

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLEN L. BROWN and U.S. POSTAL SERVICE,
POST OFFICE, Phoenix, AZ

*Docket No. 98-1599; Submitted on the Record;
Issued December 28, 1999*

DECISION and ORDER

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

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

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional or stress-related 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 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.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

In the present case, appellant, an electronic technician, alleged that he sustained an emotional or stress-related condition as a result of a number of employment incidents and conditions.⁷ By decision dated January 28, 1998, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant has alleged that harassment and discrimination on the part of his supervisors contributed to his claimed stress-related condition. Appellant claimed that Ardell Braaten, a supervisor, repeatedly harassed him beginning in 1988 by yelling at him, making comments about his weight, calling him by his wife's name, denigrating his work performance and using vulgar language. He indicated that many of Mr. Braaten's comments were intended to humiliate him in front of his coworkers. Appellant alleged that Mr. Braaten disciplined and criticized him more harshly than his coworkers with respect to the length of his work breaks and other aspects of his work performance. He also claimed that Mr. Braaten assigned more work to him than to his coworkers.⁸ Appellant indicated that in December 1996 another supervisor, Bryan Cornellies, made a crude sexual comment to him.

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.⁹ However, for

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

⁵ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

⁷ Appellant alleged that employment factors caused him to develop an emotional condition and to sustain a heart attack in June 1991.

⁸ The record contains notes, dated between 1992 and 1996, in which appellant detailed some of these alleged comments and actions.

⁹ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

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.¹⁰ In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors.¹¹ Appellant alleged that supervisors made statements and engaged in actions which he believed constituted harassment and discrimination, but he provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.¹² Moreover, the record contains several statements in which coworkers indicated that appellant was the individual who used vulgar language and created unrest in the work place. At least one of the coworkers who appellant claimed had witnessed the alleged harassment by Mr. Braaten specifically noted that Mr. Braaten had not made the statements attributed to him. Thus, appellant has not established a compensable employment factor under the Act with regard to the alleged harassment or discrimination.

Appellant alleged that Mr. Braaten wrongly issued disciplinary letters, subjected him to unreasonable discussions regarding his work performance and mishandled his use of leave. He also claimed that Mr. Braaten wrongly asserted that he had threatened to kill him.¹³ Regarding appellant's allegations that Mr. Braaten mishandled disciplinary and leave matters and unreasonably monitored his activities at work, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.¹⁴ Although the handling of disciplinary and leave matters and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹⁵ 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. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁶ Appellant did not submit any evidence to show that the employing establishment committed error or abuse with respect to these administrative matters. Thus, appellant has not established a compensable employment factor under the Act in this respect.

¹⁰ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹¹ *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).

¹² *See William P. George*, 43 ECAB 1159, 1167 (1992).

¹³ Appellant indicated that no adverse action was initiated with respect to this alleged threat.

¹⁴ *See Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹⁵ *Id.*

¹⁶ *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

Appellant alleged that he sustained stress because Mr. Braaten gave him too much work. 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 The Board notes, however, that appellant did not establish the factual aspect of this claim.

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.¹⁸

The decision of the Office of Workers' Compensation Programs dated January 28, 1998 is affirmed.

Dated, Washington, D.C.
December 28, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member

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

¹⁸ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).