U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD C. HEINZ and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Cincinnati, OH

Docket No. 99-992; Submitted on the Record;
Issued September 12, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

The issues are: (1) whether appellant has established that he sustained an emotional condition causally related to compensable factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

In the present case, appellant filed a claim on August 14, 1997, alleging that he sustained emotional stress as a result of his employment as an Appeals' office manager. In an accompanying narrative statement, appellant stated that he was not evaluated based on his ability to obtain the correct revenue for the government and he could not understand why the government always took the lower end of a settlement range. He further stated, "under the Appeals' system since quality of decision does not count in the evaluative process for managers, we relentlessly push employees to close cases…. Appeals' officers then become accustomed to taking the easy way out and offering generous settlements…. Sophisticated representatives realize that what Appeals want[s] most is a fast resolution and refuse to settle without a favorable deal. This system has lead me to an increasingly high level of depression."

In a decision dated September 24, 1997, the Office denied the claim on the grounds that no compensable factors of employment had been established. By decision dated March 30, 1998, finalized March 31, 1998 an Office hearing representative affirmed the prior decision. In a decision dated December 18, 1998, the Office determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

The Board has reviewed the record and finds that appellant has not established an employment-related emotional condition.

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 factors of his federal employment.[1] To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.[2]

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 the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not 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 the coverage of the Federal Employees' Compensation Act.[3]

In the present case, appellant's allegation in his initial statement appeared to be that he was upset with the "[A]ppeals' system," which he felt placed too much emphasis on settling cases quickly, rather than on the quality of the decisions and obtaining the correct revenue for the employing establishment. A January 15, 1998 statement from appellant alleges an "*erroneous* obsession with productivity" at the employing establishment. (Emphasis in the original). In this statement, appellant notes incidents during which he had to advise Appeals' officers that their evaluation depended on production numbers, but he does not provide detail with regard to his specific work duties, nor does he specifically allege overwork as a factor. His claim appears to rest on what he believed was an erroneous emphasis on productivity, at the expense of ensuring quality decisions. In support of this allegation, the record contains three witness statements who agreed in general terms that there was increasing emphasis on closing cases and less emphasis on the quality of settlement agreements. On the other hand, the record contains an October 31, 1997 letter from the regional Director of Appeals, asserting that efforts were made to achieve quality in dispute resolutions, noting that there were two Appeals' programs designed to assist in ensuring high quality decisions. In a February 17, 1998 letter, an employing establishment compensation specialist noted that appellant's performance plan did emphasize quality of decisions.

The record does not establish that quality of decisions was of no importance in evaluating appellant's performance. There is no question, however, that production was also considered; the performance plan itself includes a section on increased productivity. Based on appellant's statements and the witness statements, it may be accepted that productivity, in terms of the

[1] *Pamela R. Rice*, 38 ECAB 838 (1987).

[2] *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

[3] *Lillian Cutler*, 28 ECAB 125 (1976).

number of cases resolved and the time required for resolution, was an important aspect of evaluating appellant's performance. To the extent that appellant is alleging an emotional reaction to this policy, he must submit probative evidence of error or abuse. It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.[4] The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.[5]

In this case, the record does not contain evidence establishing error or abuse with respect to a production policy in the Appeals' offices. Appellant has submitted some evidence, including newspaper articles, with respect to a restructuring at the employing establishment. This evidence does not constitute a finding or admission of error with respect to any production policy in the Appeals' offices. There is, for example, a memorandum dated September 30, 1997 from the Acting Commissioner of the employing establishment which states that the employing establishment will no longer rank district offices on their revenue results. Appellant argues that this is an admission of error, but the memorandum does not contain an admission of error. It indicates only that changes were being made in response to criticisms raised at congressional hearings. Moreover, the changes noted in the memorandum do not specifically address appellant's allegations as to the lack of emphasis on quality of appeals decisions.[6] The record does not contain probative evidence sufficient to establish error or abuse in this case. Accordingly, the Board finds that appellant did not establish a compensable factor of employment as contributing to an emotional condition. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.[7]

The Board further finds that the Office properly denied appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[8] the Office's regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law, or (2) advancing a point of law or fact not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.[9] Section 10.138(b)(2) states that any

[4] *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

[5] *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

[6] Appellant was concerned that emphasis on production resulted in unfavorable settlements for the employing establishment; the evidence submitted indicates that the employing establishment was responding to criticism that it was overly concerned with collecting revenue from taxpayers. Decisions of the Appeals' offices were not discussed in the memorandum.

[7] *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

[8] 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.")

[9] 20 C.F.R. § 10.138(b)(1).

application for review that does not meet at least one of the requirements listed in section 10.138(b)(1) will be denied by the Office without review of the merits of the claim.[10]

In this case, appellant submitted press releases, excerpts of statements from employing establishment officials and a memorandum dated August 6, 1998 to Appeals' office employees. This evidence does not constitute relevant and pertinent evidence not previously considered. The underlying issue is whether there was error or abuse in an administrative policy at the Appeals' office and the evidence submitted does not address that issue. The Board finds that appellant did not meet any of the requirements for reopening a case and therefore the Office properly denied merit review in this case.

The decisions of the Office of Workers' Compensation Programs dated December 18 and March 30, 1998, are affirmed.

Dated, Washington, DC
September 12, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member

[10] 20 C.F.R. § 10.138(b)(2); *see also Norman W. Hanson*, 45 ECAB 430 (1994).