

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. 98-2374; Submitted on the Record;
Issued March 17, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition while in the performance of his duties.

On September 25, 1995 appellant, a materials handler, filed a claim asserting that he sustained an emotional condition while in the performance of his duties. He alleged that on September 8, 1995 he received a disciplinary action from his supervisor in reprisal for his union activities. In a written statement, he explained that a reduction in personnel created a stressful work environment. He stated that each time he reported Mr. Lowe for working beyond scheduled hours without pay, which violated the union contract, he shortly thereafter received disciplinary action from Mr. DiMattio or Ms. Oldakowski. He stated that these individuals continually harassed and intimidated him. He stated that when Mr. Lowe left, his loss of leadership created a stressful work environment. Appellant stated that Ms. Oldakowski denied his request to be designated leader or supervisor, which generated an even more stressful work environment. He stated that he reported two employees for verbal abuse but that Ms. Oldakowski refused union representation. Appellant added:

“In September 1995 Mr. Larkin, Associate Director, suspended me and did not provide charges requiring adverse action. Mr. DiMattio proposed my removal and accused me of misconduct on five separate occasions. He did not provide counseling, receive my testimony, or provide union representation for any of these occasions.

“In October 1995 I received a suspension and reassignment from Mr. Lucas, [the] Director.

“I am feeling a great deal of stress because this administration has taken disciplinary action against me, in reprisal for my union activities.”

The employing establishment contested appellant's claim on the grounds that the disciplinary action against appellant was valid and not based on his union activities but rather was based on appellant's failure to exhibit acceptable interpersonal behavior skills. The employing establishment asserted that appellant's alleged stress was directly related to his own repeated misconduct. The employing establishment denied appellant's charges of harassment and denial of union representation. The employing establishment explained that the reduction in personnel was a result of the workload having decreased significantly. The employing establishment also explained that the warehouse always had adequate coverage for the workload.

Appellant replied that he did not believe the warehouse workload decreased. He stressed consideration of harassment from supply management in reprisal for his activities as a union steward.

In a decision dated July 2, 1996, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that evidence failed to demonstrate that the claimed injury occurred in the performance of duty. On October 26, 1996 an Office hearing representative set aside the July 2, 1996 decision and remanded the case for appropriate findings of fact on the factors or incidents implicated by appellant. In a decision dated March 31, 1997, the Office denied appellant's claim on the grounds that fact of injury was not established. The Office made findings of fact on the factors or incidents implicated by appellant and found that appellant had failed to establish compensable factors of employment.

Appellant requested an oral hearing before an Office hearing representative, which was held on May 19, 1998. In a decision dated July 8, 1998, the hearing representative affirmed the Office's March 31, 1997 decision. The hearing representative found that the evidence failed to establish compensable factors of employment.

The Board finds that the evidence fails to establish that appellant sustained an emotional condition while in the performance of his duties.

Workers' compensation law does not cover each and every injury or illness that is somehow related to his employment.¹ An employee's emotional reaction to an administrative or personnel matter is generally not covered. Thus, the Board has held that an oral reprimand generally does not constitute a compensable factor of employment,² neither do disciplinary matters consisting of counseling sessions, discussion or letters of warning for conduct;³ investigations;⁴ determinations concerning promotions and the work environment;⁵ discussions

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

² *Joseph F. McHale*, 45 ECAB 669 (1994).

³ *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

⁴ *Sandra F. Powell*, 45 ECAB 877 (1994).

⁵ *Merriett J. Kauffman*, 45 ECAB 696 (1994).

about an SF-171;⁶ reassignment and subsequent denial of requests for transfer;⁷ discussion about the employee's relationship with other supervisors;⁸ or the monitoring of work by a supervisor.⁹

Nonetheless, the Board has held 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.¹⁰ Perceptions alone, however, 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.¹¹

Appellant has alleged that his emotional condition is causally related to reprisals for his activities as a union steward. In doing so, he claims error or abuse by the employing establishment in administration or personnel matters. Appellant, however, has submitted no probative and reliable evidence to establish that such reprisals took place. The employing establishment has explained that disciplinary action against appellant was based on his failure to exhibit acceptable interpersonal behavior skills. Appellant has offered no favorable grievance decision or other evidence to the contrary. Without probative and reliable evidence establishing a factual basis for his claim, appellant's perception of reprisal is insufficient to establish a compensable factor of employment.

Appellant also implicates harassment, the loss of personnel, the failure to be designated leader or supervisor and the denial of union representation. The employing establishment has denied harassment and the denial of union representation and appellant has submitted no probative and reliable evidence that harassment or denial of union representation actually occurred. The employing establishment has indicated that there was a reduction in personnel and that appellant was denied a request to be designated leader, but the record fails to support that the reduction resulted in an increased workload or that the denial of appellant's request was erroneous or abusive.

Because the record contains no reliable and probative evidence corroborating appellant's allegations, the Board finds that the Office properly denied appellant's claim.

⁶ *Lorna R. Strong*, 45 ECAB 470 (1994).

⁷ *James W. Griffin*, 45 ECAB 774 (1994).

⁸ *Raul Campbell*, 45 ECAB 869 (1994).

⁹ *Daryl R. Davis*, 45 ECAB 907 (1994).

¹⁰ *Margreate Lublin*, 44 ECAB 945 (1993).

¹¹ *Ruthie M. Evans*, 41 ECAB 416 (1990).

The July 8, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

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

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member