U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLARENCE B. HERRY and FEDERAL DEPOSIT INSURANCE CORPORATION, EMPLOYEE PROGRAMS BRANCH, Franklin, Mass.

Docket No. 97-2516; Submitted on the Record;
Issued July 6, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant has established that he sustained emotional stress, hypertension and high blood pressure causally related to compensable factors of his federal employment.

The case has been before the Board on a prior appeal. In a decision dated December 4, 1996, the Board remanded the case for the Office of Workers' Compensation Programs to make proper factual findings as to the compensability of the allegations made by appellant.[1] By decision dated April 26, 1997, the Office denied the claim on the grounds that the medical evidence was not sufficient to establish an injury causally related to compensable factors of employment.

The Board has reviewed the record and finds that appellant has not established an injury causally related his federal employment.

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 factors of his federal employment.[2] To establish his claim that he sustained an injury in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or physical injury; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his condition.[3]

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[1] Docket No. 95-100.

[2] *Pamela R. Rice*, 38 ECAB 838 (1987).

[3] *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[4]

It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.[5] The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.[6]

In the present case, the Office did, on remand, make specific findings as to factors of employment alleged by appellant in this case. The memorandum accompanying the April 27, 1997 decision indicates that most of the allegations have been accepted as compensable factors; for example, being required to work overtime, and specific instances of being subject to abusive language. The Office did not accept as compensable the following allegations regarding administrative matters: (1) appellant was not granted compensatory time on January 30, 1991, (2) appellant was asked to sign a letter expressing his willingness to travel, and (3) he was denied leave for a physician's appointment. As noted above, administrative decisions are compensable factors only to the extent that there is evidence of error or abuse by the employing establishment. In this case, appellant did not submit sufficient detail or probative evidence of error as to these specific matters, and the Board concurs that they have not been established as factors of employment.[7] The Office also noted that appellant had filed complaints with the Equal Employment Opportunity Commission (EEOC) that had been settled without admission of error by the employing establishment. The record indicates that appellant did file an EEOC complaint in January 1992 alleging discrimination based on race, national origin and physical handicap. The complaint alleged that appellant was denied a performance appraisal, his temporary appointment was renewed for six months rather than a year, and his application for two positions were not forwarded to the selecting officials. The settlement agreement specifically states that it shall not be construed as an admission of error by the employing establishment, and therefore the agreement does not establish either discrimination or error in an

[4] *Lillian Cutler*, 28 ECAB 125 (1976).

[5] *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

[6] *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

[7] Allegations of error or abuse must be supported with probative and reliable evidence; *see Janet I. Jones*, 47 ECAB 345 (1996).

administrative matter. There is also a settlement agreement regarding a complaint of discrimination for denial of leave on June 26, 1992, which contains similar language. With regard to a third EEOC complaint, there is a February 14, 1994 decision from an administrative judge, finding that the employing establishment had made an offer of full relief.[8] The offer of relief states that it is not an admission of discrimination, nor is there a finding of discrimination by the administrative judge.[9] There is, therefore, no finding of discrimination or admission of error with respect to any of the complaints filed, and the Board is unable to find sufficient evidence of record establishing discrimination in the matters alleged. The Board finds that the evidence relating to the EEOC complaints filed is not sufficient to establish discrimination, or otherwise establish a compensable factor of employment.

Accordingly, the Board is unable to find any additional factors of employment beyond those accepted by the Office in the memorandum accompanying the April 27, 1997 Office decision.

Even though appellant has established compensable factors of employment, in order to meet his burden of proof he must submit probative medical evidence as to causal relationship between a diagnosed condition and the identified employment factors. In this case, the medical evidence is of diminished probative value to the issues presented. In a report dated November 29, 1993, Dr. Roy M. Rubin, an internist, stated that appellant had hypertension and "[appellant] believes that his blood pressure has been adversely affected by his treatment at work for the federal government. It is a well-known fact that blood pressure can be elevated by stress, and while I cannot detail specific instances where his work situation has specifically caused his blood pressure to be elevated, he very clearly does have hypertension at this time requiring treatment." This report is of little probative value on causal relationship because Dr. Rubin concedes that he could not describe specific instances where work caused an elevated blood pressure. The Board notes that appellant's own belief of causal relationship is not probative medical evidence on the issue.[10]

In a May 12, 1994 report, Dr. Rubin stated in pertinent part "It is my medical and professional opinion that the alleged recurring incidences of unfair treatment at the hands of his [employing establishment] supervisors, long workdays involving overtime, intense assignments, meeting strict deadlines, and conflicts with coworkers and supervisors contributed to a stressful work environment that could have caused [appellant's] illness of severe high blood pressure, or it could have aggravated and accelerated his high blood pressure to the point where he must take medication daily." Dr. Rubin did describe compensable work factors, but his opinion on causal relationship is limited to a statement that work "could have" been causally related to high blood pressure. While it is not necessary that a medical opinion on causal relationship reduce the cause or etiology of a condition to an absolute medical certainty, the opinion cannot be speculative or

[8] Appellant had alleged discrimination and reprisal regarding a negative performance appraisal and failure to be selected for the position of administrative officer.

[9] The mere fact that an administrative action is later modified or rescinded does not, in and of itself, establish error or abuse. *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Richard J. Dube*, 42 ECAB 916 (1991).

[10] *Manuel Garcia*, 37 ECAB 767 (1986).

equivocal.[11] Such equivocal statements as "could have" are of diminished probative value and are not sufficient to establish causal relationship.[12]

The Board finds that the reports of Dr. Rubin are not of sufficient probative value to establish the claim or require further development of the evidence. In the absence of medical opinion evidence that contains an affirmative medical opinion on causal relationship, with supporting medical rationale, between compensable work factors and a diagnosed condition, the Board finds that the Office properly denied the claim in this case.

The decision of the Office of Workers' Compensation Programs dated April 26, 1997 is affirmed.

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

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member

[11] *Roger Dingess*, 47 ECAB 123 (1995).

[12] *See William S. Wright*, 45 ECAB 498 (1994) (a physician's statement that appellant's medication "could very well have been" the cause of his condition was equivocal and speculative).