

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM GRONER and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Erie, PA

*Docket No. 99-2020; Submitted on the Record;
Issued August 17, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained an injury while in the performance of duty.

On January 16, 1998 appellant, a gardener, filed a claim asserting that his heart disease was aggravated by stress in his federal employment. He stated: "I was feeling stressed out because I felt harassed and intimidated. I was feeling chest pains and was admitted to Erie, VAMC." In a statement dated February 4, 1998, appellant explained that he felt stress from his program leader and team leader since October 1997.

In an accident report dated January 6, 1998, appellant stated that his team leader started an argument with him. Appellant disagreed with statements made by the team leader, but the team leader repeated his statements in louder tones. Appellant stated: "I left the meeting because I was feeling chest pains."

On February 27, 1998 the Office of Workers' Compensation Programs requested that appellant submit additional evidence to establish his claim.

In a statement dated February 27, 1998, appellant's supervisor reported that appellant experienced no apparent stress until his interactions and behaviors with other team members were called into question.

In a letter dated May 18, 1998, the employing establishment explained that the incident in question occurred during a meeting to address the communication board located in the grounds utility garage. The team leader informed the grounds team that the program leader had recommended using the communications board for messages or to indicate the whereabouts of team members throughout the day. Team members thought this was a good idea, explained the employing establishment, except for appellant, who thought it was meant solely for him. "He got upset and argued the point with the Team Leader and left the meeting."

In a decision dated May 26, 1998, the Office denied appellant's claim on the grounds that the evidence failed to show that the injury occurred in the performance of duty. The Office

noted that appellant had submitted no witness statements or other evidence to support that the team leader started an argument with him. The Office found that appellant's reaction to an administrative issue could not be considered in the performance of duty.

Appellant requested a hearing before an Office hearing representative. At the hearing, which was held on November 19, 1998, appellant stated that his work-related stress was caused by harassment and intimidation by the program leader and team leader, a hostile work environment encouraged by the program leader and reprisal by the program leader for union activities. Appellant testified that the team leader had made false accusations against him from November 1997 until chest pains manifested on January 6, 1998. He stated that the program leader used these false accusations to build an evidence file and take adverse action against him. According to appellant, during the team meeting of January 6, 1998, the team leader indicated that it was appellant's fault that a sign-out board had to be installed in the garage because he had complained of poor team communications. Appellant tried to explain that he did not complain and that the sign-out board was not his fault, but the team leader repeated his statements in an aggressive, loud and overbearing manner. It was at this point that appellant left the meeting because he was feeling chest pains.

Appellant also implicated an incident on November 24, 1997 when the program leader denied his request to be relieved of his time and leave administration duties. He explained to the program leader that he was not able to do those duties. On January 5, 1998 the program leader advised that she would be taking adverse action against appellant for the November 24, 1997 incident.

Appellant testified that the program leader did nothing in response to the team's complaint about the team leader's harassing and intimidating behavior.

Appellant referenced letters from a former coworker, Mr. Hopkins, supporting his claim.

He also noted that the program leader had tried unsuccessfully to take adverse action against him for his refusal to sign a document summarizing a meeting on February 10, 1998. Appellant believed that the summary distorted what took place.

Appellant stated that he was shown a notice of proposed removal for allegedly making a harassing telephone call to the team leader, but it was never formally given to him.

Appellant submitted a memorandum signed by Mr. Hopkins on March 17, 1998. Mr. Hopkins indicated that in November 1997 the team leader read to him a report of contact about appellant; that in November 1997 the team leader had accused appellant of making a derogatory telephone call; and that in October 1995 the program leader had told him, "I didn't get [appellant] this time, but if I have a chance to do it all over again, I won't make the same mistakes again."

In a statement dated August 8, 1996, Mr. Hopkins stated that during his employment the program leader showed an antagonistic and uncooperative attitude toward appellant.

Appellant further submitted an April 7, 1998 note from Dr. Raymond Haiback, who stated: “[Appellant] is under my care and should remain on medical leave due to stress and coronary artery disease, until further notice.”

In a decision dated February 4, 1999, the hearing representative affirmed the Office’s denial of appellant’s claim.

Appellant requested reconsideration and urged evidence from his other cases be examined.

In a decision dated May 26, 1999, the Office reviewed the merits of appellant’s claim and denied modification of its prior decision.

The Board finds that the evidence fails to establish that appellant sustained an injury while in the performance of duty.

Workers’ compensation law does not cover each and every injury or illness that is somehow related to employment.¹ An employee’s emotional reaction to an administrative or personnel matter is generally not covered. The Board has held, however, that error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.² Perceptions alone are not sufficient to establish entitlement to compensation. To discharge his burden of proof, a claimant must establish a factual basis for his claim by supporting his allegations with probative and reliable evidence.³

In this case, appellant claims that stress at work aggravated his heart disease and he attributes this stress to the actions of the program leader and team leader. Because these actions are administrative in nature, appellant’s reaction thereto as a general rule falls outside the scope of workers’ compensation. Appellant has alleged harassment, intimidation, hostility, reprisal and false accusations. Such error or abuse may afford coverage, but as the Board has explained, appellant’s mere perception is not sufficient to establish entitlement to compensation. He must substantiate his allegations of error or abuse with probative and reliable evidence.

The Board has carefully reviewed the record on appeal and finds that appellant has failed to substantiate error or abuse. Apart from his own allegations, the only evidence submitted to support error or abuse by the program leader or team leader are the statements signed by Mr. Hopkins. In the memorandum he signed on March 17, 1998, Mr. Hopkins indicated that in November 1997 the team leader read to him a report of contact about appellant and also accused appellant of making a derogatory telephone call. He also indicated that in October 1995 the program leader had professed an intent “to get” appellant if the chance again arose. Appellant has not shown how these actions or statements, if taken as true, constituted error or abuse. He has pointed to no applicable rule or regulation prohibiting such action or expression and has

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Margreate Lublin*, 44 ECAB 945 (1993).

³ *Ruthie M. Evans*, 41 ECAB 416 (1990).

submitted no finding of error or abuse or improper action from a grievance or similar administrative procedure designed to investigate such matters.

In his August 8, 1996 statement, Mr. Hopkins asserted that during his employment the program leader showed an antagonistic and uncooperative attitude toward appellant. This statement is insufficient to support appellant's allegations of harassment as it reflects a subjective assessment of the supervisor's attitude and, lacking any detail whatsoever, fails to demonstrate error or abuse with any probative force.

Because appellant has failed to substantiate his allegations of error or abuse in the administrative actions to which he attributes his stress, he has not met his burden of proof to establish that he sustained an injury while in the performance of duty.

The hearing representative correctly observed that it was unnecessary to address the medical evidence in this case because appellant had failed to establish a compensable factor of employment.⁴ The Board nonetheless has reviewed the medical evidence in this case and notes that appellant has failed to submit a single medical opinion expressly attributing his heart disease to any factor of his federal employment. In his April 7, 1998 note, Dr. Haiback advised that appellant should remain on medical leave "due to stress and coronary artery disease, until further notice." He made no mention of appellant's federal employment. Without medical opinion evidence supporting causal relationship, which is an essential element of appellant's claim, appellant has failed to make a *prima facie* claim for compensation.

The May 26 and February 4, 1999 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
August 17, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

⁴ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).