

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARDEN E. LAWRENCE and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Los Angeles, CA

*Docket No. 98-1193; Submitted on the Record;
Issued February 16, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty causally related to factors of employment; and (2) whether the Office of Workers' Compensation Programs properly denied merit review.

On August 25, 1997 appellant, then a 41-year-old psychiatric nurse assistant, filed an occupational disease claim, alleging that his stress and depression were caused by the "nature" of his work. He stopped work on July 15, 1997. By letter dated September 29, 1997, the Office informed appellant of the evidence needed to support his claim. By decision dated October 29, 1997, the Office denied the claim, finding that appellant had not submitted medical evidence to establish that he suffered from an employment-related emotional condition. On November 7, 1997 appellant requested reconsideration and submitted additional evidence. By decision dated January 5, 1998, the Office modified the prior decision, finding that appellant had not established that he sustained an emotional condition in the performance of duty on the grounds that his allegations were nonspecific and did not establish error or abuse on the part of the employing establishment. Appellant again requested reconsideration and submitted a medical report. By decision dated February 2, 1998, the Office denied appellant's reconsideration request, finding the evidence irrelevant to the issue of whether he sustained an emotional condition in the performance of duty. The instant appeal follows.

The Board finds this case is not in posture for decision.

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence establishing employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical

opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.¹

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to 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. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.² On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.³ While, as a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act,⁴ error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage.⁵ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁶

In support of his claim, appellant submitted statements in which he alleged that he became stressed because of taking care of the daily needs of psychiatric patients and that he became stressed following the death of a patient on July 14, 1997. He further alleged, that he would have to place the dead in body bags and escort them to the morgue, that he had been hit by patients and harassed at work. He submitted additional statements alleging that the employing establishment was short of staff, that he received insufficient training, that a nurse used abusive language towards him, that payroll employees were rude to him, that he was untrained for a light-duty job following a foot injury, that he had problems with a supervisor regarding a job assignment and that he had problems with supervisor, Lily Lara, regarding leave requests and pay differential who would yell at him and created a hostile workplace. He also submitted a November 15, 1997 statement from a coworker, Paul H. Diaz, who generally contended that appellant was stressed by employment and by his supervisor, Ms. Lara. The medical evidence submitted includes an August 12, 1997 report in which Dr. David Cheung, a psychiatrist, noted that appellant had been admitted to the Long Beach Veterans Administration Medical Center with diagnoses of schizophrenia, chronic paranoid type and possible dysthymia and borderline/schizotypal personality features.

¹ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² 5 U.S.C. § 8101 *et seq.*

³ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *See Norman A. Harris*, 42 ECAB 923 (1991).

⁵ *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁶ *Ruthie M. Evans*, 41 ECAB 416 (1990).

Regarding appellant's allegations, as a general rule, a claimant's reaction to administrative or personnel matters fall outside the scope of coverage of the Act.⁷ Administrative or personnel matters, although generally related to employment, are administrative functions of the employer rather than regular or specially assigned work duties of the employee.⁸ Matters involving the use of leave⁹ and pay¹⁰ are administrative matters not directly related to an employee's regular duties absent a showing of error or abuse on the part of the employing establishment. Similarly, an employee's complaints about the manner in which a supervisor performs supervisory duties or the manner in which a supervisor exercises supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor or manager in general must be allowed to perform their duties, that employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.¹¹ However, where the evidence discloses error or abuse on the part of the employing establishment, coverage will be afforded.¹² In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹³ To support such a claim, a claimant must establish a factual basis by providing probative and reliable evidence.¹⁴ Likewise, for harassment to give rise to a compensable disability under the Act, there must be some evidence that acts alleged or implicated by the employee did, in fact, occur.

In this case, the only evidence submitted by appellant is a statement from a coworker. However, Mr. Diaz did not refer to any specific incidents that would substantiate appellant's allegations.¹⁵ Appellant, therefore, has not established error or abuse on the part of the employing establishment regarding administrative matters. Appellant has implicated compensable employment factors in that he alleged that his emotional condition was caused by his general job duties, which included attending to the daily needs of patients, handling cadavere and escorting them to the morgue. The only evidence of record from the employing establishment is a brief statement dated September 9, 1997 in which Ms. Lara indicated that appellant had been discussing personal problems with other staff members and evidence regarding a previous injury and his subsequent light-duty assignment. Appellant's supervisor did not address his allegations pertaining to appellant's regular or specially assigned job duties.

⁷ 5 U.S.C. §§ 8101-8193; *see Janet I. Jones*, 47 ECAB 345 (1996).

⁸ *Gregory N. Waite*, 46 ECAB 662 (1995).

⁹ *Elizabeth Pinero*, 46 ECAB 123 (1994).

¹⁰ *Frederick D. Richardson*, 45 ECAB 454 (1994).

¹¹ *Christophe Jolicoeur*, 49 ECAB ____ (Docket No. 96-597, issued June 11, 1998).

¹² *See Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995).

¹³ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁴ *See Barbara J. Nicholson*, 45 ECAB 843 (1994).

¹⁵ *Jose L. Gonzalez-Garced*, *supra* note 12.

The record does not indicate that the Office requested information from the employing establishment pertaining to appellant's job duties and does not contain a position description.

Proceedings under the Act are not adversarial in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹⁶ As the above allegations made by appellant directly relate to the performance of his regularly assigned duties, under the principles set forth in *Cutler*,¹⁷ these could be compensable factors of his federal employment which contributed to his emotional condition. In its decision dated January 5, 1998, the Office denied appellant's claim on the grounds that he had not established a compensable factor of employment.

The Board notes that, where appellant's regular job duties involve assistance with hostile patients and requirements regarding the handling of the deceased, these would be considered compensable employment factors. The case will be remanded to the Office for further development.¹⁸ On remand, the Office should obtain the necessary information from the employing establishment to include a complete job description. The Office should then prepare an appropriate statement of accepted facts which provides a complete and proper frame of reference for a physician to review and develop the medical evidence as maybe necessary in this case. After such development as the Office deems necessary, it should issue a *de novo* decision.¹⁹

¹⁶ *Mark A. Cacchione*, 46 ECAB 148 (1994).

¹⁷ *Lillian Cutler*, *supra* note 3.

¹⁸ When the claimant has established a compensable factor of employment, the Office should base its decision on an analysis of the medical evidence; *see Abe E. Scott*, 45 ECAB 164 (1993).

¹⁹ In light of the Board's holding regarding the first issue in this case, the second issue is rendered moot.

The decisions of the Office of Workers' Compensation Programs dated February 2 and January 5, 1998 and October 29, 1997 are hereby set aside and the case is remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
February 16, 2000

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member