

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HAROLD F. FRYE and U.S. POSTAL SERVICE,
ACCOUNTING SERVICES, Richmond, VA

*Docket No. 99-720; Submitted on the Record;
Issued November 21, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to factors of his federal employment.

On August 27, 1997 appellant, then a 46-year-old accounting technician, filed an occupational disease claim alleging that he sustained an emotional condition, which he attributed to being "passed over" to work in a particular location,¹ having his supervisors chosen by a quota system and not by merit, not being treated with respect by his supervisors, fearing that his job would be abolished, being denied a change in workdays and reporting times, having to meet deadlines in performing his job, and not being selected for certain positions. He indicated that he first became aware of his condition in July 1988. Appellant stopped work on August 18, 1997.

In a narrative report dated August 19, 1997, Dr. Padmani Atri, a psychiatrist, related that appellant complained of job stress. Dr. Atri provided the results of a mental status examination and diagnosed major depression, but did not attribute appellant's condition to any specific factors of employment.

In form reports dated August 26, 1997, Dr. Sigmund Sellman, a family practitioner, diagnosed a major affective disorder, which appellant attributed to job stress and noted that he had referred appellant to a psychiatrist.

In a statement dated September 4, 1997, Wayne Mangigian, appellant's supervisor, stated that appellant was told in a meeting that everyone's schedule would be examined to determine if any changes would benefit the office workload. He stated that appellant's position was no more stressful than any other position at the employing establishment.

In a memorandum dated October 3, 1997, Mr. Mangigian stated his opinion that appellant's job in the accounting office was not stressful and there was no staffing shortage that

¹ Appellant noted that he did later obtain a job in this desired location.

required appellant to work overtime or carry any additional workload and he had no problem with appellant's job performance. He noted that there were no conduct problems and he seemed to have no conflicts with coworkers but that he did express concern over the possibility that his reporting time might be changed.

In a memorandum dated October 17, 1997, Patrick Finney, a supervisor, stated that he considered appellant a very good employee and noted that there were never any unusual demands placed upon him nor did he ever appear overworked or stressed in performing his duties. He stated that one of appellant's duties was to distribute the payroll checks and collect salary advances every two weeks and, to the best of his knowledge, he was never personally blamed by other employees for timecards or salary checks arriving late or timecard reporting mistakes. Mr. Finney stated that appellant was provided with adequate training, office equipment and space and, when necessary, additional help in completing his workload and he was never required to work overtime.

By decision dated January 9, 1998, the Office denied appellant's claim for compensation benefits.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained an emotional condition causally related to compensable factors of his employment.

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.² 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.³

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.⁴ This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁵

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 adjudicatory function, must make findings of fact regarding which working conditions are

² 5 U.S.C. §§ 8101-8193.

³ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Pamela R. Rice*, 38 ECAB 838 (1987).

⁵ *Effie O. Morris*, 44 ECAB 470 (1993).

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.⁶ 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.⁷

In this case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegation that he was not granted a requested change in his days off and reporting times, the Board finds that this allegation concerning his assigned work schedule relates to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and does not fall within the coverage of the Act.⁸ Although the assignment of work schedules 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.¹⁰ In a statement dated September 4, 1997, Mr. Mangigian, appellant's supervisor, stated that appellant was told in a meeting that everyone's schedule would be examined to determine if any changes would benefit the office workload. Thus, it appears that any change in work schedules was due to improving office efficiency. Appellant has failed to show error or abuse in the employing establishment's handling of his work schedule. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's allegation of denial of promotions and a request to work in a different location, the Board has previously held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform his regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.¹¹ Thus, appellant has not established a compensable employment factor under the Act in this respect.

⁶ See *Margaret S. Krzycki*, 43 ECAB 496 (1992); *Norma L. Blank*, 43 ECAB 384 (1992).

⁷ *Id.*

⁸ See *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Donald W. Bottles*, 40 ECAB 349 (1988).

Regarding appellant's allegation that he developed stress due to insecurity about maintaining his position, the Board has previously held that a claimant's job insecurity, including fear of a reduction-in-force, is not a compensable factor of employment under the Act.¹²

Regarding appellant's allegation that his supervisors were not chosen for their positions based on merit, the evidence fails to establish this allegation as factual. Therefore, it is not deemed a compensable factor of employment.

Appellant has also alleged that he was not treated respectfully by his supervisors. To the extent that incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹³ 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.¹⁴ 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 or coworkers.¹⁵ Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's allegation that his emotional condition was caused by having to meet deadlines in preparing paychecks for delivery to employees, the Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable.

In *Joseph A. Antal*,¹⁶ a tax examiner filed a claim alleging that his emotional condition was caused by the pressures of trying to meet the production standards of his job and the Board, citing the principles of *Cutler*, found that the claimant was entitled to compensation. In *Georgia F. Kennedy*,¹⁷ the Board, citing the principles of *Cutler*, listed employment factors, which would be covered under the Act, including an unusually heavy workload and imposition of unreasonable deadlines.

In this case, in his statement dated September 4, 1997, Mr. Mangigian stated that appellant's position was no more stressful than any other position at the employing establishment. In a memorandum dated October 3, 1997, Mr. Mangigian stated his opinion that

¹² See *Artice Dotson*, 41 ECAB 754 (1990).

¹³ *David W. Shirey*, 42 ECAB 783 (1991); *Kathleen D. Walker*, 42 ECAB 603 (1991).

¹⁴ *Jack Hopkins, Jr.*, 42 ECAB 818 (1991).

¹⁵ See *Joel Parker, Sr.*, 43 ECAB 220 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁶ 34 ECAB 608 (1983).

¹⁷ 35 ECAB 1151 (1984).

appellant's job in the accounting office was not stressful and there was no staffing shortage that required appellant to work overtime or carry any additional workload and he had no problem with appellant's job performance.

In a memorandum dated October 17, 1997, Mr. Finney stated that he considered appellant a very good employee and noted that there were never any unusual demands placed upon him nor did he ever appear overworked or stressed in performing his duties. He stated that one of appellant's duties was to distribute payroll checks and collect salary advances and, to the best of his knowledge, appellant was never personally blamed by other employees for timecards or salary checks arriving late or timecard errors. Mr. Finney stated that appellant was provided with adequate training, office equipment and space and, when necessary, additional help in completing his workload and he was never required to work overtime. Appellant agreed that he never had to work overtime. Thus, the evidence does not establish that the employing establishment imposed unreasonable deadlines on appellant regarding the handling of the paychecks or that he had an unusually heavy workload.

Even if appellant's allegations concerning his deadlines and workload were considered a compensable factor of employment in this case, the medical reports from Drs. Sellman and Atri do not attribute appellant's emotional condition to any specific employment factors. Therefore, appellant has not established that his emotional condition was causally related to his reaction to his workload and deadlines.

For the foregoing reasons, appellant has not established that he sustained an emotional condition in the performance of duty.

The decision of the Office of Workers' Compensation Programs dated January 9, 1998 is affirmed.

Dated, Washington, DC
November 21, 2000

Michael J. Walsh
Chairman

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member