

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD WINKFIELD and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Pittsburgh, Pa.

*Docket No. 97-2514; Submitted on the Record;
Issued July 6, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof in establishing that his emotional condition was causally related to factors of his employment.

On March 29, 1993 appellant, then a 42-year-old medical technologist, filed a claim for stress, mental anguish and depression. In a May 18, 1994 decision, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that fact of injury was not established. Appellant requested a hearing before an Office hearing representative. In a February 3, 1995 decision, an Office hearing representative found that appellant had alleged several factors of employment caused his emotional condition. The hearing representative found that several factors cited by appellant were not compensable factors of employment. He found that the requirement that appellant be on-call on most weekends was a compensable factor of employment but indicated that appellant had not submitted sufficient medical evidence to establish that his emotional condition was causally related to compensable factors of employment. The hearing representative therefore affirmed the Office's May 18, 1994 decision. Appellant requested reconsideration. In a May 19, 1997 merit decision, the Office denied appellant's request for modification of its prior decisions.

The Board finds that appellant has not met his burden of proof in establishing that his emotional condition is causally related to factors of his employment.

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 with 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 a 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 cited several factors as the cause of his emotional condition. He stated that on January 14, 1993 he was informed in a meeting with his superiors that there was not enough work in the anatomical pathology department to justify keeping the section open. The superiors indicated that appellant's job would be changed from that of a histotechnologist to a medical technologist and he would be placed under the supervision of the supervisory medical technologist. Appellant indicated that he was subsequently given several memoranda which left him confused and brought on anxiety and stress. He indicated that he found particularly stressful the fact that he would be supervised in his specialty by a supervisor who did not have the professional and technical knowledge to supervise him. He stated that he began to develop chest pain and other muscular pain.

The employing establishment indicated that appellant's department was reorganized after the pathologist in charge of the department resigned on December 23, 1992. It indicated that from February 21 through March 17, 1993 appellant was assigned to prepare the laboratory for a College of American Pathologist accreditation inspection. In a March 8, 1993 memorandum, he was informed that he no longer needed a pager and was directed to turn in the one assigned to him. In a March 22, 1993 memorandum, the employing establishment informed appellant that, because of the reclassification of his position, he no longer needed a separate office or the help of a work student. The employing establishment indicated that appellant used sick leave on March 19, March 22, March 24 and March 26, 1993 and submitted his claim on March 29, 1993 with a request for leave without pay.

Appellant described other factors of his employment which he considered stressful. He indicated that shortly after he began work at the employing establishment in June 1979 he was assigned to histology and then, as part of his duties, was assigned to autopsy service. As part of the autopsy service appellant had to be on call from 7:00 a.m. to 3:30 p.m. on weekends and holidays for autopsy service. He had to constantly call to report the phone number where he would be in case he was called in. Appellant was not given a pager for many years. He was not paid for being on call but only for the time he actually worked on the weekends, including the time it took to drive to the employing establishment.

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) *reaffd on recon.*, 42 ECAB 566 (1991).

Appellant indicated that the employing establishment held up promotions and, on one occasion, gave a promotion to a coworker who had less training than he did. He noted that at one time someone made an anonymous complaint that appellant was performing autopsies which led to an investigation which eventually cleared him. In 1992 he began training a new employee to help in histology when a resignation led eventually to the promotion of the employee he was training to be his supervisor. He noted that in 1990 a secretary was hired in the employing establishment who seemed to have problems with him and would engage in such actions as blocking the name plate on his mailbox with a no smoking sign even though it was constantly moved and delaying in typing reports for appellant. Appellant noted that on June 16, 1992 he was given a desk audit with no notice which had never been done before. He noted that, after the College of American Pathologist inspection, a total of 16 major deficiencies were found in the clinical section of the laboratory. Appellant related that when the inspector indicated that appellant had a small section, smirks appeared on the faces of management. When the inspector indicated that appellant's section had no deficiencies, the smirks disappeared. However, he did not receive any congratulations from his superiors. Appellant commented that he hoped to get an outstanding rating in his performance evaluation at the end of March 1993 but his evaluation was postponed to May because of the change in his job duties.

