U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL G. GROSS and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Roxbury, MA

Docket No. 98-605; Submitted on the Record;
Issued November 16, 1999

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained an emotional condition while in the performance of duty.

On August 8, 1995 appellant, then a 44-year-old customer service supervisor, filed a claim alleging that factors of his federal employment caused or contributed to his development of a psychological condition. Appellant stated that he first became aware of his condition and its relation to his employment on July 14, 1995. In narrative statements accompanying his claim, appellant described the events which he believed precipitated his condition. He stated that on February 4, 1993 he was placed in a "pool" with other employees and began to worry about whether he would be able to keep his job. Appellant desired a day shift position but one was not immediately available. Subsequently, when a Tour 2 position became available, he applied for the position. Appellant stated that upon accepting the position on October 2, 1993, he told his managers that if he received the necessary training, he would be able to perform the duties of the position and since that time repeatedly requested additional training as well as assistance, but that his requests were overlooked by management. Appellant asserted that he gave over one hundred and ten percent of his time to his job, coming in early and leaving late, working longer hours than were due and not taking lunch in an attempt to adequately perform his job. He added that he never complained and even worked some of his days off without pay, attempting to bring the station and others up to par. Then, on July 14, 1995, upon receiving a letter of warning from management, he experienced shortness of breath and pain in his left arm and sought emergency medical treatment. He stated that his condition was the result of undue stress due to work assignments, unattainable work goals and overwork without assistance. Appellant stopped work on July 14, 1995 and has not returned.

In a decision dated June 28, 1996, the Office of Workers' Compensation Programs accepted that appellant had a reaction to his inability to perform his duties as a supervisor and further accepted that appellant had performed some overtime, but found that the medical

evidence of record was insufficient to establish that appellant's emotional condition is causally related to his employment.

By letter dated March 17, 1997, appellant, through counsel, requested reconsideration of the Office's June 28, 1996 decision rejecting his claim.

In a merit decision dated June 18, 1997, the Office found the arguments raised on reconsideration insufficient to warrant modification of the prior decision.

By letter dated August 21, 1997, appellant, through counsel, requested reconsideration of his claim and submitted additional evidence in support of his request.

In a merit decision dated November 12, 1997, the Office found the evidence submitted in support of appellant's request for reconsideration insufficient to warrant modification of its prior decision.

The Board finds that appellant has not met his burden of proof to establish that he sustained an emotional condition while in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition, for which compensation is claimed is causally related to the employment injury.[2]

To establish that he has sustained an emotional condition causally related to factors of his federal employment, appellant must submit: (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 condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors. Rationalized medical opinion evidence is medical evidence that 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, 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.[3]

In the present case, appellant has identified factors and incidents which allegedly caused or contributed to his condition. The Office has accepted some of the factors and incidents

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *See Kathleen D. Walker*, 42 ECAB 603, 608-09 (1991).

identified by appellant as compensable factors of employment and found that other alleged factors were not compensable under the Act.

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 Act. Where the 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 arises out of and in the course of employment and is compensable under the Act. Conversely, where a disability 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, the emotional condition is not compensable under the Act. Disabling emotional conditions resulting from an employee's feelings of job insecurity or from the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.[4]

In its March 15, 1996 statement of accepted facts, the Office correctly determined that appellant's regular duties were compensable factors under the Act.[5]

Appellant's contention that the employing establishment failed to provide adequate training, however, involves an administrative matter.[6] Generally, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. Absent evidence of error or abuse by the employing establishment, administrative and personnel matters are not compensable factors of employment.[7] In this case, the employing establishment has submitted records, which show appellant has received approximately 186 hours of training on various subjects during his tenure as a customer service supervisor and appellant has not submitted any evidence of error or abuse with regard to the employing establishment's training practices. As there is no evidence of error or abuse on behalf of the employing establishment with regard to the employing establishment's training practices, this contention cannot be considered a compensable employment factor.

While the Office accepted appellant's employment duties as compensable factors of employment, appellant has failed to submit sufficient medical evidence to establish that his emotional condition was causally related to his employment duties.

In support of his claim, appellant submitted several reports from his treating physicians, Dr. M.J. Wisneski, a psychiatrist, and Dr. Lesley N. Fishelman, a Board-certified psychiatrist, in addition to several progress reports from a clinical social worker and a nurse. In his report dated September 12, 1995, Dr. Wisneski stated that he had seen appellant on three occasions for stress at work and that appellant had described the stress as overwhelming and the job as undoable.

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[4] *Lillian Cutler*, 28 ECAB 125, 129-30 (1976).

[5] *Id.*

[6] *See Michael Thomas Plante*, 44 ECAB 510 (1993).

[7] *Anthony A. Zarcone*, 44 ECAB 751 (1993).

Dr. Wisneski related appellant's contention that the job training was inadequate and that the assistance was insufficient. He concluded that appellant was unable to handle the stress of the position and should probably seek a transfer. In a report dated August 29, 1995, Dr. Fishelman stated that she was treating appellant for severe stress secondary to a stressful work environment.

