U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of W. REX DAVIS and DEPARTMENT OF THE NAVY, NAVY MEDICAL COMMAND, Fort Hueneme, CA

Docket No. 97-2322; Submitted on the Record;
Issued September 7, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON, BRADLEY T. KNOTT

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

The Board has duly reviewed the case record and finds that appellant has failed to establish a factual basis for his claim that he sustained an emotional condition causally related to factors of his federal employment.

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 concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[1] On the other hand, the disability is not covered where it 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.[2]

Where an employee alleges harassment and cites to specific incidents and the employer denies that harassment occurred, the Office of Workers' Compensation Programs or some other appropriate fact finder must make a determination as to the truth of the allegations.[3] The issue is not whether the claimant has established harassment or discrimination under standards applied

---

[1] *Dinna M. Ramirez,* 48 ECAB ___ (Docket No. 94-2062, issued January 17, 1997); *see Thomas D. McEuen,* 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[2] *Michael Ewanichak,* 48 ECAB ___ (Docket No. 95-451, issued February 26, 1997); *Lillian Cutler,* 28 ECAB 125 (1976).

[3] *Michael Ewanichak, supra* note 2; *Gregory J. Meisenburg,* 44 ECAB 527 (1993).

by the Equal Employment Opportunity Commission. Rather, the issue is whether the claimant under the Act has submitted evidence sufficient to establish an injury arising in the performance of duty.[4] To establish entitlement to benefits, the claimant must establish a factual basis for the claim by supporting allegations with probative and reliable evidence.[5]

On August 7, 1996 appellant, then a 71-year-old doctor, filed an occupational claim alleging that he sustained stress-related migraine and cluster headaches which were aggravated and triggered by the maladaptive circumstances of his workplace. Appellant made numerous allegations of harassment stating that he felt his supervisors, Dr. Steve Torrey, Dr. Rudy V. Tacoronti, some of the nurses, Lieutenant Rebecca Wadkins, Darla Christiano and other members of the staff including Teresa Valdez were part of a conspiracy to force him to retire due to his age. Appellant did, in fact, retire effective August 3, 1996 due to his "work environment … caus[ing him] aggravation of migraine and cluster headaches … rendering him unable to continue working" as shown on the Notification of Personnel Action, SF-50. The medical evidence of record consisting of medical reports or disability notes dated June 11, 1996 through March 10, 1997 document that appellant was treated by at least three doctors for migraines and cluster headaches which he alleged he sustained from stress at work.

By decision dated April 17, 1997, the Office denied appellant's claim stating that appellant did not sustain his burden of proving that the injury occurred in the performance of duty.

Among his numerous allegations, appellant stated that Dr. Torrey and his coworker Ms. Christiano discriminated against him. Dr. Torrey was initially appellant's supervisor and was replaced by Dr. Tacoronti in October 1995. Appellant stated that Dr. Torrey placed a GS-11 nurse, Ms. Christiano, in charge of the occupational medicine clinic for which he worked and that appellant was a GS-13 and a doctor. Appellant stated that he filed a grievance and had a courtesy inspection by the Inspector General (IG) performed, the inspection noted the discrepancy and advised appellant that it was wrong. Ms. Christiano was then moved to a different position but she began monitoring appellant's patient health record to lodge "occurrences" against him. An "occurrence" is an incident of questionable treatment or diagnosis which is inquired into by supervisory personnel in order to maintain quality patient care.

Appellant also stated that Dr. Torrey "was very demanding," that he did not like to work with him and that he often had to go to Dr. Torrey's office to do his work as well as his own. Dr. Torrey's office was located 12 miles from where appellant worked. Appellant stated Dr. Torrey liked to save money and told him that he could hire a physician's assistant for much less money than appellant's salary.

Appellant alleged that he was "dressed down" by Lieutenant Wadkins, that he was subject to harsh and vulgar outbursts by her as well as verbal abuse and received "belittling

[4] *See Martha L. Cook*, 47 ECAB 226 (1995).

