

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT L. ELEY and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Hampton, VA

*Docket No. 99-343; Submitted on the Record;
Issued July 7, 2000*

DECISION and ORDER

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

The issue is whether appellant has established that he has migraine headaches and depression causally related to compensable factors of his employment.

On August 3, 1996 appellant, then a 35-year-old barber, filed a claim for compensation indicating that he stopped working on May 17, 1996. He stated that the stress of his job caused an increase in migraine headaches. Appellant described several factors which he considered to be stressful. He noted that he had to perform his services while standing with only a 30-minute break. Appellant indicated that patients wanting a haircut had to stand in the hallway, posing a safety hazard. He commented that when there was such a line with people waiting, he felt he could not take a break. Appellant contended that whenever he took a break for a few minutes, his supervisor received complaints. He claimed that the lighting in the room was inadequate and the barber chair was broken. Appellant sought equipment to provide services to female patients but his requests were rejected. He complained that he previously would be paid in advance for his work but a change in employing establishment policy required that he not collect payment until after he gave a haircut. Appellant stated that patients constantly got haircuts and then stated they had no money to pay him, causing a decrease in the amount of money he earned. He stated that when he sought an increase in the amount of payment he was allowed to retain, his only pay in the employing establishment, the employing establishment rejected a request to raise it from 65 percent to 75 percent. Appellant claimed that he was to be reimbursed for equipment he purchased but he never received reimbursement. He stated that he received inconsistent responses when he requested an increase in the size of his shop at the employing establishment. Appellant claimed that several requests to take time off due to migraine headaches were denied. He was then required to submit a doctor's note for each absence even though he had sufficient leave time available. Appellant stated that when his physician instructed him to take off work for an unspecified period of time, his supervisor pressured him for a date of return, even calling several times a day and coming to appellant's house three times. He contended that in the last visit, the supervisor's language was less than professional.

In response, appellant's supervisor stated that appellant was never promised a new barbershop at the employing establishment because space was at a premium and a new barbershop was a low priority. He claimed appellant had sufficient time in his schedule to take his scheduled 30-minute lunch and two 15-minute breaks. Appellant noted that appellant worked in the wards, three hours a day, four days a week, cutting hair in the wards and spent only one full day a week in the barber shop. He stated, based on information given by appellant, that there was rarely a line in the hallway for people wanting haircuts. Appellant noted that there was seating in the shop for three people and space for one wheelchair. He stated that the employing establishment provided appellant with razors but appellant bought his own because he did not like the razors provided by the employing establishment. Appellant commented that there was not a large demand for services for females at the employing establishment since most patients were male and the female staff rarely had time in the workday to get complete styling. The supervisor stated that on May 15, 1996 appellant walked into his office, gave a note from a physician giving him an undefined period of time off from work, and left without an exit interview or filling out the necessary paperwork. He indicated appellant never returned his telephone calls, which required him to go to appellant's house. The supervisor noted that he had to get the key to the shop from appellant and returned personal items to him that had been left in the shop.

In a March 27 1997 decision, the Office of Workers' Compensation Programs rejected appellant's claim for compensation on the grounds that he had not sustained an injury in the performance of duty. The Office indicated that issues relating to appellant's leave, the size and location of the barber shop and the supervisor's visit to his home were accepted as having occurred but were not within appellant's performance of duty. The Office further indicated that it had not accepted that appellant was required to stand in one place continually without adequate support and was allowed only one 30-minute break or that his supervisor harassed him in the visit to his house.

In an April 25, 1997 letter, appellant, through his attorney, requested a hearing before an Office hearing representative, which was conducted on February 23, 1998. In a July 22, 1998 decision, the Office hearing representative found that most of the factors cited by appellant and reviewed by the Office were administrative and personnel matters and therefore were not within appellant's performance of duty. He found that the requirement that appellant seek payment from customers after the haircut and the result that many customers did not pay directly involved appellant's job duties. The Office hearing representative concluded that this factor constituted a compensable factor of employment. He also found that the broken chair, in which a customer could not sit back to receive a haircut, was also a compensable factor of employment. The hearing representative stated that appellant's financial stress due to the drop in income, leading to a filing for bankruptcy, was not a compensable factor of his employment. He indicated that, although there were several compensable factors of employment, there was insufficient medical evidence of record to establish that these factors caused or contributed to appellant's condition. The Office hearing representative therefore affirmed the Office's March 27, 1997 employment injury.

