thus, the Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.⁴

The record indicates that appellant's alleged stress occurred following reorganizations at the employing establishment and reassignment of duties. Appellant has not submitted any evidence that the administrative actions were made in error or were in fact abusive. Appellant's own perceptions and feeling alone are not compensable. To establish entitlement to benefits under the Act, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.⁵ As appellant's allegations lack substantiation of error or abuse on behalf of the employing establishment, they are not compensable in this case.

Regarding appellant's allegation that he was denied travel, the Board finds that appellant has not submitted any corroborating evidence that he was improperly denied travel required by his work. The record substantiates that during the time period in question, appellant did travel extensively. On those occasions that appellant was denied travel, appellant's supervisors have explained that appellant simply did not need to attend the meeting or his work could be completed without travel. There is no evidence to support a finding that denial of travel in any specific instance was in error as appellant's work in fact mandated the particular travel in question.

Regarding appellant's disagreement with performance evaluations in 1994 and 1995, these allegations pertain to the performance of administrative functions and do not directly relate to the performance of appellant's own duties.⁶ While appellant has described the performance evaluations as degrading and insulting, he has not submitted any corroborating evidence to

² See *Garry M. Carlo*, 47 ECAB 299 (1996).

³ *Martin Stadel*, 47 ECAB 306 (1996).

⁴ *Id.*

⁵ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁶ See *Harriet J. Landry*, 47 ECAB 543 (1996).

establish that the evaluations were in fact in error or were abusive. Again, appellant's own frustrations and perceptions regarding such administrative acts do not establish compensable factors of employment.

Regarding appellant's dislike of the change of his work duties following the reorganizations, such allegations pertain to a desire to work in a particular position. The evidence of record indicates that appellant's employment duties and job title did change, there is no evidence of record that appellant was demoted. While appellant may have been unsatisfied in his new job role, the Board has held that self-generated frustration arising from not being allowed to work in a particular position or to hold a particular job is not compensable under the Act.⁷

Regarding appellant's allegations that sick leave issues were improperly handled by his supervisor during 1996, culminating in appellant's retirement on May 3, 1996, appellant has also not established the compensability of these allegations. Appellant has not submitted any evidence which establishes that management erred or acted abusively in any specific instance relating to these matters. Appellant's allegations that he did not like the way management handled these issues and his own belief that the employing establishment required excessive documentation, without evidence establishing error or abuse, is not sufficient to establish compensability under the Act.⁸

Appellant has also alleged in general terms that he was harassed by his supervisor. Actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. However, for harassment to give rise to a compensable factor of employment, there must be evidence that harassment or discrimination did, in fact, occur.⁹ Mere perceptions of harassment are not compensable. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹⁰ To establish entitlement, the claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹¹ Appellant has alleged that he was embarrassed during meetings by his superiors. However, appellant has not provided details of any specific verbal exchange or evidence substantiating or verifying what was said. For this reason, the Board finds that appellant has failed to factually establish this allegation as a compensable factor of employment.¹²

⁷ See *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁸ *Leroy Thomas, III*, 46 ECAB 946 (1995).

⁹ *Helen P. Allen*, 47 ECAB 141 (1995).

¹⁰ *Id.*

¹¹ See *Joel Parker, Sr.*, 43 ECAB 220 (1991).

¹² *Garry M. Carlo*, 47 ECAB 299 (1996).

As appellant has not alleged any factor of employment which is compensable pursuant to the Act, it is unnecessary to address the medical evidence of record.¹³ Appellant has not met his burden of proof in this case.

The decision of the Office of Workers' Compensation Programs dated December 30, 1996 is hereby affirmed.

Dated, Washington, D.C.
April 16, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹³ *Id.*