

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELIJAH BURTON, JR. and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Long Beach, CA

*Docket No. 99-887; Submitted on the Record;
Issued August 30, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained an emotional condition while in the performance of duty.

On August 26, 1997 appellant, a 43-year-old office automation clerk, filed an occupational disease claim alleging that he sustained an emotional condition while in the performance of duty. He stated that he suffered from depression, anxiety, adjustment disorder and insomnia. Appellant alleged that he was ridiculed and persecuted by coworkers and supervisors for refusing to go along with their waste, fraud and abuse. He identified August 2, 1993 as the date he first realized his condition was employment related.

Appellant submitted hundreds of pages of documents chronicling numerous employment incidents that allegedly contributed to his claimed emotional condition. These incidents included alleged reprisals for having filed Equal Employment Opportunity (EEO) complaints, unfair performance appraisals, authorization of leave, improper review of work, false allegations of sexual harassment, a claim of false arrest, complaints of a noisy work environment, alleged failure to promote and general allegations of harassment and discrimination.

The Office of Workers' Compensation Programs issued a decision on February 25, 1998 denying appellant's claim for compensation. The Office found that appellant failed to establish that his claimed emotional condition arose in the performance of duty.

On September 18, 1998 appellant requested reconsideration and he submitted additional evidence. By decision dated October 8, 1998, the Office denied modification.

The Board finds that appellant failed to establish that he sustained an emotional condition in the performance of duty.

In order to establish that he sustained an emotional condition causally related to factors of his federal employment, appellant must submit: (1) factual evidence identifying and supporting

employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition or psychiatric disorder is causally related to the identified compensable employment factors.¹

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.² Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.³

The majority of the employment incidents appellant alleged as contributing to his claimed emotional condition fall within the realm of administrative and personnel matters. As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Federal Employees' Compensation Act.⁴ However, to the extent that the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.⁵

The record reveals that appellant filed numerous grievances and EEO complaints with respect to most of the above-mentioned employment incidents. However, none of these complaints have been resolved in appellant's favor. Specifically, several of appellant's EEO complaints have been thoroughly investigated and closed. Furthermore, the record does not demonstrate that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities. Consequently, appellant's complaints regarding leave requests, performance appraisals, failure to obtain a promotion, supervisory review of work assignments, the handling of sexual harassment charges levied against appellant and the removal of a chain and lock from appellant's filing cabinet do not fall within the realm of compensable employment factors.

Appellant also alleged that the employing establishment was responsible for his false arrest by the local policing authority. The record indicates that appellant was arrested on May 12, 1997 by the Long Beach Police Department for two outstanding warrants involving battery and a traffic violation. The employing establishment's security force detained appellant

¹ See *Kathleen D. Walker*, 42 ECAB 603 (1991).

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁴ *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997).

⁵ *Id.*

until he was taken into custody by the local police department. There is no connection between appellant's May 12, 1997 arrest and his employment other than the fact that appellant was apprehended while at work. The outstanding warrants for which appellant was arrested did not pertain to his work activities. Furthermore, there is no indication from the record that the employing establishment's security force erred in detaining appellant until the local policing authority took custody of him.

Appellant also alleged that his office was noisy and that the noise interfered with his ability to perform his assigned duties. His complaints about the noisy work environment and his frustration from not being able to resolve this problem are not compensable employment factors. As previously noted, frustration from not being permitted to work in a particular environment is not covered under the Act.⁶ Additionally, an employee's dissatisfaction with perceived poor management is not compensable under the Act.⁷

Lastly, appellant has alleged harassment with respect to most of the previously mentioned employment incidents. The Board has held that for harassment to give rise to a compensable disability there must be evidence that harassment did, in fact, occur. A claimant's mere perception of harassment is not compensable.⁸ The allegations of harassment must be substantiated by reliable and probative evidence.⁹ In the instant case, appellant has not presented evidence that he was harassed in the workplace.

Consequently, appellant has failed to implicate any compensable employment factors as a cause for his claimed emotional condition. As such, the Office properly denied his claim.¹⁰

⁶ *Lillian Cutler*, *supra* note 2.

⁷ *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

⁸ *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

⁹ *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991).

¹⁰ Unless a claimant establishes a compensable employment factor, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299 (1996).

The October 8, 1998 decision of the Office of Workers' Compensation Programs is, hereby, affirmed.

Dated, Washington, DC
August 30, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member