U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT THACKER, SR. and DEPARTMENT OF THE NAVY, PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

Docket No. 98-335; Submitted on the Record;
Issued December 29, 1999

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

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

On June 5, 1997 appellant, then a 61-year-old pipefitter, filed a claim for compensation benefits alleging that he sustained an emotional condition in the performance of duty on May 28, 1997. Appellant stated that on or about May 20, 1997 he was informed by Supervisor Jim Galick that he did not have the qualifications to remain in position to which he had been assigned for the past year. He stated that he was informed that no action would be taken regarding this situation because he had been performing the work even though he did not have the required qualifications. Appellant stated that later, however, he was told not to perform any of this type of work until the matter was resolved. He stated that on May 29, 1997 he was told that he would have a meeting with Mr. Galick and a union steward regarding a "preaction" concerning his lack of qualifications for the position he had been performing. Appellant stated that on May 30, 1997 he was told to turn in his tools and return to an earlier job that he had been performing.

In a disability certificate dated June 4, 1997, Dr. John M. Samms, a Board-certified family practitioner, indicated that appellant had been out of work commencing on June 2, 1997 due to "traumatic stress from job-related problems." He indicated that appellant could return to work on June 17, 1997.

In clinical notes dated June 4, 1997, Dr. Samms indicated that appellant was hospitalized for chest pain. He stated:

> "I feel that the traumatic degree of stress that he is undergoing at work is dangerous to his health and feel at this time it would be in his best interest to be off of work for a couple of weeks until the work situation stabilizes and his

supervisors can organize what they are going to do to rectify the problem. We will have him off work June 2, 1997 through June 16, 1997."

In a letter dated July 11, 1997, an employing establishment injury compensation program administrator stated that Mr. Galick had advised that a "preaction" referred to an investigation which preceded possible disciplinary action. She related that the preaction referred to by appellant in his claim was a fact-gathering interview. She noted that appellant was generally able to perform required duties, that no disciplinary actions had been taken in the last five years according to appellant's official records, and his performance rating over the last three rating periods had been "exceeds fully successful."

In an undated response to appellant's claim, received by the Office on July 28, 1997, appellant's supervisor stated that he told appellant on May 28, 1997 that no disciplinary action was pending at that time and that since no preaction investigation had taken place, management did not have enough information to determine what, if any, action would be taken. He stated that appellant was never told that he was being removed from his job and that he was told to report to another duty station because there was no work fitting his qualifications at that time.

By decision dated August 6, 1997, the Office of Workers' Compensation Programs denied appellant's claim.

The Board finds that appellant has failed to meet his burden of proof to establish 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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[1] 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.[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

[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).

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 that 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]

Regarding appellant's allegation that the employing establishment advised him that he had been performing a job for which he lacked the required qualifications and transferred him to a position for which he was qualified, the Board finds that this allegation relates to an administrative or personnel matter and does not fall within the coverage of the Act.[7] Although employing establishment actions regarding an employee's qualifications for his job are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.[8] However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.[9] In this case, the record shows that appellant was advised that the employing establishment had learned that he lacked the qualifications for the position to which he had been assigned during the past year. He was later transferred to a job which he had been performing prior to the job in question, a job for which he did possess the required qualifications. In a letter dated July 11, 1997, an employing establishment injury compensation program administrator stated that the preaction regarding appellant's lack of qualifications for the position he had been performing for the previous year was merely a fact-gathering interview. She noted that appellant was generally able to perform his required duties, that no disciplinary actions had been taken in the last five years according to appellant's official records, and his performance rating over the last three rating periods had been "exceeds fully successful." The Board finds that appellant has provided insufficient evidence of error or abuse in the employing establishment's administrative action in reassigning him from a position for which he lacked the required qualifications to a position for which he was qualified. Thus, appellant has not established a compensable employment factor under the Act in this respect.

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[4] *Effie O. Morris*, 44 ECAB 470, 473 (1993).

[5] *See Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389 (1992).

[6] *Id.*

[7] *See Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

[8] *Id.*

[9] *Id.*

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.[10]

The August 6, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
December 29, 1999

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

[10] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, *supra* note 5.