

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GEORGE COSPER and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Birmingham, AL

*Docket No. 99-724; Submitted on the Record;  
Issued November 2, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,  
VALERIE D. EVANS-HARRELL

The issue is whether appellant established that he sustained an emotional condition in the performance of duty.

On February 26, 1998 appellant, then a 56-year-old revenue officer, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he suffered from stress and depression due to harassment at work by his supervisor and management and their combined refusal to provide him fair treatment in work assignments and work environment.

In an attachment to his CA-2 claim form, appellant indicated that, while he was working as a group manager in 1995, he had been reprimanded for accepting a prohibited gift.<sup>1</sup> According to appellant, although the gift was of little value, management underwent an extensive investigation, which appellant thought was unnecessary and excessive. He indicated that he requested a transfer to the field as a revenue officer and then came under the supervision of several temporary group managers who took a "dictatorial attitude" toward him and treated him unfairly in the assignment of his work. Appellant noted that when he attempted to discuss his assignments with superiors he was simply told what to do without any regard for his complaints. He alleged that he was required to meet impossible deadlines,<sup>2</sup> and that he was assigned extra cases in an attempt to lower his annual appraisal rating. He complained that the management improperly refused to implement an electronic method for obtaining travel vouchers despite suggestions from the staff that the change could be accomplished in less than 24 hours. Appellant further alleged that management took on a "continuous witch hunt" of field

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<sup>1</sup> The employing establishment reprimanded appellant for accepting an autographed baseball, the value of which was assessed between \$250.00 and \$350.00, in violation of the government wide standards of ethical conduct.

<sup>2</sup> Appellant alleged that the employing establishment announced a new policy of closing down certain businesses for unpaid taxes, which he considered to be impossible to implement and would result in appellant and other revenue officers failing to meet their critical standards. The policy is referred to as the "in business repeater strategy."

employees to attempt to find misconduct on the part of appellant and other senior revenue officers.

The record indicates that appellant filed a number of union grievances alleging that his group manager improperly assigned him 19 or more cases outside of his assigned area of work and in violation of a bargaining agreement. He also contended that the cases were improperly graded for assignment.

Appellant also alleged an incident on February 9, 1998 as demonstrating a hostile work environment. He stated that, when he returned to work from sick leave another employee, Adelaide Bradford, had moved his coffee pot and taken over a corner of the office space designated as common area. Appellant indicated that he asked Ms. Bradford where his coffee pot was and why the power had been shut off in his work space but that her reaction was to shout at him and walk off.<sup>3</sup>

In support of his claim, appellant submitted a treatment noted by Dr. John R. Langlow, a Board-certified psychiatrist, who recommended that appellant stay off work until March 30, 1998 due to “work-related depression.”

Unsigned office notes dated January 23, 1998 from Dr. Langlow indicate:

“[The] patient says that he is feeling that the workplace has caused him to reach the point where he does not feel appropriate for it any longer. [Appellant] feels that his main supervisor, not necessarily his immediate supervisor, is pushing him too far, to the point he is having mood swings he cannot control. He is not motivated and he feels dumped on. [Appellant] feels that he is starting to not respond properly to supervision at work and he is talking back when he should not. He is not necessarily willing to follow all the directives from his supervisor.”

Dr. Langlow opined that appellant was disabled from work due to major depression, single episode. He concluded that he had no reason to doubt appellant’s position that he was totally disabled.

In a report dated March 4, 1998, David E. Myers, an EAP counselor and Ph.D., noted that appellant had a history of feeling abused and picked on by a change in management over a two-to three-year period. He described a “precipitating incident” being that appellant was accused of taking a baseball and having to go through an extensive investigation that was “allegedly unnecessary in [appellant’s] viewpoint.” Mr. Myers opined that appellant had symptoms suggestive of major depressive disorder, single episode.

In a March 27, 1998 letter, the Office of Workers’ Compensation Programs advised appellant of the factual and medical evidence necessary to establish his claim and allotted him 30 days within which to submit it.

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<sup>3</sup> Appellant submitted two witness statements indicating that, while Ms. Bradford appeared very agitated to have to answer appellant’s questions regarding the location of his personal belongings, appellant did not shout at Ms. Bradford at any time during the exchange.

In a decision dated May 19, 1998, the Office denied appellant's claim on the grounds that he failed to allege a compensable factor of his employment as the cause of his emotional condition. The Office further found that appellant failed to substantiate his allegations of harassment. Thus the claimed injury did not occur in the performance of duty.

In a letter dated June 19, 1998, appellant requested reconsideration and submitted additional evidence in support of his claim.

