

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN W. BOYETTE and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION REHABILITATION & COUNSELING DIVISION,
Pensacola, Fla.

*Docket No. 97-955; Submitted on the Record;
Issued January 25, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof in establishing that he sustained an aggravation of his preexisting gastrointestinal conditions due to stress related to factors of his federal employment.

On September 1, 1994 appellant, a 52-year-old counseling psychologist and rehabilitation specialist, filed an occupational disease claim, alleging that his preexisting gastrointestinal conditions of subtotal gastrectomy, Bilroth II, gastrojejunostomy with history of duodenal ulcer, hernia, dumping syndrome and intestinal obstruction secondary to adhesions were exacerbated or aggravated by stress related to factors of his federal employment. In his supplemental statements and testimony at his hearing before an Office of Workers' Compensation Programs hearing representative, appellant identified the following as causative factors of his emotional condition, which he alleged aggravated or exacerbated his preexisting conditions: he was working with full-time case loads in both the positions of counseling psychologist and rehabilitation specialist; his work load increased significantly beginning 1989-1990; he was required to perform additional travel in the field, which interfered with his physician prescribed schedule for taking medication and eating until August 1994; he performed supervisory duties for case management in 1989 and 1990; due to the loss of his clerk, he was required to do all testing and evaluation for his clients in addition to his normal duties; he had additional travel due to working with Disabled Transportation Program interviews; he was required to learn computer skills in order to perform his duties; his work more than doubled by 1994 and he was involved in a car accident while in the performance of duty in January 1993.

In a decision dated June 9, 1995, the Office denied appellant's claim on the grounds that he had not fully responded to their request for additional information concerning a disciplinary action against him and, therefore, they could not write a statement of accepted facts or proceed in his case. Consequently, fact of injury was not established. By decision dated April 30, 1996, an Office hearing representative set aside the June 9, 1995 decision of the Office, on the grounds

that appellant had submitted sufficient evidence and testimony at the hearing for the Office to proceed in his case and prepare a statement of accepted facts. The Office hearing representative advised that the statement of accepted facts should be forwarded to the employing establishment for comments specifically addressing his allegations or they would be accepted as completely factual and that after such further development as the Office deemed necessary, a new decision should be issued. In a decision dated August 23, 1996, the Office denied appellant's claim on the grounds that he had not identified any compensable factors of employment as causative factors of his stress.

The Board has duly reviewed the entire case record on appeal and finds that the case is not in posture for decision.¹

The initial question presented in an emotional condition claim is whether appellant has alleged and substantiated compensable factors of employment contributing to his condition. Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition, which will be covered under the Federal Employees' Compensation Act. Where disability results from an emotional reaction to regular- or specially-assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand the disability is not covered where it results from factors such 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. Disabling conditions resulting from an employee's feeling of job insecurity or desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.² 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.³ 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.⁴

In the present case, the Office noted in a statement of accepted facts dated August 23, 1996, that appellant had not provided any compensable factors for use in the adjudication of his claim. Specifically, the Office noted that appellant was given a 10-day suspension from his

¹ The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant's appeal with the Board was docketed on January 3, 1997, the only decisions before the Board are the Office's April 30 and August 23, 1996 decisions; *see* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985).

⁴ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

workplace, that he had no unusual or out of the ordinary job requirements and had performed required work functions and volunteered for additional duties without requesting relief, that he had averaged only 7 hours of sick leave per month for the period of 1 year preceding his “termination of employment” and that he had been admonished concerning his clearance of 100 rehabilitation cases without providing the required narrative. The statement reflects an adoption of elements listed in the employing establishment’s response to the May 17 and August 5, 1996 letters requesting information concerning appellant’s identified causative factors. In its response dated August 21, 1996, Nancy P. Hayward, appellant’s supervisor, indicated that appellant was in a good mood whenever he traveled away from the office and that he made trips that were not necessary after the employing establishment hired a new case manager to cover more distant territories; that the only computer work performed by appellant was to complete award actions, which required only 2 minutes of work; that appellant did assist in the training of a new case manager concerning award processing; that she had assisted appellant in his admission into a pain management clinic; that prior to appellant’s suspension from work he averaged only 7.25 hours of sick leave per month and that he advised his supervisor on problems performing his job after he was admonished for improperly clearing rehabilitation cases and that appellant began complaining about his health after his work was monitored more due to this infraction.

A review of the employing establishment’s response indicates that it does not negate many of appellant’s identified causative factors and in fact, corroborated three factors. Specifically, Ms. Hayward’s statement does not negate appellant’s contention that he traveled an average of 180 miles per month between August 1993 and August 1994 due to work-related responsibilities. In addition, Ms. Hayward corroborated that appellant engaged in computer work and did have some supervisory duties with respect to case management training. Appellant also had increased work responsibilities due to the loss of a clerk who would have normally performed testing and evaluation of his clients, he was involved in a car accident in January 1993 while in the performance of duty and worked in dual roles as a rehabilitation specialist and counseling psychologist in 1994 and traveled to interview for the Disabled Transportation Program. These activities are accepted as factual and arising out of his regular- or specially-assigned duties.⁵

As appellant has established several compensable factors of his employment, the Office must base its decision on an analysis of the medical evidence.⁶ Since the Office found that there were no compensable employment factors, it did not analyze or develop the medical evidence. The case will be remanded for that purpose.⁷

The decision of the Office of Workers’ Compensation Programs dated August 23, 1996 is reversed in part and the case is remanded for further proceedings consistent with this decision. The decision of the Office dated April 30, 1996 is hereby affirmed.

⁵ See *Lillian Cutler*, *supra* note 2.

⁶ See *Lorraine E. Schroeder*, 44 ECAB 323 (1992); *Margaret Krzycki*, 43 ECAB 496 (1992); *Norma L. Blank*, 43 ECAB 384 (1992).

⁷ See generally *Dodge Osborne*, 44 ECAB 869 (1993).

Dated, Washington, D.C.
January 25, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member