

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN E. PENN and DEPARTMENT OF THE NAVY,
NAVAL PUBLIC WORKS CENTER, San Diego, CA

*Docket No. 98-915; Submitted on the Record;
Issued December 22, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to factors of his federal employment.

On April 10, 1997 appellant, then a 58-year-old clerk, filed an occupational disease claim alleging that he sustained an emotional condition which he attributed to factors of his federal employment. He attributed his claimed emotional condition to being dissatisfied with a performance evaluation, being unable to perform his clerical duties when he commenced his position on March 31, 1997¹ because no one was present to explain how to use the computer or the copy machine,² not receiving training for his clerical position, receiving a telephone call on April 2, 1997 for an employee from the employee's wife and not knowing how to contact the employee, being reprimanded on April 3, 1997 by the general foreman for mishandling the April 2, 1997 call, requesting a standard operation procedure manual on April 3, 1997 so that he could better understand his duties and being told by a coworker that none existed and overhearing a zone manager on April 3, 1997 state sarcastically that the employing establishment needed to reduce its overhead costs to pay his salary. Appellant stated that when he reported for work on Monday, April 7, 1997 he felt hopeless and unwanted, developed pain in his arms and head, felt as though he was going to have a heart attack and asked to go to the dispensary.

In a form report dated April 7, 1997, Dr. Dottie Ann D. Sazon, a Board-certified internist specializing in pulmonary diseases and critical care medicine, diagnosed acute situational anxiety disorder and opined that appellant would improve when removed from his current work environment.

¹ Appellant stated that he was transferred to the clerical position due to a foot injury.

² Appellant stated that the next day, April 1, 1997, an employee showed him how to operate the computer and he then performed data entry tasks.

In an undated statement received by the Office of Workers' Compensation Programs on May 2, 1997, appellant's supervisor, Mr. Webb Carson, stated that appellant's duties as a clerk included answering the telephones and taking messages and filing a few papers each day. He indicated that appellant did not work at the clerical position long enough to receive training as he had only worked for one week before claiming his emotional condition.³

In a statement dated June 3, 1997, Mr. Carson related that appellant had never indicated that he felt he could not perform his assigned job of answering the telephones and did not appear to be incapable of performing the work. He noted that appellant had been assigned as a clerk sitting in the front entrance area and his duties included answering the telephones, taking messages and directing incoming visitors to other parts of the building. He noted that appellant had sustained an employment-related foot injury in 1996 and performed light-duty office work from October 23 to December 27, 1996 following foot surgery before commencing his clerical position on March 31, 1997. He stated that training would have been provided to appellant had he continued in his position. Mr. Carson stated that appellant was not reprimanded for any inability to perform his position and that no complaints were made about appellant's work.

In a report dated June 6, 1997, Dr. Lawrence T. Woodburn, a psychologist, related that appellant began to perform his position as a clerk on March 31, 1997. He related appellant's complaint that his supervisors were not expecting him when he arrived to begin his clerical position and were very hostile about his presence. He related that Mr. Carson said to appellant, "Why are they sending us light-duty people when we barely have the numbers to support our [permanent people]?" He related appellant's complaint that the atmosphere at work was tense with rumors of a reduction-in-force. Dr. Woodburn related that a supervisor was having a conversation with two foremen concerning the lowering of personnel costs and stated, "that's good, we need more cost cutting because I have to pay [appellant]" and then stared straight at appellant who felt this was intentionally belittling. The psychologist related that appellant tried to perform his duties as best he could and began performing data entry operations on April 7, 1997 but had no training in data entry so he used a "hunt and peck" method to complete the task which took him several hours and he alleged that a trained clerk could do the same work in a few minutes. He related that appellant felt hopeless and unwanted, developed pain in his arms, neck and head, became nauseous and frightened and thought he was going to die. Dr. Woodburn diagnosed panic disorder without agoraphobia and adjustment disorder with mixed anxiety and depressed mood. He stated:

"Actual events of employment (criticism, hostile work environment, lack of proper training) has contributed more than 50 [percent] to the development of diagnosable mental health disorders ... to a reasonable degree of medical probability."

