

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of DAVID KELLER and DEPARTMENT OF VETERANS AFFAIRS,  
SALT LAKE CITY VETERANS ADMINISTRATION HOSPITAL,  
Salt Lake City, UT

*Docket No. 98-290; Submitted on the Record;  
Issued August 23, 1999*

---

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issue is whether appellant has established that he developed an emotional condition in the performance of duty, causally related to compensable factors of his federal employment.

The Board finds that appellant has not established that he developed an emotional condition, causally related to compensable factors of his employment.

To establish appellant's claim that he has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional or psychiatric disorder; 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. Such an opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.<sup>2</sup>

Workers' compensation law is not applicable 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. These injuries occur in the course of employment and have some kind

---

<sup>1</sup> See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>2</sup> See *Martha L. Watson*, 46 ECAB 407 (1995); *Donna Faye Cardwell*, *supra* note 1.

of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations 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 to a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not compensable where it results from such factors as an employee's fear of a reduction-in-force, his frustration from not being permitted to work in a particular environment or to hold a particular position, or his failure to secure a promotion. 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

When working conditions are alleged as factors in causing disability, the Office of Workers' Compensation Programs, 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.<sup>6</sup> When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.<sup>7</sup> When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.<sup>8</sup>

In this case, none of the factors implicated by appellant in causing his emotional condition are found to be compensable.

---

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

<sup>4</sup> *Artice Dotson*, 41 ECAB 754 (1990); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984).

<sup>5</sup> *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>6</sup> See *Barbara Bush*, 38 ECAB 710 (1987).

<sup>7</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>8</sup> See *Gregory J. Meisenberg*, 44 ECAB 527 (1993).

Appellant, who had made a previous claim for a psychological condition which was accepted by the Office for an adjustment disorder with mixed anxiety and depressed mood and which had been found to have resolved by January 10, 1996, had returned to work with the restriction that he was not to be directly supervised by Ms. Peggy Thames, nor was he to work in the same office as Ms. Thames.<sup>9</sup>

In this case appellant, a 39-year-old supply clerk, filed a new occupational illness claim alleging that he developed a recurrence of “stress/anxiety/panic attack/depression/post-traumatic stress disorder” in January 1997. The Office developed the claim as a new occupational illness claim and this record does not include the earlier records regarding the 1994 claim.

Appellant cited several incidents in his employment that he felt precipitated his “recurrence;” he claimed that a new manager, Mr. Stan Vest, did not give him a standard performance appraisal form but typed a memorandum for his performance evaluation and rated him fully satisfactory and he alleged that his prior evaluations had been higher; appellant also alleged that his satisfactory ratings for the preceding three years were given in retaliation for his filing the 1994 claim; appellant alleged that he was called into Mr. Vest’s office to defend his work against allegations made towards him by employees of Ms. Thames, and was called in to discuss his relationship with Ms. Thames, which visibly shook him and that Mr. Vest told him to “get over it” and that he found out that Mr. Vest was planning to move Ms. Thames into the general building area. Appellant also alleged that on January 2, 1997 he overheard that Ms. Thames had moved into Mr. Vest’s office and that Mr. Vest had moved one office over. He claimed that he became paralyzed with fear and had to stop work on January 2, 1997.

On May 2, 1997 Mr. Vest responded to appellant’s allegations noting that his psychological condition accommodations had not changed, that Ms. Thames was not his supervisor, that appellant’s fully satisfactory rating was based upon his actual performance for the period rated, that appellant verbalized personal attacks on both past and current staff that were focused generally on the employing establishment, that appellant had an overall dislike for the employing establishment and that counseling sessions were required because appellant refused to work or communicate with any staff member working with Ms. Thames which created a dysfunctional environment perpetuated and fed by appellant’s refusal to work with others. Mr. Vest explained that the counseling sessions were needed because appellant needed to understand the long-term effects of his behavior, that Ms. Thames was moved to appellant’s building due to space requirements, that she had her own office and did not supervise appellant and that appellant’s hate, discrimination and prejudice against veterans resulted in his behavior to gain unjustified sympathy for his claim.

Also submitted were multiple medical reports and personnel job descriptions and rating comments.

---

<sup>9</sup> OWCP No. 120158808. This claim, or a recurrence of disability related to this claim, is not now before the Board on this appeal; see 20 C.F.R. § 501.2(c).

By decision dated October 3, 1997, the Office rejected appellant's emotional condition claim finding that none of the work factors cited were compensation factors of employment. The Board concurs with the Office's findings and analysis.

Appellant argued that receiving a satisfactory typed memorandum evaluation caused him stress, that it was given in retaliation for his claim filing and that Mr. Vest's counseling sessions caused him stress. However, these are all administrative or personnel actions. In *Thomas D. McEuen*<sup>10</sup> the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.<sup>11</sup> Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. The incidents and allegations made by appellant which fall into this category of administrative or personnel actions include: appellant's performance evaluations<sup>12</sup>; his counseling and supervisory discussions<sup>13</sup>; and the rearrangement of personnel in offices.<sup>14</sup> Appellant has presented no evidence of administrative supervisory error or abuse in the performance of these actions and therefore they are not compensable now under the Act.

Appellant also alleged that his condition occurred due to his fear of future psychological injury. This is also not compensable under the Act and is considered to be self-generated.<sup>15</sup>

As appellant has failed to implicate any compensation factor of employment in the causation of his condition, there is no need to review the medical evidence.

---

<sup>10</sup> *Supra* note 5.

<sup>11</sup> See *Richard J. Dube*, 42 ECAB 916 (1991).

<sup>12</sup> See *Harriet J. Landry*, 47 ECAB 543 (1996); *Sammy N. Cash*, 46 ECAB 419 (1995); *James E. Woods*, 45 ECAB 556 (1994).

<sup>13</sup> See *Barbara E. Hamm*, 45 ECAB 843 (1994); *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Kathi A. Scarnato*, 43 ECAB 335 (1991) (disciplinary matters consisting of counseling sessions, discussions or letters of warning are administrative actions which are not compensable absent evidence of error or abuse).

<sup>14</sup> *John F. Cain*, 46 ECAB 565 (1995) (stress due to transfer of former supervisor to appellant's current work environment is not compensable under the Act as it relates to a claimant's frustration from not being permitted the particular environment he desired).

<sup>15</sup> *Joseph G. Cutrufello*, 46 ECAB 285 (1994).

Accordingly, the decision of the Office of Workers' Compensation Programs dated October 3, 1997 is hereby affirmed.

Dated, Washington, D.C.

August 23, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member