

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RONNIE J. FENDLEY and DEPARTMENT OF THE ARMY,  
FORT SAM, Houston, TX

*Docket No. 98-550; Submitted on the Record;  
Issued February 8, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition in the performance of duty.

On November 29, 1995 appellant, a 52-year-old medical equipment and manpower analyst, filed a claim for benefits, claiming that he had sustained an emotional condition in the performance of duty, and that he became aware this condition was caused or aggravated by his employment as of April 2, 1995. Appellant indicated that, since obtaining his present position, he had been hospitalized for stress-related ailments on seven occasions and had experienced considerable difficulty making adjustments to using a computer and other technical equipment.

In support of his claim, appellant submitted a handwritten statement which was received by the Office Of Workers' Compensation Programs on January 29, 1996. He stated that he experienced stress in his position because he was supposed to learn and grasp new technologies in office communications, but that he had difficulty interpreting and becoming fluent in these newer concepts. Appellant also indicated that he experienced eye strain and stress due to the increasing use of computers at the employing establishment. He stated that the constant use of numbers in his job began to result in the repetition of these numbers in his head, causing him additional stress.

In addition, appellant asserted that he attended a month-long training class in May 1995 which was so mentally demanding that it caused him to be sent home and hospitalized in June 1995, prior to the final examination. He indicated that his frontline supervisor accused him of deliberately "messing up" at the training class and told him on many occasions that he would be lucky to avoid receiving an unsatisfactory rating or being fired because of his poor performance. Appellant stated that his supervisor often "jumped him" and cursed at him, and threatened him with a file that he had compiled from personnel records submitted by his previous supervisors and coworkers. He also stated that he was subjected to stressful remarks from his coworkers after his hospitalization and claimed that this additional stress had resulted in more medical

treatment and hospitalizations. Appellant asserted that he feared losing his job because he was never sure of how to satisfy his supervisor.<sup>1</sup>

Appellant also submitted an October 24, 1989 medical report from Dr. Joseph A. Simpson, Board-certified in psychiatry and neurology, who stated that, when he first examined appellant on October 3, 1989, he related symptoms of anxiety and depression, particularly in the context of distress with his present job assignment, a position which he felt was beyond his capabilities. Dr. Simpson noted a previous episode in 1970 when appellant was hospitalized for a nervous breakdown and underwent shock therapy. He also advised that appellant claimed to have near-total recall of all the numbers he had seen during the day, and that he was unable to stop thinking about them, even after he went home at night. Dr. Simpson noted that appellant had numerous stress factors in his life, including having a child with birth defects which required numerous operations, various medical problems with his other children, his own, unrelated medical problems and the fact that his father had passed away in the past year. He diagnosed dysthymic disorder and anxiety disorder.

The record also contains treatment notes from October 1992 which indicated appellant was hospitalized at that time for depression and anxiety caused by changes occurring at the workplace and by ongoing, multiple health issues within his family. The notes also indicated that appellant had obsessive-compulsive characteristics regarding thoughts of numbers with which he worked. Appellant was diagnosed with major depression, recurrent, obsessive-compulsive disorder and generalized anxiety disorder.

In a report dated September 22, 1995, Dr. Simpson stated:

“I have treated appellant since October 1989. At that time he gave a history of onset of illness in 1969 or before. At that time he had been hospitalized and received eighteen electroconvulsive therapy [ECT] treatments. He seems to have gone without treatment until I saw him, but had suffered from medical problems including a rectal fistula. His problems have been associated with his job as “medical equipment manpower specialist.” He had not worked on computers previously, taking a job for which he was ill-equipped, as the job he had he thought was about to expire, this happening in 1986. This job had been stressful for him as he suffers the thought that the job he had was about to expire. The job was stressful for him as he suffers from “lazy eye syndrome” and has a near total recall of all numbers he has seen during the day, leaving him very anxious and unable to function outside of work. Symptoms have included extreme anxiety symptoms, shaking, being afraid, temper outbursts, lack of interest, crying spells, suicide thoughts, which have been present off and on his entire life, and difficulty concentrating.... Psychological testing at that time showed essentially a psychotic depression with some organic impairment on the bender. He was found to not have some soft neurological signs. He was hospitalized two or three times

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<sup>1</sup> Appellant noted in the statement that he had a preexisting mental condition, and had previously been hospitalized in 1969 following a reaction to medication prescribed after surgery and stress caused by four surgeries on his son.

