

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT GUAJARDO and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, San Antonio, TX

*Docket No. 98-860; Submitted on the Record;
Issued November 26, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

In the present case, appellant filed a claim on April 3, 1997 alleging that he sustained a stress condition, as well as headaches and nausea, as a result of his federal employment. In narrative statements, appellant indicated that his unit had been downsized and restructured, resulting in additional duties but less pay, since his opportunity for overtime pay was reduced. Appellant also indicated that the restructuring caused schedule changes and loss of supervisory duties. In addition, he described an incident on April 2, 1997 in which he had a verbal altercation with a nurse.

By decision dated July 18, 1997, the Office of Workers' Compensation Programs denied the claim on the grounds that appellant had not established an injury in the performance of duty. In a decision dated October 21, 1997, the Office modified its prior decision to reflect that appellant had established a compensable factor of employment, but had not established an injury causally related to the compensable factor.

The Board 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;

¹ Pamela R. Rice, 38 ECAB 838 (1987).

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

In the present case, the Office accepted a compensable factor of employment: that appellant's workload increased as a result of restructuring within the employing establishment. The remainder of appellant's allegations, however, were properly found not to constitute compensable factors of employment. The loss of pay resulting from the lack of overtime work is not within coverage of the Act. As noted above, frustration at not being able to hold a particular position or perform certain duties is not compensable. Similarly, appellant's frustration at having to work on alternate weekends, which represented a change in his work schedule, is not compensable.⁴ With respect to the April 2, 1997 incident, appellant submitted a written statement alleging that he had prepared a dialysis machine for use, and when he called to report that it was ready, a nurse, Mr. Penaloza, yelled at him to leave the machine alone, using profanity. Mr. Penaloza submitted a written statement indicating that he told appellant that he would set up the machine and take it to the patient's floor, when appellant started to shout that it was appellant's job to set up machines, and profane language was exchanged by both parties. Although the Board has recognized the compensability of verbal altercations or abuse in certain circumstances,⁵ this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.⁶ The incident described by appellant appears to be an isolated incident in which two coworkers had a disagreement and used inappropriate language. The Board cannot find that the April 2, 1997 incident rose to the level of verbal abuse or otherwise falls within the coverage of the Act.

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

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

⁴ A change in an employee's duty shift may be a compensable factor if an injury is attributed to the inability to perform job duties due to a shift change; however, an employee's frustration over not being able to work a particular schedule is not covered; see *Helen P. Allen*, 47 ECAB 141 (1995).

⁵ See, e.g., *Abe E. Scott*, 45 ECAB 164 (1993) (a supervisor's use of the epithet "ape" was a compensable employment factor).

⁶ *Harriet J. Landry*, 47 ECAB 543 (1996).

The Board accordingly finds that the statement of accepted facts accurately distinguished between compensable and noncompensable work factors. The Office referred the statement of accepted facts to attending physicians Dr. Cornelius H. Nau, Jr., a psychiatrist, and Dr. Betty Schroeder, a psychologist. In a report dated October 13, 1997, Dr. Nau addressed specific questions posed by the Office and stated in pertinent part that “there is no medical connection between this compensable employment factor and [appellant’s] psychiatric condition.” There is no indication that Dr. Schroeder provided a responsive medical report.

The Board therefore finds that the medical evidence of record is not sufficient to establish an emotional condition or other injury causally related to compensable factors of appellant’s employment.

The decisions of the Office of Workers’ Compensation Programs dated October 21 and July 18, 1997 are affirmed.

Dated, Washington, D.C.
November 26, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member