* * *

"[Appellant] is temporarily totally disabled and precluded from working at present."

³ The record shows that appellant performed his clerical position from March 31 to April 7, 1997.

By decision dated July 11, 1997, the Office denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish that he sustained an emotional condition causally related to compensable factors of employment.

By letter dated October 10, 1997, appellant requested reconsideration of the denial of his claim and submitted Dr. Woodburn's June 6, 1997 report, which was previously of record.

By decision dated October 23, 1997, the Office denied appellant's request for reconsideration.

The Board finds that appellant has not met 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.⁴ 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.⁵

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.⁶ 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.⁷

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.⁸ 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

⁴ 5 U.S.C. §§ 8101-8193.

⁵ See *Thomas D. McEuen*, 41 ECAB 387, 391 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁷ *Effie O. Morris*, 44 ECAB 470, 473 (1993).

⁸ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389 (1992).

record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁹

In the present case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegation that the employing establishment issued an unfair performance evaluation, the Board finds that this allegation relates to an administrative or personnel matter, unrelated to the employee's regular or specially assigned work duties and does not fall within the coverage of the Act.¹⁰ Although employee performance evaluations are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹¹ 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.¹² In this case, appellant has provided insufficient evidence to establish this allegation as factual. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant has also alleged that harassment and discrimination on the part of his supervisors contributed to his claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹³ However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹⁴ In the present case, appellant has alleged that he was reprimanded for mishandling a telephone call. However, in a statement dated June 3, 1997, appellant's supervisor, Mr. Carson, stated that appellant was not reprimanded for any inability to perform his position and that no complaints were made about appellant's work. Appellant also alleged that he overheard a supervisor state sarcastically that there needed to be more cost-cutting measures because he had to pay appellant's salary. There is insufficient evidence of record to establish this incident as factual. Appellant provided no corroborating evidence, such as witness statements, to support his allegations.¹⁵ Appellant has not submitted sufficient evidence to establish that he was

⁹ *Id.*

¹⁰ See *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

¹¹ *Id.*

¹² *Id.*

¹³ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁴ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁵ See *William P. George*, 43 ECAB 1159, 1167 (1992).

harassed or discriminated against by his supervisors.¹⁶ Thus, he has not established a compensable employment factor under the Act in this respect.

Appellant has also alleged that he was unable to perform his clerical duties when he commenced his position on March 31, 1997 because no one was present to explain to him how to use the computer or the copy machine, that he did not receive training for his clerical position, that he received a telephone call on April 2, 1997 for an employee from the employee's wife and did not know how to contact the employee and that he requested a standard operation procedure manual on April 3, 1997 so that he could better understand his duties but was told by a coworker that none existed. The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable.¹⁷ However, in a statement dated June 3, 1997, Mr. Carson stated that appellant had never indicated that he felt he could not perform his assigned tasks and did not appear to be incapable of performing the work. He noted that appellant had performed light-duty office work from October 23 to December 27, 1996 before commencing his clerical position on March 31, 1997. He stated that training would have been provided to appellant had he continued in his position.¹⁸ Mr. Carson stated that appellant was not reprimanded for any inability to perform his position and that no complaints were made about appellant's work. Thus, the record shows that appellant had successfully performed office work for two months, October through December 1996 before commencing his March 31, 1997 clerical job, that he did not advise his supervisor that he felt he could not perform the job, that on his second day at work he received instruction from a coworker as to how to operate the computer and that he would have received additional training had he continued in his position. Considering all the circumstances, appellant's allegations concerning his job duties are not deemed compensable factors of employment.

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.¹⁹

The October 23 and July 11, 1997 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.

December 22, 1999

¹⁶ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁷ See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

¹⁸ As noted above, on April 1, 1997 a coworker showed appellant how to use the computer.

¹⁹ 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 8.

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member