U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARLISS J. McNEELY and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Little Rock, Ark.

Docket No. 97-2187; Submitted on the Record;
Issued April 26, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained an emotional condition while in the performance of duty.

On February 3, 1995 appellant, then a 44-year-old health technician, filed an occupational disease claim, alleging that he sustained depression of which he first became aware and realized was causally related to factors of his federal employment on November 1, 1994. On his claim form and in a supplemental statement, appellant indicated that his depression was caused by the employing establishment's refusal to allow him to withdraw his resignation which became effective October 31, 1994. In a decision dated September 7, 1995, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence did not establish that appellant sustained an emotional condition while in the performance of duty. By decision dated April 18, 1997, an Office hearing representative affirmed the decision of the Office.

The Board has carefully reviewed the entire case record on appeal and finds that appellant has not met his burden of proof in establishing that he sustained an emotional condition while in the performance of duty.[1]

The initial question presented in an emotional condition claim is whether appellant has alleged and substantiated compensable factors of employment contributing to his condition. 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'

[1] The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed his appeal with the Board on June 10, 1997, the only decision before the Board is the Office's April 18, 1997 decision. *See* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

Compensation Act. Where 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. On the other hand, the disability is not covered where it results from factors such 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 desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.[2] 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.[3] 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.[4]

In the present case, appellant asserts that his emotional condition was due to the employing establishment's refusal to allow him to withdraw his resignation, a personnel matter. Thus, in order to meet his burden of proof, appellant must establish that the employing establishment either erred or acted abusively in not allowing him to withdraw his resignation. Appellant has not met his burden of proof. A review of the record reveals that appellant requested vacation leave for the period of July 22 to 29, 1994 and then requested leave without pay (LWOP) for the period of August 1 to October 31, 1994. Appellant indicated that he needed LWOP due to a move to El Paso, Texas with his wife. By memorandum dated July 27, 1994, the employing establishment granted appellant's request and noted that since his leave request exceeded 30 days, appellant was advised that he might not be able to return to the same position if it was not available, that in the event of a reduction-in-force, he would be treated as an employee on duty and that if warranted by a reduction-in-force, his LWOP could be canceled. On July 22, 1994 appellant signed a form indicating that he wished to resign effective October 31, 1994. The record also contains a memorandum from the employing establishment denying appellant's request for additional LWOP for the period of November 1, 1994 to January 31, 1995.

Appellant contends that he attempted to withdraw his resignation by letter dated October 26, 1994 and requested a return to work before October 31, 1994. The record does contain a copy of that letter as well as telephone records which indicate that appellant attempted to contact the employing establishment during the week of October 26, 1994. In addition, there is a copy of an e-mail which indicates that appellant's LWOP was temporarily extended provided he return to work by November 2 or 3, 1994. However, appellant did not return to work by that date. While the evidence also demonstrates that appellant called the employing

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

[3] *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985).

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

establishment on November 1, 1994, there is no indication that the employing establishment agreed that such contact would be sufficient to extend appellant's LWOP status or to allow appellant to withdraw his resignation. In addition, appellant's contention that he was forced to resign in order to be granted LWOP is not supported by any documentation in the record. As appellant has not established error or abuse by the employing establishment in not allowing appellant to withdraw his voluntary resignation effective October 31, 1994, any emotional condition related to this event is self-generated and therefore is not compensable.

The decision of the Office of Workers' Compensation Programs dated April 18, 1997 is hereby affirmed.

Dated, Washington, D.C.
April 26, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member