

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELBERT STOUDELMIRE and DEPARTMENT OF LABOR,
OFFICE OF WORKERS' COMPENSATION PROGRAMS, Seattle, Wash.

*Docket No. 97-1676; Submitted on the Record;
Issued June 22, 1999*

DECISION and ORDER

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

The issue is whether appellant has established that he sustained an emotional condition causally related to compensable factors of his federal employment.

On September 13, 1996 appellant filed a claim alleging that he sustained an emotional condition causally related to his federal employment. In a statement dated September 12, 1996, appellant, through his representative, discussed the factors which he believed contributed to his condition. Appellant referred to administrative actions of the employing establishment, including: (1) a Performance Improvement Plan (PIP) was issued on June 1, 1994 and then rescinded on June 21, 1994 following the filing of a grievance; (2) on July 6, 1994 appellant was denied sick leave and was suspended without notice, and action that was later rescinded; (3) in 1994 appellant was found to be below standard on a critical element during a performance review; (4) higher standards for processing of "LS-208's" were instituted in 1994; (5) a coworker was promoted to a higher grade of pay, and the clerks' duties were changed on several occasions to justify the promotion: and (6) in July 1996 appellant's supervisor distributed a private memorandum written to appellant. In addition, appellant alleged that there were continuous threats to place him on a PIP, that the multiple changes in duties caused appellant and coworkers to "become confused as to who does what," that there was disparate pay for equal work in his office and that appellant's supervisor was hostile to him on several occasions.

By decision dated November 27, 1996, the Office of Workers' Compensation Programs denied the claim on the grounds that appellant had not established an injury in the performance of duty. By decision dated March 6, 1997, the Office denied modification of its prior decision.

The Board has reviewed the record and finds that appellant has not established an injury in the performance of duty.

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.¹ To establish his claim that he sustained an emotional condition 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 psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.²

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.³

As noted above, appellant has identified several administrative actions of the employing establishment as contributing to an emotional condition. Although the handling of such matters is generally related to employment, it is an administrative function of the employer, not a duty of the employee.⁴ An administrative or personnel matter will not be considered a compensable factor of employment unless the evidence discloses that the employing establishment erred or acted abusively.⁵

Appellant has alleged error by the employing establishment with regard to the attempt to implement a PIP in June 1994, which was then rescinded, as evidenced by a brief memorandum dated June 21, 1994, which advised appellant that the PIP had been rescinded. Although the employing establishment may have changed its position regarding the PIP, this does not itself establish error or abuse.⁶ There is no admission of error, no specific finding by an administrative agency that the attempt to impose a PIP was erroneous, or other probative evidence on this issue. Appellant also has alleged error regarding a request for sick leave in July 1994, but again there is no probative evidence establishing error or abuse by the employing establishment with respect to a request for sick leave.

Appellant has also discussed other administrative actions by the employing establishment, including a performance appraisal, raising standards on certain job elements,

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Anne L. Livermore*, 46 ECAB 425 (1995).

⁵ *See Sharon R. Bowman*, 45 ECAB 187 (1993).

⁶ *See Tanya A. Gaines*, 44 ECAB 923 (1993).

distributing a memorandum sent to appellant and promotion of a coworker. There is, however, no pertinent evidence of record establishing error or abuse as to these actions. With respect to allegations that appellant was constantly threatened with PIP's and subject to a hostile attitude by his supervisor, these allegations have been denied by the supervisor and no other evidence establishing a factual basis for these allegations has been presented.

With respect to a change in work duties, the record does contain statements from two coworkers supporting the allegation that there were changes made to appellant's work assignments. Appellant has not discussed in detail the specific modifications to his job duties; it appears from the September 12, 1996 statement that appellant's reaction to these changes was based on confusion caused by the administrative decision to make the changes, rather than the actual performance of the duties themselves. As noted above, administrative matters are subject to the error or abuse standard and no evidence of error or abuse has been submitted. The Board also notes that one coworker referred to an "increased work load" for appellant, but this allegation was not made in the September 12, 1996 statement and there is not sufficient evidence to support an increased work load in this case.

The Board accordingly finds that appellant has not alleged and substantiated a compensable factor of employment as contributing to an emotional condition. Since no compensable factor has been established, the Board will not address the medical evidence.⁷

The decisions of the Office of Workers' Compensation Programs dated March 6, 1997 and November 27, 1996, are affirmed.

Dated, Washington, D.C.
June 22, 1999

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member

⁷ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).