[5] *Barbara E. Hamm*, 45 ECAB 843, 851 (1994).

treatment" by Ms. Valdez in front of a patient. He stated that he was "treated by disdain by the clerical staff" and "was subjected to treatment bordering on ridicule." Giving some specific examples, appellant stated that Lieutenant Wadkins, who was his supervisor in 1996, interrupted him when he was trying to talk to her in mid-May 1996, saying "I laid my ass on the line with the CO for you -- and you better not forget it," and "we have been propping you up too much -- I am not doing it any longer." Appellant stated that on May 24, 1996 Ms. Valdez sent flowers from the office to a female coworker who had been hospitalized but told appellant that she had put on the card that it was just from appellant when in fact the card said it was from all of them. On June 4, 1996 appellant stated that on two different occasions Lieutenant Wadkins put yellow stickers on the medical records, directing him to take action, in a "less than friendly way." In a memorandum dated September 9, 1994, appellant stated that Ms. Christiano took his running clothes out of the bathroom that adjoins his office, laughed and said, "they stink." Appellant said that she did it a fourth time and when he stated the clothes had not been used, she said that since she did her husband's clothes that way, she might as well do his that way. When Ms. Christiano was placed in charge of the office at one time, she laughed, "rocking back on her heels," and said to him "Who needs doctors."

Appellant said he said to Dr. Torrey, how would he like it if he were appellant's age and received this kind of treatment and Dr. Torrey said to him, that if he were appellant's age, he would have retired. He also stated that a couple of times, Dr. Torrey was in his presence when he was being teased about his age, specifically, when Ms. Valdez called him "old man" and Steve McCombs, another coworker, harassed him about his age and Dr. Torrey said nothing thereby giving his tacit approval. Appellant stated that Ms. Valdez grabbed his leave and earnings slip out of his hand and laughed saying, "[Appellant], you make too much," and that this disrespect hurt. Appellant stated that when he reported this incident to Mr. Torrey and Ms. Christiano, the disrespect was ignored.

Appellant alleged that in one of two meetings with Dr. Tacoronti on June 5, 1996, Dr. Tacoronti issued him three occurrences, one of which had to do with the correctness of appellant's prescribing a certain medicine for a patient and another with whether appellant properly addressed a patient's high blood pressure. Appellant stated that at that meeting, Ken Peters, from patient administration, stated that appellant would be under "more scrutiny." Appellant also stated the usual procedure in the case of an occurrence was to advise the doctor and permit him to explain the treatment in question but the procedure was not being followed in his case. He stated that occurrences were being lodged and he was not being informed or given the opportunity to respond. Appellant stated on June 7, 1996 that when he asked Mr. Peters for the treatment record pertaining to one of the occurrences, Mr. Peters advised him that the records were "unavailable." Appellant indicated that he felt in these occurrences he had acted properly. Appellant also believed his peer review was not ordinary. Appellant stated he received conflicting messages about taking sick leave as in Mr. Peters told him he could take sick leave for his condition, but Dr. Tacoronti then indicated if he kept taking it, he could lose his job.

Appellant stated that beginning in 1992 and thereafter the individuals in authority wanted him out, so that they could save money by hiring a physician's assistant in his place. He stated coworkers reported this to him and his understanding was that his current replacement was a physician's assistant. He also believed he was being discriminated against because of his sex

and was being retaliated against for ordering the IG inspection. He believed his efforts to obtain disability retirement were being hampered.

Appellant submitted a witness' statement from a coworker, Dr. Kenneth Karols, dated January 6, 1997. Dr. Karols corroborated that appellant was under great stress, opined that appellant was singled out after his IG complaint and stated that one of the occurrences in whose review he participated was trivial. Dr. Karols believed that the "credentialling and peer review process" was being used as a weapon against appellant and unless he retired or resigned, management would eventually "get" him.

In a statement dated January 3, 1997, Ms. Valdez stated that she was aware that "persons outside the clinic" were checking up on appellant and by "checking up" she meant that they were reviewing medical records of patients for the purpose of finding fault with his work. She also stated that she remembered Lieutenant Wadkins telling her that they "were going to get rid of [appellant] by finding a way to either make him resign or to fire him." Ms. Valdez stated that she was instructed to pull appellant's patient's medical records for review, that it "was obvious to her" that the supervisory authorities "were trying to build a case" against appellant and that they were "after him" for years.

