

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNIE C. JOHNSON and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Breckville, Ohio

*Docket No. 97-1024; Submitted on the Record;
Issued January 13, 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 in establishing that he sustained an injury in the performance of duty.

On June 15, 1995 appellant, then a 42-year-old medical clerk, filed a claim for depression which he related to harassment at work. In a September 16, 1995 decision, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that fact of injury had not been established. In a September 26, 1995 letter, appellant's attorney requested a hearing before an Office hearing representative. In a January 16, 1996 decision, issued without a hearing, an Office hearing representative found that the Office had not made the necessary finding of facts of whether the factual allegations set forth by appellant were substantiated by the record. He therefore remanded the case for further development of the record. In a February 6, 1996 decision, the Office again denied appellant's claim for compensation on the grounds that fact of injury was not established. Appellant again requested a hearing before an Office hearing representative. In a December 13, 1996 decision, a second Office hearing representative found that appellant had not submitted sufficient factual evidence to accept that he had been exposed to compensable factors of his employment within the performance of duty. He therefore affirmed the Office's February 6, 1996 decision.

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty.

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 the 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 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. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.¹ 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.² 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.³

Appellant contended that he was verbally harassed and insulted by his immediate supervisor, particularly in a March 2, 1995 meeting. He stated that he had sought a meeting on February 28, 1995 with his supervisor to discuss some policies, procedures and time management at the employing establishment as it involved his duties. Appellant contended that his supervisor responded in a very negative and condescending manner. He indicated that his supervisor summoned him to her office on March 2, 1995. Appellant stated that the supervisor criticized him for staying at work beyond his scheduled time of 4:30 p.m. without supervision. He reported that he gave an explanation. Appellant related that his supervisor then stated, that if the waves in his hair were not so tight he could use his brain more. He claimed that the supervisor described his conduct as "ghetto style and very street." Appellant indicated that he stood up but refrained from leaving because he felt matters could be worked out. He reported that he told his supervisor that he hoped they could work out matters. Appellant alleged that the supervisor stated that they had nothing to discuss and "to quit acting like a nigger." He claimed that when the supervisor made that statement, his whole sense of loyalty, devotion, time, effort and feelings were in a state of shock.

Appellant also contended that matters of leave were handled improperly. He indicated that he did not work from May 12 through June 14, 1995 due to his emotional condition. Appellant stated that he was subjected to additional harassment by Mary Carter-McNeil, his supervisor's superior. He claimed that he was threatened with absent-without-leave (AWOL) status even with prior notification of the circumstances of his absences. Appellant submitted two statements from witnesses at a physician's office who stated that, after appellant saw his physician on July 14, 1995, he talked with Ms. Carter-McNeil by telephone and was frequently interrupted in his conversation and appeared to become increasingly agitated. The office manager for the physician indicated that she then spoke with Ms. Carter-McNeil who advised her of what information appellant needed to submit. The office manager stated that she twice

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

³ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

asked Ms. Carter-McNeil to submit the requirement for information in writing but the request was refused.

In an August 23, 1996 affidavit, Ms. Carter-McNeil noted that appellant's former supervisor had retired. She stated that she did not believe the supervisor engaged in harmful name-calling. Ms. Carter-McNeil indicated that the supervisor would meet with appellant to work out problems but appellant would use the meetings to assert he was being singled out and victimized by the supervisor. She reported that, in an effort to ameliorate the situation, she instructed appellant to report directly to her. Ms. Carter-McNeil commented that appellant merely redirected his anger at her rather than his former supervisor. She stated that in the spring and summer of 1995 appellant's requests for leave due to his emotional condition were approved whenever he submitted the required medical documentation. After his leave was exhausted by September 19, 1995, she notified appellant that he either had to be cleared for and return to duty or present additional leave requests with supporting medical documentation. Ms. Carter-McNeil noted that appellant only provided a prescription for six additional weeks of leave and was therefore placed on AWOL status.

An official at the employing establishment indicated that it "granted whatever leave available for the periods May 5 through June 14, July 17 through July 20 and August 8 through September 19, 1995." When appellant was scheduled to return to work, he presented a prescription for additional rest with no supporting medical documentation so his requests for leave were not approved and he was placed on AWOL status. After discussions with appellant's representative, appellant was placed in a leave-without-pay status for the period December 6 through December 27, 1995 while he was to gather medical documentation. When the documentation was not furnished, appellant was returned to an AWOL status. The official indicated when appellant finally submitted medical documentation on January 10, 1996, it showed that he was released to work by the physician effective December 1, 1995. Appellant continued to refuse to come to work. The employing establishment therefore proposed to remove him from duty. He returned to work on April 8, 1996 but was notified in an April 19, 1996 letter of the employing establishment's decision to remove him. The official denied that appellant was harassed. He indicated that three women accused appellant of sexual harassment within a one-year period. The employing establishment submitted statements from the three women, and his former supervisor and indicated that appellant was separated from one female coworker through administrative transfers because of the allegations of sexual harassment.

Appellant made a general allegation that his emotional condition was due to harassment by her supervisors. The actions of a supervisor which an employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act. However, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perception of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.⁴ While appellant claimed that his supervisor made racial insults to him, he has not submitted any corroborating evidence showing that such insults were spoken to him

⁴ *Joan Juanita Greene*, 41 ECAB 760 (1990).

or that his supervisor made the alleged statements to him. The incident therefore cannot be accepted as having occurred in the manner alleged by appellant.

The disputes relating to the granting and use of leave are administrative matters. Appellant has not submitted any evidence to demonstrate that the employing establishment erred or acted abusively in requesting additional medical documentation to support appellant's requests for leave. Although appellant submitted evidence that he was subjected to demands for medical documentation in his July 14, 1995 telephone conversation with Ms. Carter-McNeil, he was granted his request for leave for the period July 17 through July 20, 1995 which shows that once the medical documentation was submitted, appellant's request for leave was granted. There is no evidence that Ms. Carter-McNeil was abusive in the telephone conversation. Appellant, therefore, has not established that he sustained any compensable factors of employment that would be within the performance of duty.

The decisions of the Office of Workers' Compensation Programs, dated December 13 and February 6, 1996 are hereby affirmed.

Dated, Washington, D.C.
January 13, 1999

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member