in the fall of 1993, again with suicidal behavior and threats to family members.... He was again rehospitalized in January 1995 after becoming suicidally depressed and threatening family members.... Appellant improved for a short time, "but however, he decompensated around June 1995 after going to a workshop in Virginia. He had become hysterical, was threatening suicide. Again, he received four ECT treatments. Following that he had some continuing confusion and has great difficulty returning to work and concentrating. He has been rehospitalized twice in the past two weeks, again with suicidal behavior and violent behavior towards his wife. Unfortunately, the trend seems ominous, that the frequency of these episodes and the combination of symptoms leave him unable to consistently perform his job. His compliance with therapy has generally been adequate but he has proven impervious to insight-oriented psychotherapy, basically unable to move beyond his extreme obsessive-compulsive thinking and extreme pessimism, fearfulness, and frank exaggeration of his variety of stressors including physical symptoms and environmental stressors."

Dr. Simpson diagnosed an atypical bipolar disorder, mixed, severe, obsessive compulsive disorder and atypical panic disorder, with severe histrionic and passive-dependent features. He concluded that, as appellant's symptoms complex was rather atypical and represented multiple psychiatric disorders, his condition was progressively worsening, and he did not anticipate full or partial recovery or a significant period of remission.

Marvin Hanley, appellant's supervisor, submitted a memorandum dated May 18, 1995 in response to appellant's allegations. He stated that, although he was aware appellant had been experiencing some health problems, he never gave any indication that he was unhappy with his job. Mr. Hanley stated, appellant told him in a December 19, 1994 counseling session that he was the happiest he had ever been in civil service and had recently received an achievement award from the employing establishment. He stated that appellant received nothing but the best ratings and received special awards for his outstanding service. The supervisor noted, however, that appellant was a nervous and argumentative person who became very loud and agitated when upset, and had voluntarily enrolled in classes for anger control, communications skills and stress management. Mr. Hanley claimed that appellant had told him these classes had been of much help to him.

Mr. Hanley noted that in 1992, all employees had been upgraded from GS11's to GS12's, and that therefore more responsibility was required by all affected employees, including appellant. He noted, however, that, while appellant's job was demanding and difficult, it was no more so than that of any other employee in his division. Mr. Hanley acknowledged that appellant was having a difficult time with computers, but stated that he had assigned a coworker to assist appellant and had enrolled him in several classes to help him. He also indicated that appellant had many personal problems which he had attributed to a variety of sources. In regard to appellant's difficulties using the computer, Mr. Hanley stated that appellant was never observed working at his computer for long periods of time, which the supervisor attempted to establish by attaching results of computer transactions over a course of time which, he claimed, indicated that appellant did not work extensively at the computer as he had alleged.

Mr. Hanley submitted another statement, received by the Office on January 29, 1996, which indicated that appellant had submitted a similar claim in December 1994, but had withdrawn that claim before it was forwarded to the Office. He contended that appellant made some false and misleading statements in his claim and stated that when appellant returned to work following his training class in June 1995, he appeared “very upset” regarding his difficulties with the course and asked if he was going to be fired. Mr. Hanley stated that he reassured appellant he would not lose his job, but that there was concern for his health and everyone wanted him to get well. He advised appellant that, if he could not perform his job, he might have to give him a bad evaluation; however, he stated that he never “jumped” or cursed at appellant, as alleged. The employing establishment submitted statements from appellant’s upper-level supervisors and several coworkers which generally supported the statements from Mr. Hanley. The employing establishment also submitted a June 28, 1995 memorandum indicating that, during the management training course appellant was scheduled to attend from May 1 to May 26, 1995, his attitude and physical demeanor became distracting to both students and faculty, and the school staff was required to expend a disproportionate amount of time and resources to attend to his needs. The memorandum noted that appellant was referred to a doctor the day before the course ended.

By decision dated May 5, 1997, the Office denied appellant’s claim based on an emotional injury, finding that he failed to establish specific factors of employment to which he attributed his alleged disability. The Office therefore found that fact of injury was not established.

By letter dated May 28, 1997, appellant requested a review of the written record. In support of his claim, appellant submitted an undated statement in which he claimed that he used computers to a greater extent than that asserted by the employing establishment, noting that he was on leave for much of the period cited, December 1994 through May 1995. Appellant asserted that his computer transactions were substantially reduced due to the large amount of illnesses and absences he accumulated during this period.

By decision dated November 13, 1997, an Office hearing representative affirmed the Office’s May 5, 1997 decision.

The Board finds that appellant has not established that he sustained an emotional condition causally related to his federal employment.

