

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN O. PETERSON, III and DEPARTMENT OF THE NAVY,
SPACE & NAVAL WARFARE SYSTEMS CENTER, San Diego, CA

*Docket No. 99-27; Submitted on the Record;
Issued May 19, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

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

The Board finds that appellant did not meet 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

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.³ This burden includes the submission of a detailed

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).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

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 of Workers' Compensation Programs, as part of its 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.⁵ 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.⁶

On November 4, 1997 appellant, then a 31-year-old electronics technician, filed a claim alleging that he sustained an emotional condition as a result of a number of employment incidents and conditions at work.⁷ By decision dated January 26, 1998, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. By decision dated June 3, 1998, the Office denied modification of its January 26, 1998 decision. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

In several statements, appellant alleged that the employing establishment made errors in his temporary assigned duty and permanent change of station orders. He alleged that, when the employing establishment sent him from his work site in Charleston, South Carolina to Mayport, Florida, it incorrectly issued him temporary assignment duty order because Mayport was his permanent duty station and temporary assignment duty orders cannot be used for such temporary assignment duty in a location which is the permanent duty station. Appellant further claimed that he was advanced about \$10,000.00 from his permanent change of station orders for expenses related to his move but that the problems with his temporary assignment duty orders prevented him from being reimbursed. He claimed that he developed stress related to the fact that he had to repay more than \$8,000.00 in rental, moving and related expenses in connection with his move to Mayport.

Regarding appellant's claim that the employing establishment wrongly handled his temporary assignment duty and permanent change of station orders, the Board finds that this allegation relates to an administrative or personnel matters, unrelated to the employee's regular

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

⁷ Appellant was terminated from the employing establishment effective December 31, 1997 due to irregularities in his security clearance application.

or specially assigned work duties and does not fall within the coverage of the Act.⁸ Although the handling of such orders is generally related to the employment, it is an administrative function of the employer, and not a duty of the employee.⁹ However, the Board has also 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. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁰ The Board notes that the record contains evidence which shows that the employing establishment committed error in connection with the handling of appellant's temporary assignment duty and permanent change of station orders. In affidavits completed in January 1998, three superiors, Captain James Hoffman, Georgia Lack, and Glenda Algozzini, confirmed that errors were made in appellant's temporary assignment duty and permanent change of station orders. Thus, appellant has established a compensable employment factor under the Act with respect to the errors in his temporary assignment duty and permanent change of station orders.

Appellant has also alleged that harassment and discrimination on the part of his supervisors contributed to his claimed stress-related condition. He alleged that his supervisors, including Frank Graham, harassed him by attempting to pressure him into signing temporary assignment duty and permanent change of station orders which he felt were fraudulent.¹¹ Appellant also alleged that he was subjected to harassment and discrimination regarding an investigation into his security clearance and his subsequent termination from the employing establishment because he had engaged in "whistle-blowing" activities. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹² However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹³

⁸ See *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

⁹ *Id.*

¹⁰ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹¹ Appellant alleged that they wanted him to incorrectly change his permanent duty station retroactively.

¹² *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹³ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors.¹⁴ Appellant alleged that supervisors made statements and engaged in actions which he believed constituted harassment and discrimination, but he provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.¹⁵ With respect to appellant's claim that he was encouraged to sign fraudulent orders, Ms. Lack testified that appellant was provided with an opportunity to file temporary assignment duty and permanent change of station paperwork which accurately reflected his situation but was not asked to say anything which was untrue. Appellant filed a Merit Systems Review Board claim in connection with his termination, but a decision was issued in April 1998 which found that appellant's termination was proper and not due to whistle-blowing activities. Appellant initiated an Equal Employment Opportunity Commission claim with respect to these matters but he did not follow through with this claim. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.¹⁶

In the present case, appellant has only identified a compensable factor of employment with respect to the errors in his temporary assignment duty and permanent change of station orders. 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. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.¹⁷

Appellant submitted medical evidence in support of his claim, including reports of Dr. Howard M. Kurtzman, an attending Board-certified psychiatrist. The reports of Dr. Kurtzman, however, do not contain an opinion that appellant sustained an emotional condition due to the accepted employment factor, the errors in his temporary assignment duty and permanent change of station orders. In a note dated October 13, 1997, Dr. Kurtzman indicated that appellant reported "financial problems due to administrative mistakes by his agency" but is unclear to which administrative mistakes appellant referred. Moreover, the note is of limited probative value in that it does not contain an opinion that appellant sustained a diagnosable condition due to the accepted employment factor or any other factor.¹⁸

¹⁴ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁵ See *William P. George*, 43 ECAB 1159, 1167 (1992).

¹⁶ Moreover, appellant did not show that the employing establishment committed error or abuse with respect to the administrative aspects of the security clearance investigation and his termination.

¹⁷ See *William P. George*, 43 ECAB 1159, 1168 (1992).

¹⁸ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

The decisions of the Office of Workers' Compensation Programs dated June 3 and January 26, 1998 are affirmed.

Dated, Washington, D.C.
May 19, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member