Most of the factors cited by appellant cannot be considered compensable factors of his employment. Appellant's reaction to the change in his job duties from that of a histotechnologist to a medical technologist cannot be considered a compensable factor of employment because his reaction was frustration over his inability to remain in his former position. The displacement from his private office and the reassignment of his student assistant due to the change in job duties also cannot be considered compensable factors of employment. The delay in a promotion and the promotion of a subordinate to be his supervisor also cannot be considered compensable factors of his employment. His reaction to the delay in the performance evaluation is also not a compensable factor of employment. All these factors arose from administrative actions of the employing establishment and were unrelated to his assigned job duties.

Appellant has indicated that he was subjected to harassment and discrimination as shown by these actions of the employing establishment and by the actions of a secretary in delaying his work and obscuring his office mail box. If harassment and discrimination were to be shown to have occurred, it would be considered a compensable factor of employment. However, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perceptions 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 Appellant has not done so here. He has not substantiated that the actions of the employing establishment constituted harassment or discrimination. Appellant therefore has not established that the administrative actions he alleged as the cause of his emotional condition were compensable factors of employment.

Appellant indicated that his assignment to be on call for autopsies, which initially required that he call in his location on weekends and holidays, was stressful. He also noted that he was not paid for the time he was on call although efforts were made to get such payment. The Office hearing representative found that this factor was a compensable factor of employment.

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

However, the Office, in its May 19, 1997 decision found that this factor was not a compensable factor of employment because appellant was more concerned about being paid for being on call rather than the imposition of being on call. The Board, in reviewing the evidence, finds that appellant's on-call status was a compensable factor of employment. The on-call status was an additional employment duty imposed on appellant. His testimony at the hearing before the Office hearing representative showed that the on-call status constantly disrupted appellant's ability to plan his time away from work and on one occasion, forced him to forgo participation in a family reunion. He was initially required to call in from every location he went during the hours he was on call. While he sought to be compensated for being on call, this action cannot obviate the stress caused by being on call as a part of his employment duties. Therefore, the requirement that appellant be on call is a compensable factor of employment. However, appellant has not established that this factor caused or contributed to the cause of his emotional condition.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁵ and (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁶ and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁷ The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. 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 claimant,⁸ must be one of reasonable medical certainty⁹ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰

In an April 2, 1993 report, Dr. Guillermo Borrero, a Board-certified psychiatrist, related that appellant complained of mistreatment and some degree of persecution by the employing establishment. Appellant indicated that he had not had problems at the employing establishment until recently with a lack of care about his seniority and an undermining of his position. He reported that his job had been eliminated and he had been made a medical technologist on January 14, 1993. Appellant complained of increased pressure and began to complain of chest

⁵ See *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁶ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979).

⁷ See generally *Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

⁸ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁹ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹⁰ See *William E. Enright*, 31 ECAB 426, 430 (1980).

pain. Dr. Borrero diagnosed adjustment disorder secondary to job-related pressure and incipient evidence of major pressure with the pressure of neurovegetative markers. He related appellant's condition to his employment but cited in his history the factors of employment which the Office and the Board have found not to be within appellant's performance of his assigned duties. In a May 4, 1995 report, Dr. Borrero repeated his diagnoses. He stated that he had advised appellant at that time to relieve himself from stress by seeking leave. Dr. Borrero indicated that appellant's progress had been colored by a series of legal battles that had enhanced his level of anxiety. He commented that some of appellant's process had been maintained and stimulated by his obsessive-compulsive tendencies. Dr. Borrero stated that the stress experienced by appellant during the original period of his initial consultation played a significant role in the development of his anxiety. This most recent report still did not relate appellant's emotional condition to compensable factors of employment but to factors that are not within his performance of duty. Appellant therefore has not submitted the reliable, probative medical evidence necessary to establish that his emotional condition is causally related to compensable factors of employment.

The decision of the Office of Workers' Compensation Programs, dated May 19, 1997, is hereby affirmed.

Dated, Washington, D.C.
July 6, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member