

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID L. DeVORRE and DEPARTMENT OF JUSTICE, DRUG
ENFORCEMENT ADMINISTRATION, Los Angeles, CA

*Docket No. 97-2862; Submitted on the Record;
Issued August 24, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

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

On June 3, 1996 appellant, then a 50-year-old criminal investigator, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he experienced depression causally related to factors of his federal employment. Appellant attributed his condition to the following:

“I had been a Grade 14[,] Step 4 supervisor 11½ months when I was demoted in grade to a 13 step 8 investigator prior to completing my probationary period as a supervisor. My probationary period was to have been 12 months and I thought that I was doing an adequate job. I had received two evaluations at the fully successful level and then without warning and without a chance to improve I was evaluated as unsatisfactory which caused me to be demoted. This demotion has caused me anxiety, stress and depression.”

By decision dated August 13, 1996, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he did not establish an injury in the performance of duty. The Office found that appellant had not alleged any compensable employment factors.

Appellant requested a hearing before an Office hearing representative, which was held on April 1, 1997. By decision dated June 12, 1997, the hearing representative affirmed the Office's August 13, 1996 decision.

The Board has duly reviewed the case record and finds that appellant has not established that he sustained an emotional condition in the performance of duty.

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 comes within the coverage of the Federal Employees' Compensation Act.¹ 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.²

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.³ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁵ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates the factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

Appellant primarily attributed his emotional condition to receiving a poor evaluation in 1996 and being demoted from a supervisory position prior to the expiration of his probationary period. Appellant related that he obtained his promotion on May 1, 1995 and had fully successful evaluations on August 1 and November 13, 1995. He further related that on January 10, 1996 his superiors informed him that he was in jeopardy of not completing his probation period due to morale problems among his staff and that instead of being given a chance to improve his performance he was assigned to training. The record contains a formal action dated April 18, 1996 from the employing establishment demoting appellant due to unsatisfactory performance during his probationary period.

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

⁶ *Id.*

With respect to appellant's allegation that he sustained an emotional condition due to a poor performance evaluation and demotion in 1996, the Board finds that this allegation relates to an administrative function of the employing establishment and not the employee's regular or specially assigned work duties and thus is not compensable unless there is evidence that the employing establishment erred or acted abusively.⁷ In the instant case, appellant did not submit any evidence to show that his poor evaluation and subsequent demotion constituted administrative abuse. The evidence submitted by a supervisor at the employing establishment indicated that appellant was demoted for poor performance and morale. The record also contains a copy of appellant's August 1, 1995 interim performance appraisal which noted that if he did not improve his interpersonal skill he could be rated as unsatisfactory. As appellant did not submit any evidence to support his claim that the employing establishment committed error or abuse in connection with his poor evaluation and demotion, he has not established a compensable employment factor under the Act.

Regarding appellant's contention that the employing establishment erred in failing to transfer him following his demotion, the Board has held that a reaction to a transfer or the disappointment over the failure to obtain a desired transfer, does not constitute a compensable employment factor absent a showing of error or abuse on behalf of the employing establishment.⁸ As appellant has submitted no evidence regarding the denial of a transfer, he has not established a compensable factor of employment.

Appellant further contended that following his demotion one coworker mumbled about him in his presence and another coworker made unspecified "snide" remarks. With regard to his allegations of harassment by coworkers, the Board has held that a general unsubstantiated perception of harassment does not constitute an employment factor.⁹ Appellant has not provided any evidence that the harassment did, in fact, occur and thus he has not established a compensable employment factor.

With respect to appellant's argument that the employing establishment required him to use leave to visit his physician, the Board notes that matters involving the use of sick leave and the rules and procedures relating thereto, are administrative or personnel matters unrelated to the employee's regular or specially assigned work duties or requirements.¹⁰ Appellant has submitted no evidence to establish error or abuse by the employing establishment regarding his leave usage.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.¹¹

⁷ See *Jimmy Gilbreath*, 44 ECAB 555 (1993).

⁸ See *Joan Juanita Greene*, 41 ECAB 760 (1990).

⁹ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁰ *Jack Hopkins, Jr.*, 42 ECAB 818 (1991).

¹¹ As appellant has not established any compensable employment factors, the Board need not consider the

The decision of the Office of Workers' Compensation Programs dated June 12, 1997 is hereby affirmed.

Dated, Washington, D.C.
August 24, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member

medical evidence of record; *see Margaret S. Krzycki, supra* note 5.