The Board finds that appellant had not established that his migraine headache or emotional conditions were causally related to compensable factors of his employment.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. 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 Act. 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. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.¹ When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.² In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.³

Appellant contended that the barbershop he used was too small, possessed poor lighting and posed a safety hazard if patients had to stand in the hallway. All these factors related to the physical comfort of the employing establishment and appellant's desire to work in a better environment. These matters therefore are not compensable factors of appellant's employment.⁴ Appellant also claimed that he was denied leave several times and was forced to submit doctor's statements in support of other requests for sick leave. The use of leave is an administrative matter and therefore is not considered a compensable factor of employment unless there is evidence of error or abuse on the part of the employing establishment. Appellant has not shown such error or abuse in his supervisor's request for substantiation for the use of sick leave. He further claimed that his supervisor visited his house several times pursuant to his departure from the employing establishment in May 1996 and verbally abused him on one occasion. The supervisor claimed that appellant's departure was sudden, without an exit interview or completing paperwork. He stated that he had to go to appellant's house because appellant did not return telephone calls. The supervisor also noted that he had to get the keys to the barbershop from appellant. The actions of appellant's supervisor were, again, administrative in nature and therefore not compensable factors of employment. Appellant made a general allegation that supervisor's actions constituted harassment. The actions of a supervisor which an employee characterizes as harassment may constitute factors of employment giving rise to

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

² *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

³ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁴ *Ralph O. Webster*, 38 ECAB 521 (1987).

coverage under the Act. However, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.⁵ Appellant has not established such a basis in this case. In particular, he has not established that the supervisor engaged in verbal abuse. Appellant noted that the employing establishment refused to allow him to buy equipment to use for women and refused to change the rate of his pay. These matters are also administrative actions within the control of the employing establishment and not within the performance of appellant's assigned duties. They only relate to appellant's desire for more customers and more pay. Appellant contended that he was unable to take his breaks. The evidence submitted by his supervisor, however, indicated that appellant had sufficient time to take his breaks. Appellant therefore, has not substantiated this particular factor of employment occurred as he alleged.

The Office hearing representative found two factors of employment to be compensable, the condition of the barber chair and the change in the method by which appellant was paid. The broken chair would present appellant difficulties in performing his duties of cutting customer's hair. The failure of customers to pay appellant for haircuts given directly related to the manner in which he was compensated for performing his assigned duties by receiving a percentage of the amount paid. The hearing representative therefore properly found that these factors were compensable factors of employment.

The medical evidence of record, however, did not relate appellant's condition to these particular factors of employment. In an August 7, 1996 report, Dr. Donald L. Mingione, a clinical psychologist, diagnosed depression and vascular headaches with a cluster pattern. He submitted other reports which showed appellant had a history of a head injury in November 1985 when he fell off a ladder. Dr. Mingione indicated that he had requested appellant take leave from his job to place appellant in a stress reduction program. However, he did not specify the source of appellant's stress. In a September 20, 1996 report, Dr. Mingione stated that appellant experienced episodes of depression and dysphoria relating to his capacity and recurrence of headaches. He noted that the headaches appeared to be exacerbated by situations of stress, either vocational or arising from other areas. Dr. Mingione did not describe the stressful parts of appellant's job that produced the stress which exacerbated appellant's condition. In a June 24, 1997 report, he stated that appellant had been treated for post concussion headaches which had been poorly controlled. Dr. Mingione indicated that appellant had not responded to any of the usual courses of treatment. He commented that a correlation had been made between occupational stress and social stress and the onset of the headache. Dr. Mingione indicated that appellant had sleep difficulty, which frequently was a correlate of a depressive disorder that accompanied chronic pain disorder and the vocational life losses appellant had experience. He stated that the limitations experienced by appellant on his life activities on and off the job which were a direct extension from the unpredictable acute pain which caused appellant to isolate himself until the pain abated. Dr. Mingione again did not discuss what aspects of appellant's job caused his condition. Appellant therefore did not submit any medical evidence that directly related his emotional condition and headaches to compensable factors of his employment.

⁵ *Joan Juanita Greene*, 41 ECAB 760 (1990).

The decision of the Office of Workers' Compensation Programs dated July 22, 1998 is hereby affirmed.

Dated, Washington, D.C.
July 7, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member