

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARTHUR E. WALKER and DEPARTMENT OF HEALTH & HUMAN
SERVICES, FOOD & DRUG ADMINISTRATION, Brooklyn, NY

*Docket No. 98-1798; Submitted on the Record;
Issued May 1, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

On October 3, 1996 appellant, then a 33-year-old physical science technician, filed a notice of traumatic injury, alleging that he suffered head and chest pains, as a result of a confrontation with supervisors on September 20, 1996. By decision dated January 8, 1997, the Office of Workers' Compensation Programs denied this claim. Appellant then requested an oral hearing and an Office hearing representative found that the Office failed to consider all the factors that appellant, in subsequent documentation, alleged caused his emotional conditions. It, therefore, set aside, the Office January 8, 1997 decision and returned the case for the Office to consider all the incidents appellant alleged contributed to his emotional condition. On July 1, 1997 the Office determined that appellant's claim should be processed as an occupational disease claim. Appellant, therefore, filed a notice of occupational disease on August 6, 1997.

Appellant's chief allegation is that the employing establishment engaged in a pattern of abusive behavior beginning in 1991 in retaliation for his filing of an Equal Employment Opportunity (EEO) claim that contributed to his emotional condition. In this regard, appellant asserts that the employing establishment acted abusively in many administrative matters. He alleges that supervisors Ella Walker and Alfred King yelled at him on September 20, 1996 regarding the manner of his overtime work. Appellant further states that the employing establishment harassed him regarding his request for leave for a religious occasion and his subsequent efforts to repay the leave with overtime work. Appellant asserts that following a June 1993 verbal altercation with a co-worker, the employing establishment took inadequate disciplinary actions to protect his safety from the co-worker. In addition, appellant indicates that the employing establishment forcibly removed him from the work site and placed him on administrative leave on May 24, 1994 due to its animus against him. He also states that he received an unfair performance appraisal in February 1995 in retaliation for his EEO activity.

In addition to these administrative matters, appellant contends that the employing establishment acted in a retaliatory fashion by forcing him to visit a nearby prison, which was soon to open, despite his protest that he had uncomfortable experiences visiting a prison as a youth. He also claims that the employing establishment initiated two harassing telephone calls to his home in March 1994. Finally, appellant states that his supervisor, Ms. Walker, directed her husband, a co-worker, to threaten him while at work.

In a letter dated September 30, 1997, the employing establishment denies that it undertook any administrative action or otherwise acted to retaliate against appellant for his EEO complaint. The employing establishment states that the suspensions appellant served in 1991 and 1994 were justified by his insubordination and his being absent without leave. It notes that appellant's EEO claims and grievances regarding the suspensions were dismissed. It further states that it verbally warned the co-worker allegedly threatening appellant in June 1993 and that appellant's safety was not threatened due to the incident. The employing establishment indicates that appellant was placed on administrative leave and removed from the workplace on May 24, 1994 only because he was overheard threatening the lives of co-workers. It states that following an investigation appellant was returned to work without any disciplinary action. The employing establishment contends that appellant's September 1995 performance appraisal was supported by his poor performance. Finally, the employing establishment indicates that it merely requested appellant provide the reason for his religious leave request in June 1996 and that subsequently it only asked appellant to provide a schedule of the overtime work, to comply with safety rules and to complete only necessary overtime work.

By decision dated February 6, 1998, the Office determined that appellant failed to establish any compensable factors of employment and found that the evidence failed to establish that appellant sustained an injury in the performance of duty.

The Board finds that appellant has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ 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.²

In cases involving emotional conditions, the Board has held that when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.³ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁴

In the present case, appellant alleges that in numerous instances the employing establishment acted abusively in conducting administrative matters in order to retaliate against his previous filing of an EEO complaint. As mentioned above, this alleged abuse includes: Supervisors Walker and King yelling at him on September 20, 1996 regarding his overtime work, supervisors harassing him regarding his request for leave for a religious occasion, supervisors harassing him regarding his overtime work, the failure of supervisors to protect his safety from a co-worker following a verbal altercation with appropriate disciplinary action, supervisors removing him from the work site and placing him on administrative leave on May 24, 1994 because a co-worker overheard a perceived threat of violence from appellant and a poor performance appraisal in September 1995.

The Board has found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.⁵ Appellant, however, submitted no corroborating evidence supporting his assertion that the employing establishment acted in error or abusively in these administrative matters. Moreover, the employing establishment provided reasonable explanations for its actions in these administrative matters. It indicated that appellant's suspensions stemmed from documented instances of insubordination and his being absent without leave. It stated that it provided adequate discipline relating to the June 1993 verbal altercation appellant had with a co-worker by verbally warning the parties involved. It stated that appellant was placed on administrative leave and asked to leave the work site on May 24, 1994 only because a worker heard appellant threaten the lives of co-workers. Appellant admitted making the violent statement in a deposition dated June 7, 1996. The employing establishment indicated that appellant's poor performance appraisal was supported by his poor performance. Finally, it indicated that it merely inquired about the reason for appellant's leave request for a religious occasion and then provided reasonable monitoring of appellant's overtime work. Accordingly, appellant's mere perceptions of error or abuse in these administrative matters are not sufficient to establish entitlement to compensation.⁶

³ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁴ *Id.*

⁵ *Martin Standel*, 47 ECAB 306 (1996).

⁶ *Janet I. Jones*, 47 ECAB 345 (1996).

In addition to these allegations of abuse concerning the administrative matters, appellant alleges that the employing establishment and his supervisors harassed him by requiring him to visit a prison, by calling his home with abusive telephone calls and by having Ms. Walker's husband threaten him on the job site. Appellant, however, fails to provide any evidence that the employing establishment was responsible for the abusive telephone calls he received in March 1994 or that Ms. Walker instructed her husband to threaten appellant on April 30, 1996. In fact, the employing establishment indicates that appellant initiated the discussion with Ms. Walker's husband on April 30, 1996. Finally, the record is devoid of any evidence establishing that the employing establishment required appellant to visit the prison in retaliation for his EEO activity.⁷ Consequently, because appellant failed to provide any corroborating evidence that these events occurred, he failed to meet his burden of establishing that the harassment occurred.⁸ Appellant, therefore, failed to establish a compensable factor of employment and did not meet his burden of proof in establishing that he sustained an emotional condition in the performance of duty.

The decision of the Office of Workers' Compensation Programs dated February 6, 1998 is affirmed.

Dated, Washington, D.C.
May 1, 2000

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁷ Even if appellant is contending that his emotional condition stemmed directly from the prison visit, rather than his perception of retaliation, the record is devoid of any medical evidence establishing that he sustained an emotional condition due to the prison visit.

⁸ *Erdward J. Meros*, 47 ECAB 609 (1996).