

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS J. BURROWS and DEPARTMENT OF THE NAVY, U.S. NAVAL
PUBLIC WORKS CENTER TRANSPORTATION DEPARTMENT, Great Lakes, Ill.

*Docket No. 97-239; Submitted on the Record;
Issued January 12, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof to establish that he sustained an emotional condition in the performance of duty, causally related to compensable factors of his federal employment.

On July 24, 1993 appellant, then a 53-year-old transportation maintenance foreman, filed an occupational disease claim alleging that he sustained stress and depression as a result of his federal employment, and that the resulting high blood pressure necessitated his taking a week of sick leave on his physician's recommendation. In support of his claim, appellant submitted a narrative statement in which he alleged that his emotional condition resulted from an unfair and unjustified disciplinary action which was brought against him by his immediate supervisor, Mr. W.J. Drennan, and which resulted in him receiving a five-day suspension for conduct unbecoming a supervisor. Appellant subsequently filed a grievance concerning the suspension but the charges against him of harassment of subordinate employees, misuse of government property and intimidation of employees, were all found to be supported by the available evidence, and his grievance was denied. In further support of his claim, appellant submitted treatment notes from his attending physician, Dr. L.T. Zebell, a physician specializing in obstetrics and gynecology, in which the physician noted that appellant complained of stress at work, apparently arising out of a disciplinary action, and recommended that in light of appellant's elevated blood pressure and prior history of myocardial infarction, he take a week off from work.

By letter dated December 2, 1993, the employing establishment controverted appellant's claim and refuted his allegations.

After informing appellant of the type of medical and factual evidence necessary to substantiate his claim and fully developing the evidence submitted, the Office of Workers' Compensation Programs issued a decision on June 7, 1994 rejecting appellant's claim. The Office found that the employing establishment's disciplinary action against appellant was an

administrative matter and that as appellant had not established that the employing establishment had committed error or abuse, appellant had not established that the claimed emotional and physical stress had occurred in the performance of duty.

On June 15, 1994 appellant requested an oral hearing. In additional written statements and in his hearing testimony, appellant catalogued several incidents in which he felt his supervisor, Mr. Drennan, had harassed him and speculated that Mr. Drennan's behavior was motivated by the fact that appellant was the supervisor of Mr. Drennan's brother and had on numerous occasions found the brother's work performance inadequate. Appellant felt that Mr. Drennan wanted him out of the way so that the brother would not have any more problems. Appellant also alleged that Mr. Drennan refused to consult him when making decisions regarding the allocation of financial resources within the transportation department, although he admitted that Mr. Drennan was not required to do so; that Mr. Drennan encouraged other employees to file Equal Employment Opportunity (EEO) complaints against appellant rather than resolve matters through the union, which eventually resulted in his disciplinary suspension; and that despite the fact that it was appellant's responsibility to ensure the safety of all visitors to his workplace, Mr. Drennan repeatedly brought visitors into dangerous areas of appellant's workplace without first notifying appellant or allowing him the opportunity to provide the visitors with protective clothing.

In a decision dated March 21, 1995, the Office hearing representative denied appellant's claim on the grounds that, although appellant had established at least one compensable factor of employment, the medical evidence of record was insufficient to establish a causal relationship between that factor and appellant's claimed emotional condition.

By letter dated January 18, 1996, appellant requested reconsideration of the Office's decision and submitted additional factual evidence in support of his claim.

In a decision dated July 9, 1996, the Office reviewed appellant's claim on its merits and found that the newly submitted evidence was insufficient to warrant modification of the prior decision.

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.

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.¹ 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. The opinion of the physician must be based on a complete factual and medical background of the

¹ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

claimant, 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.²

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 coverage 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 coverage of the Federal Employees' Compensation Act.³ On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.⁴

In this case, appellant submitted several narrative statements and other evidence to the record which contain various allegations and identify employment incidents which he believes constituted harassment and inappropriate behavior on the part of his supervisor, Mr. Drennan.

With respect to appellant's claim that he was unfairly suspended by the employing establishment for conduct unbecoming a supervisor, the Board notes that this was an administrative action by the employing establishment, and that the general standard for allegations involving administrative or personnel matters is that although these are related to employment, they are primarily duties of the employer rather than regular duties of the employee. In order to establish a compensable factor, there must be evidence of error or abuse by the employing establishment.⁵ Appellant has provided no evidence that the employing establishment acted improperly, the employing establishment has specifically controverted appellant's allegations and the Board notes that a grievance filed by appellant with respect to this incident was not resolved in appellant's favor. Consequently, the employing establishment's disciplinary action against appellant cannot be considered a compensable factor of appellant's employment.

With respect to appellant's allegations of harassment against his supervisor, Mr. Drennan, the Board has held that mere perceptions or feelings do not constitute compensable factors of employment,⁶ and unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.⁷ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her

² *Victor J. Woodhams*, 41 ECAB 345 (1989).

³ 5 U.S.C. § 8101 *et seq.*

⁴ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *See Donald E. Ewals*, 45 ECAB 111 (1993).

⁶ *See Lorraine E. Schroeder*, 44 ECAB 323 (1992).

⁷ *Mary A. Sisneros*, 46 ECAB 155 (1994).

allegations with probative and reliable evidence.⁸ Other than appellant's own statements, the record does not contain any factual support for appellant's allegations that Mr. Drennan harassed appellant because of appellant's refusal to accord special privileges to Mr. Drennan's brother, and the employing establishment submitted a statement specifically refuting this allegation. Appellant's claim that Mr. Drennan encouraged other employees to file EEO complaints against appellant is similarly unsupported by the evidence of record. A claim based on verbal altercations or a difficult relationship with a supervisor must be supported by the record,⁹ and a claimant's burden of proof is not discharged by the fact that the employee has identified some incidents which occurred in the course of his employment, but rather appellant must provide evidence that these events in fact occurred. Therefore, in the absence of evidence substantiating his claims, appellant did not establish that harassment occurred.

Finally, with respect to appellant's allegation that Mr. Drennen, on two or three occasions, brought visitors to appellant's workplace without previously notifying appellant or allowing him the opportunity to ensure the safety of the visitors, as was his responsibility, the Board finds that this is not a compensable factor of employment as appellant has provided no witness statements or other evidence in support of his claim, it remains uncontroverted by the employing establishment. The Board further notes, however that appellant has not provided any rationalized medical evidence as the causal relationship, if any, between appellant's emotional condition and these specific actions on the part of appellant's supervisor. Rather, the medical evidence of record relevant to this claim, which consists of office visit notes from appellant's treating physician, Dr. Zebell, references only the disciplinary action brought against appellant and its stressful effect on him, and contains no other discussion of any other factors of appellant's workplace. By letter dated February 2, 1994, the Office notified appellant that this medical evidence was insufficient to establish his claim, and specifically informed him of the type of evidence necessary to meet his burden of proof. Appellant, however, failed to submit such medical evidence.

As appellant has not submitted sufficient factual or medical evidence to corroborate his claim, he has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.

⁸ See *Donald E. Ewals*, *supra* note 5; *Anthony A. Zarcone*, 44 ECAB 751 (1993).

⁹ See *Diane C. Bernard*, 45 ECAB 223 (1993).

Accordingly, the decision of Office of Workers' Compensation Programs dated July 9, 1996 is hereby affirmed.

Dated, Washington, D.C.
January 12, 1999

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member