By letters dated March 5, 1996, the Office referred appellant, the medical evidence of record and a statement of accepted facts to Dr. Leslie Fishbine, a Board-certified psychiatrist, for a second opinion examination. In the statement of accepted facts the Office stated that the only factor considered to be in the performance of appellant's duty was appellant's reaction to the performing of the duties of his position as a supervisor, customer service. The Office advised Dr. Fishbine that the remainder of appellant's allegations, including his being placed in a pool of employees, his desire to work the day shift and his contention that he was inadequately trained were not accepted as factors of employment and were not to be considered by her in her opinion regarding causal relationship.

In a March 27, 1996 report, Dr. Fishbine reviewed the statement of accepted facts and the medical evidence of record. She provided her findings from her psychiatric examination of appellant and discussed appellant's history of employment. Dr. Fishbine stated that appellant related to her a history of "having to fight hard to gain employment with the [employing establishment] because of discrimination against blacks." She added that appellant "describes his experience [with the employing establishment] as a constant battle to get promoted because of what he viewed as nepotism and racial discrimination" and that appellant related to her that he wrote frequent letters and requested meetings with supervisors, confronting them regarding racism. Dr. Fishbine stated that appellant related to her that because of his activism, he feels he is considered a "trouble maker" and that the employing establishment has, therefore, been trying "to get rid of" him by "setting him up" to fail. She further stated that appellant specifically alleged that "he received inadequate staff and training to perform his last job as a supervisor of customer service. He feels that he was thus set up to fail and that this was the [employing establishment's] way of finally getting him out." Dr. Fishbine stated that appellant referred to his receipt of the letter of warning in 1995 as the final incident that destabilized him. She provided the results of a mental status examination and described psychological test results. Dr. Fishbine diagnosed appellant's condition as "adjustment disorder with mixed emotional features including depression and anxiety" and stated:

> "Even given the substantiation of [appellant's] claim of having an excessive amount of work with insufficient training and support, it is not clear that this factor alone would be sufficient to fully explain a psychological reaction of the severity and duration that [appellant] has experienced. Other responses to excessive work load can be imagined, such as seeking a different position or in some way documenting the presence of inadequate support to allow satisfactory job performance. It is clear, however, that [appellant's] perception of inadequate staff support and training is linked to his long history of interpreting occupational difficulties as resulting from racial discrimination. In his entire occupational history with the [employing establishment] it is noteworthy that he consistently portrays himself as a black man kept from advancing because of his race, rather than as a result of his own behaviors or job performance. Thus, he viewed

inadequate staffing and support as purposeful maneuvers to force him, as a black man, out of the [employing establishment] for standing up to a largely white system. With the receipt of the letter of warning, he felt that he had lost an important personal battle about civil rights. Thus he felt helpless and defeated and unable to face returning to the setting of this battle."

Dr. Fishbine further stated that appellant's subjective beliefs and interpretations including about his work load would only represent objective work-related stressors if they are shown to be accurate perceptions. The Board notes that to the extent that incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[8] However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[9] Although appellant alleged that he suffered racial discrimination and harassment at work in the form of inadequate support and training, which set him up to fail, appellant did not provide any reliable, probative or substantial evidence that such discrimination or harassment did, in fact, occur.[10] To the extent Dr. Fishelman relied on appellant's allegations in formulating her medical opinion it is of diminished probative value.[11]

In support of his claim, appellant submitted several reports from his treating physicians Drs. Wisneski and Fishelman, who noted that appellant was being treated for emotional and physical conditions related his employment stress. These reports, however, are insufficient to establish appellant's claim, as neither Drs. Fishelman nor Wisneski explain how or why specific employment factors caused or contributed to appellant's emotional condition and, therefore, their opinions are insufficiently rationalized and of little probative value.[12]

The remainder of the evidence submitted by appellant in support of his claim is of no probative value.[13]

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[8] *Donna J. Dibernardo,* 47 ECAB 700 (1996).

[9] *Id.*

[10] *Edward J. Meros,* 47 ECAB 609 (1996).

[11] A physician who is called to render opinion need only address the medical questions certified. Where it appears the medical expert is deviating from the statement of accepted facts, his opinion loses probative value. *See James Washington, Jr.,* 42 ECAB 187 (1990).

[12] *See Leon Harris Ford*, 31 ECAB 514, 518 (1980); *Neil Oliver*, 31 ECAB 400, 404 (1980); *Leontine F. Lucas*, 30 ECAB 925, 928 (1979).

[13] The Board notes that the reports from Ms. Sloan, a licensed social worker, and Ms. Staunton, a registered nurse, are of no probative value in support of appellant's claim. Under the Act, only licensed clinical psychologists are considered physicians. 5 U.S.C. § 8101(2). Because causal relationship is a medical question that can only be resolved by medical opinion evidence, the reports of a nonphysician cannot be considered by the Board in adjudicating that issue. *Arnold A. Alley*, 44 ECAB 912 (1993).

The Board, therefore, finds that appellant has failed to meet his burden of proof to establish that he sustained an emotional condition while in the performance of duty.

The November 12, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
November 16, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member