Appellant alleged on reconsideration that on May 28, 1998 he was directed to go home by his supervisor because he had not provided a doctor's slip approving him for work. He advised that he returned to work on June 5, 1998 and turned in a doctor's slip under protest. Appellant contends that his supervisor had no authority to demand such a letter and that he was improperly placed on both sick and annual leave for the time he was forced to be off work by his supervisor.

He also alleged that, on June 25, 1998, he was ignored by one of the branch supervisors and contends that this is further evidence that he is in a hostile work environment.

In a decision dated September 23, 1998, the Office denied modification following a merit review.

The Board finds that appellant failed to carry his burden of proof in establishing that he sustained an emotional condition in the performance of duty.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his employment.<sup>4</sup> This burden includes the submission of a detailed description of the employment conditions or factors, which appellant believes caused or adversely affected the condition for which she claims compensation.<sup>5</sup> This burden also includes the submission of rationalized medical opinion evidence, based upon a complete and accurate factual and medical background of appellant, showing a causal relationship between the condition for which compensation is claimed and the implicated factors or conditions of her federal employment.<sup>6</sup>

The Board notes that the mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of an employment relationship.<sup>7</sup> Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused or aggravated by employment factors, is sufficient to

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<sup>4</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>5</sup> *See* 20 C.F.R. § 10.100(b), 10.110.

<sup>6</sup> *See Ruth C. Borden*, 43 ECAB 146 (1991); 20 C.F.R. §10.110(a).

<sup>7</sup> *Ruth C. Borden*, *supra* note 6; *Paul D. Weiss*, 36 ECAB 720 (1985).

establish causal relation.<sup>8</sup> Causal relationship is a medical issue that can be established only by medical evidence.<sup>9</sup>

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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but nevertheless are not covered because they are not found to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.<sup>10</sup>

In the instant case, appellant alleged generally and repeatedly that he suffered from harassment and discrimination in the course of his assigned duties. However, he failed to present specific, reliable, probative and substantial evidence that this occurred. Specifically, there is no factual evidence of record to establish that management underwent a "witchhunt" or improperly conducted an investigation regarding appellant's acceptance of a prohibited gift. There is also no evidence to show that appellant was treated unfairly in the assignment of his work, with the underlying motive of management to be the lowering of appellant's annual appraisal. These are merely unsubstantiated allegations raised by appellant. The Board has held that actions of a supervisor, which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act; however, for harassment to give rise to a compensable disability or condition under the Act, there must be some evidence that such implicated acts of harassment and discrimination did in fact, occur.<sup>11</sup> Mere perceptions of harassment and discrimination are not compensable under the Act.

Additionally, although appellant contends that management imposed policy that made it more difficult for him to meet his rating standards and he alleges several violations by management of a union/management bargaining agreement, such cited factors only represent appellant's dissatisfaction with his work environment and are not compensable. The decisions rendered by the employing establishment on such personnel matters in the absence of a showing of error or abuse on behalf of the employing establishment are insufficient to establish a compensable factor of employment.

With regard to the incident of February 9, 1998, however, the Board notes that since appellant was harassed by a coworker this would constitute an employment factor entitling

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<sup>8</sup> *Id.*

<sup>9</sup> *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

<sup>10</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>11</sup> *See Ruth C. Borden*, *supra* note 7; *Pamela R. Rice*, *supra* note 4.

appellant to compensation if there was medical evidence to establish a causal connection between the incident and appellant's emotional condition.<sup>12</sup>

Although an employee may identify employment factors, this alone is insufficient to discharge his or her burden of proof. To establish that an emotional condition was sustained in the performance of duty, there must be medical evidence establishing that the employee has an emotional or psychiatric disorder; factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition; and rationalized medical evidence establishing that compensable employment factors are causally related to the emotional condition.<sup>13</sup>

The only medical evidence submitted by appellant consisted of a report by Dr. Langlow, who diagnosed a single episode of depression. Although the doctor cited appellant's allegations as to the source of his depression, the doctor did not offer an opinion as to the causal relationship between appellant's diagnosed condition and the factors of his federal employment. Because appellant has submitted no rationalized medical evidence discussing how and why any specific employment factor he encountered or implicated would cause or aggravate an emotional condition, appellant has not met his burden of proof to establish his claim.

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<sup>12</sup> The Board notes that although deadlines imposed on appellant in the performance of his regularly assigned duties would constitute a compensable factor of employment, the record does not factually establish that the employing establishment imposed unreasonable deadlines on appellant, nor is there any rationalized medical evidence to support causal relationship.

<sup>13</sup> *Debbie J. Hobbs*, 43 ECAB 135 (1991).

The decisions of the Office of Workers' Compensation Programs dated September 23 and May 19, 1998 are hereby affirmed.

Dated, Washington, DC  
November 2, 2000

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

Valerie D. Evans-Harrell  
Alternate Member