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition, and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.<sup>2</sup> There must be

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<sup>2</sup> See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.<sup>3</sup>

The first issue to be addressed is whether appellant has established factors of employment that contributed to his alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>4</sup> On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or 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 a personal injury sustained while in the performance of duty within the meaning of the Act.<sup>5</sup> Perceptions and feelings, alone, are not compensable. Only when the matter asserted is a compensable factor of employment and the evidence establishes the truth of the matter asserted may the Office then base its decision to accept or reject the claim on an analysis of the medical evidence.<sup>6</sup>

In the present case, the Office found that the allegations made by appellant concerning work-related threats of firing and abusive language by Mr. Hanley were not established as factual by the weight of evidence of record. The Office hearing representative reviewed all of appellant's specific allegations of harassment, abuse and mistreatment, and found that they were unsubstantiated and that the employing establishment had submitted witness statements which rebutted these allegations. The statements from appellant's coworkers do not establish that his supervisor threatened or verbally abused appellant or otherwise ridiculed him during the periods and dates he alleged these episodes to have occurred.<sup>7</sup>

The Board finds that appellant has failed to substantiate his claims of verbal abuse and harassment. Appellant has not submitted evidence to support his allegations that he was harassed, mistreated, or treated in a discriminatory manner by his supervisor. The Board finds that the Office properly found that the episodes of harassment cited by appellant did not factually occur as alleged as he failed to provide any corroborating evidence for his allegations. As such, appellant's allegations constitute mere perceptions or generally stated assertions of dissatisfaction with his superiors at work which do not support his claim for an emotional disability. Further, the Board has held that an oral reprimand generally does not constitute a compensable factor of employment; neither does the monitoring of work by a supervisor.<sup>8</sup> Thus,

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<sup>3</sup> See *Ruth C. Borden*, 43 ECAB 146 (1991).

<sup>4</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Merriett J. Kauffmann*, 45 ECAB 696 (1994).

<sup>8</sup> See *Janet I. Jones*, 47 ECAB 345 (1996).

appellant has not established a compensable employment factor under the Act with regard to these administrative matters.

The Board notes that the Office properly found that appellant established a factor of employment *i.e.*, his difficulty in training to use computers. Appellant alleged that the performance of computer duties following the 1992 division-wide upgrade and reassignment of responsibilities caused stress due to a lack of experience with such equipment. As this allegation related directly to the performance of his regular or specially assigned duties, and has been substantiated by the evidence of record, it constitutes a compensable factor of employment in the event.<sup>9</sup> Further, the Board has held that emotional reactions to situations in which an employee is trying to meet his position requirements, including the initial training period, are compensable.<sup>10</sup> In this case, the hearing representative correctly found that appellant's problems in learning to use a computer, which began during his initial training and continued over a prolonged, sustained period and were well documented and uncontroverted, were sufficient to establish a compensable factor of employment.<sup>11</sup>

However, appellant's burden of proof is not discharged by the fact that he has established an employment factor which may give rise to a compensable disability under the Act. Appellant also has the burden of submitting sufficient medical evidence to support his claim that his difficulties in using the computer resulted in an employment-related emotional condition.<sup>12</sup> In the instant case, appellant submitted reports from Dr. Simpson which indicated that appellant was suffering from atypical bipolar disorder, mixed, severe, obsessive-compulsive disorder, and atypical panic disorder, with severe histrionic and passive-dependent features. Dr. Simpson's reports noted a preexisting emotional history dating since 1969 with extensive treatment. He noted in the report that, after he attended the training course in May 1995, appellant's emotional condition had decompensated to the extent that he became hysterical and threatened suicide. While generally supportive of appellant's claim, Dr. Simpson did not provide sufficient rationale to explain how appellant's employment aggravated his emotional condition causing disability on or after June 1995. For this reason, appellant has not met his burden of proof.

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<sup>9</sup> *Vaile F. Walters*, 46 ECAB 822 (1995).

<sup>10</sup> *See Donna J. DiBernardo*, 47 ECAB 700 (1996).

<sup>11</sup> The hearing representative found that appellant did not submit sufficient factual evidence to support his contention that training for other technical aspects of his job constituted a compensable factor of employment.

<sup>12</sup> *Chester R. Henderson*, 42 ECAB 352 (1991).

The decision of the Office of Workers' Compensation Programs dated November 13, 1997 is affirmed.

Dated, Washington, D.C.  
February 8, 2000

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Michael E. Groom  
Alternate Member