In a statement dated February 19, 1997, Dr. Tacoronti denied that management acted unreasonably. He stated that appellant was a reemployed annuitant which meant he had previously retired from civil service and therefore could be terminated without notice or cause. Dr. Tacoronti stated that management made every effort to continue appellant's employment and assist him in the occurrence screening process, but he believed that appellant resigned to avoid this process. He stated that he was unaware that Lieutenant Wadkins "dressed down" appellant, that the staff treated appellant with disdain or ridicule or that Lieutenant Wadkins or any other staff member entered into a conspiracy to force appellant to retire from civil service. Dr. Tacoronti stated that Lieutenant Wadkins had no authority over appellant's decision to, or refrain from, separating, that he investigated and found there was no evidence of any conspiracy and further found that many staff members expressed their [*sic*] concerns regarding appellant's work. He said that staff members commented on appellant's explosive anger and public belittlement of the staff.

At the staff meeting on June 3, 1996 when he addressed the three occurrences, Dr. Tacoronti stated that appellant admitted he had made medical mistakes and could not justify his decisions but then became angry and threatened to quit on the spot. Dr. Tacoronti stated that he explained to appellant that "this was not an attack, but a means to review patient care issues." He stated that in the exit interview appellant did not indicate that he was suffering from headaches and Dr. Tacoronti believed that appellant resigned because he did not want to undergo the peer review process or be subject to scrutiny. Dr. Tacoronti stated that the peer review process was a normal procedure which applies to review of a doctor's work to ensure quality care. He also denied that appellant was subjected to more scrutiny than any other staff member. Dr. Tacoronti denied appellant was given any conflicting information regarding sick leave but stated that appellant completed a leave slip without providing a return date. He stated that it was customary for the doctors to be administratively under the Nurse Corps of which Lieutenant Wadkins was a part. Dr. Tacoronti further denied wanting to replace appellant or retaliating

against him for having the IG inspection. He also stated that he assigned appellant no additional work duties.

Appellant has failed to establish a factual basis for his allegations as he has not presented evidence corroborating the incidents he describes. Further, to the extent that his allegations address excessive monitoring of his work or disciplinary actions by management or disputes over sick leave requests, there are administrative functions of the employing establishment and as such are not compensable unless appellant shows the employing establishment abused its discretion or acted unreasonably.[6] Appellant had not made this showing. When Dr. Tacoronti challenged appellant about the three occurrences, Dr. Tacoronti stated that appellant was treated the same as any other doctor and there was a real question as to whether appellant's treatment of the three patients was proper. Appellant has failed to establish harassment by management or his coworkers because there is no corroboration of any specific factors constituting the harassment. The only evidence to corroborate appellant's allegation that management was in a conspiracy against him was Ms. Valdez's statement in her January 3, 1997 letter that Lieutenant Wadkins stated that management was out to get appellant. Appellant, however, provided no corroborating evidence that any of management's actions toward him in identifying the occurrences or holding meetings to review his work were part of a conspiracy to force him to retire. There is no corroboration that appellant was verbally abused, "belittled," "dressed down," or otherwise treated disrespectfully or discriminated against because of his age or sex or for having the IG inspection performed.[7] No evidence corroborates that Dr. Tacoronti gave conflicting signals about sick leave. Further, Dr. Tacoronti stated that it was customary for the doctors to work under the Nurse Corps of which Lieutenant Wadkins was a part and therefore it was customary for the nurse to have administrative authority over the doctor. Therefore, management did not act unreasonably in making her the head of the division in which appellant worked.[8]

Inasmuch as appellant has not established that there were any compensable factors of employment or that management acted unreasonably in its treatment toward him, he has failed to establish that he sustained an emotional condition causally related to factors of his federal employment. Since no compensable factors of employment have been established, it is not necessary to address the medical evidence.[9]

[6] *See Daryl R. Davis*, 45 DCAB 907, 911 (1994); *Barbara J. Nicholson*, 45 ECAB 803, 809 (1994).

[7] *See Barbara E. Hamm*, *supra* note 5; *Alfred Arts*, 45 ECAB 530, 544, (1994).

[8] *See Donald E. Ewals*, 45 ECAB 111, 124 (1993).

[9] *See Diane C. Bernard*, 45 ECAB 223, 228 (1993).

The decision of the Office of Workers' Compensation Programs dated April 17, 1997 is hereby affirmed.

Dated, Washington, D.C.
September 7, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member