U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RALPH P. FIFE, JR. and U.S. POSTAL SERVICE,
POST OFFICE, Pittsburgh, Pa.

Docket No. 97-2557; Submitted on the Record;
Issued May 17, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that he developed an aggravation of his preexisting post-traumatic stress disorder, causally related to compensable factors of his federal employment.

The Board finds that appellant has failed to establish that he developed an aggravation of his preexisting post-traumatic stress disorder, causally related to compensable factors of his federal employment.

To establish appellant's claim that he sustained an aggravation of a preexisting emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized 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 aggravation.[1] 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. Such an opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.[2]

Workers' compensation law is not applicable 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 concept of

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

[2] *See Martha L. Watson*, 46 ECAB 407 (1995); *Donna Faye Cardwell, supra* note 1.

workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations 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 to a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not compensable where it results from such factors as an employee's fear of a reduction-in-force, his frustration from not being permitted to work in a particular environment or to hold a particular position, or his failure to secure a promotion. 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.[3] 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.[4] 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.[5]

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship, and which working conditions are not deemed factors of employment and may not be considered.[6] When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.[7] When the matter asserted is a compensable factor of employment, and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.[8]

However, in the instant case, appellant has failed to implicate compensable factors of his employment as causative of his July 9, 1995 work stoppage.

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

[4] *Artice Dotson*, 41 ECAB 754 (1990); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984).

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

[6] *See Barbara Bush*, 38 ECAB 710 (1987).

[7] *Ruthie M. Evans*, 41 ECAB 416 (1990).

[8] *See Gregory J. Meisenberg*, 44 ECAB 527 (1993).

On April 26, 1996 appellant filed a CA-2 claim for compensation due to occupational disease but he implicated employment factors that occurred during his shift on July 8, 1995, in causing his work stoppage commencing July 9, 1995.[9] Appellant alleged that he was "exposed to excessive loud radio blasting all through eight-hour shift" on Saturday July 8, 1995. The radios he referred to were personal radios used by the employees for entertainment while working. Thereafter appellant provided personal statements about an October 1985 work stoppage, allegedly due to the noise around the letter sorting machines, for which no claim for compensation was made, and about other exposures to personal radio and loudspeaker noise during 1993 to 1994. He also provided a long narrative about work factors leading up to July 8, 1995 and his actions thereafter.

The Board has stated that exposure to noise and bright lights at work is clearly a factor of employment under the *Lillian Cutler*[10] analysis, as it involves conditions of employment encountered in the performance of duty of day-to-day duties.[11]

Under this analysis, noise from the physical work environment itself, such as machine noise letter sorting machine or the fixed loudspeaker noise used for announcements would be compensable factors of employment as they were physically and functionally part of the employment environment. However, the present case record contains no medical evidence supporting that appellant had disability in 1995 specifically due to exposure to letter sorting machine noise in 1985 or to loudspeaker noise in 1993. The medical evidence of record merely states generally that loud noises caused hypervigilance and stress in appellant's case. This is insufficient to support that disability in 1995 was causally related to these specific compensable employment factors.[12]

However, noise may or may be a compensable factor of employment.

In this case, appellant alleged that he was exposed to eight hours of loud noise blasting from a radio on July 8, 1995 which caused an aggravation of his post-traumatic stress disorder. However, appellant has submitted no corroborating factual or testimonial evidence of such noise exposure, such that the facts of record do not support appellant's exposure claims.

[9] Appellant stopped work on July 9, 1995 and did not return. By CA-7 appellant claimed compensation beginning July 7, 1995 and continuing.

[10] 28 ECAB 125 (1976).

[11] *Kathleen D. Walker*, 42 ECAB 603 (1991); *Peter Sammarco*, 35 ECAB 631 (1984).

[12] *See, e.g., O. Paul Gregg*, 46 ECAB 624 (1995); *James W. Griffin*, 45 ECAB 774 (1994); *Robert P. Bourgeois*, 45 ECAB 745 (1994)

The employing establishment provided a statement from Edward Cerilli, a coworker, regarding his observations on July 8, 1995, which stated:

> "[Appellant] had been walking around the workfloor wearing a set of headphones, as he has done on a couple of occasions previous to this day, the only difference from this day to the others is that he was listening to a portable CD player. Outside on break at approximately 5:00 p.m. [appellant], Brent Rizzo, Bob Andolini and John Bakalarski were all seated at the closest picnic bench to the entrance of the building and I was seated at the other. I saw and heard [appellant] show the others seated with him his portable CD player and tell them about the music he was listening to as he worked. 'This is the kind of music you cut your grass to, not like that shit in there.'"

The employing establishment also submitted a statement from Janice Scriva, a supervisor, who noted that on July 8, 1995 the radio was turned on with a sound level on number 3, which had been the agreed upon level between appellant and the union, that there seemed to be no problem with the radio, that everyone was working with no complaints of the music, and that appellant was working with his headphones on and seemed to be in a pleasant mood.

In a joint statement of supervisors Janice Scriva and David Consla, they noted that during the time appellant worked, there was only one radio maintained at a volume agreed upon by appellant, that if Mr. Cerilli requested a certain radio station, appellant complained vehemently about the music, but that if someone else chose the station, appellant would not complain at all. The supervisors stated that appellant had sound proof protection available, and also had his own Walkman type radio/CD player that he would wear and listen to. They noted that appellant had isolated himself from his coworkers and became increasingly incensed if Mr. Cerilli touched the radio or requested a certain radio station.

Another supervisor, Joe Ferraro, noted that appellant complained constantly about noise of people talking and radios playing at work, but that after work he went to strip bars and listened to excessive noise from the speakers there.

The Board additionally notes that appellant stated, in request for further information, that he enjoyed country western music and hunting and target shooting, and was a member of the National Rifle Association. Further, at an Equal Employment Opportunity grievance hearing appellant testified that the noise of a mower or hedge clipped did not bother him because he was not working in congested areas. The Board notes that this evidence tends to suggest that appellant's radio noise aversion at work is a function of where he is and what he is doing, and does not support his contentions that loud noises in general cause aggravation of his post-traumatic stress disorder.

Appellant bears the burden of proof to establish that the factors implicated in causing his aggravation of his post-traumatic stress disorder actually occurred as alleged and were compensable factors of employment. As appellant has submitted no substantive factual evidence supporting his contentions of exposure to eight hours of loud, blasting music on July 8, 1995, and as the employing establishment has submitted several witness statements contradicting appellant's allegations, which report that on that date appellant was wearing the headphones of

his own CD player listening to his own choice of music, and was working without complaints and seemed to be in a pleasant mood, appellant has failed to factually establish that he was exposed to the employment factors as claimed. Further, the witness statements support that only certain kinds of music and certain radio stations created a problem for appellant, and that when he chose the music or when certain others chose the music, he worked without difficulty. This amounts, not to difficulty with occupational noise exposure, but to difficulty with the particular environment as created by specific stations played on the radio. The Board has explained above that frustration at being unable to work in a particular environment is not compensable under the Act, but rather is considered self-generated.[13]

Accordingly, the decision of the Office of Workers' Compensation Programs dated June 9, 1997 is hereby affirmed.

Dated, Washington, D.C.
May 17, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[13] *Clara T. Norga*, 46 ECAB 473 (1995); *Martha L. Watson*, 46 ECAB 407 (1995).