U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM GRONER and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Erie, PA

Docket No. 00-57; Submitted on the Record;
Issued February 6, 2001

DECISION and ORDER

Before MICHAEL E. GROOM, PRISCILLA ANNE SCHWAB, VALERIE D. EVANS-HARRELL

The issue is whether appellant has established that compensable factors of his employment aggravated his coronary artery disease.

On May 4, 1998 appellant, then a 37-year-old gardener, filed an occupational disease claim that stress was a contributing factor in aggravating his heart disease. In a statement dated June 10, 1998, appellant described incidents of his employment that caused stress.

By decision dated November 6, 1998, the Office of Workers' Compensation Programs found that the evidence failed to demonstrate that appellant's claimed condition occurred in the performance of duty. Appellant requested a hearing, which was held on February 11, 1999. By decision dated April 26, 1999, an Office hearing representative found that appellant had failed to prove that compensable factors of his employment had aggravated his coronary artery disease. By letter dated May 24, 1999, appellant requested reconsideration, asking that the Office review his prior claims for stress. By decision dated July 20, 1999, the Office denied modification of its prior decisions.

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 work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act. 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.[1]

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

As set forth in his June 10, 1998 and his February 11, 1999 written statements and in his testimony at the February 11, 1999 hearing, appellant's main contentions pertain to a series of meetings with management officials, primarily his team leader and supervisor, from January 5 to April 3, 1998. Most of these meetings concerned investigation into matters which could result in disciplinary action against appellant, which are not covered under the Act in the absence of a showing of error or abuse.[2]

Appellant alleges that the proposed disciplinary actions were not provided to him in writing, but were based on five false allegations: pulling a coworker from an assigned duty on November 4, 1997; refusing to unload a salt delivery on November 4, 1997; making a derogatory telephone call to his team leader on November 21, 1997; refusing to perform time and leave duties on November 24, 1997; and using a government vehicle on January 5, 1998 without authorization. Appellant established that only one of these allegations of his misconduct was made erroneously: the coworker whom he allegedly pulled from an assignment on November 4, 1997 testified that he volunteered to help appellant in the absence of the team leader who had made the other work assignment. According to appellant's account, two of the instances of misconduct occurred, although appellant had an excuse for both: he refused to unload the salt and to process the time and leave cards when asked.

Appellant is not citing the incidents themselves as a contributing factor in his coronary artery disease, but rather is citing the allegedly false accusations leveled against him with regard to these incidents. Appellant has not submitted evidence, however, sufficient to establish that four of the five allegations were in fact erroneous and has thus not brought them within coverage of the Act.

Appellant contended that at a January 6, 1998 team meeting his team leader blamed him for the installation of a "sign-in" board and erroneously stated that appellant said he had trouble communicating with the team. These contentions were not supported by the accounts of two witnesses who attended that meeting. One of the witnesses stated that appellant got upset because he thought the sign-in board was meant solely for him and the other stated that appellant and the team leader got into a shouting match. The Board notes that not every argument at work is covered under the Act.[3]

Where appellant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.[4] Appellant has not submitted any evidence that his team leader told him on February 27, 1998 that he would not work with him because he considered appellant a racist. He also has not submitted any evidence to support his contention that the actions taken by employing establishment officials were done in reprisal for his union activities, which were performed three years earlier. Appellant also has not substantiated his perception that the incidents he cited constituted harassment.

[2] *Sharon R. Bowman*, 45 ECAB 187 (1993); *Jimmy B. Copeland*, 43 ECAB 339 (1991).

[3] *See Mary A. Sisneros*, 46 ECAB 155 (1995).

[4] *Joel Parker, Sr.*, 43 ECAB 220 (1991).

The Board has held that actions of an employee's supervisor which the employee characterizes as harassment or discrimination may constitute factors of employment giving rise to coverage under the Act, if there is evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[5] The stress appellant allegedly felt while completing forms to apply for compensation and for disability retirement is not covered under the Act.[6] Nor is his inability to be transferred when requested.[7]

As appellant has substantiated one compensable factor of employment, the medical evidence must be reviewed to determine whether this factor of employment -- the false accusation of pulling a coworker from an assignment -- aggravated appellant's coronary artery disease as alleged. He submitted medical evidence, but the only medical reports that address work stress was prepared in September 1995, more than two years before the incidents cited in the present claim. There is no medical evidence indicating that the false accusation about the work assignment in any way contributed to appellant's coronary artery disease.

The decisions of the Office of Workers' Compensation Programs dated April 26, 1999 and November 6, 1998 are hereby affirmed.

Dated, Washington, DC
February 6, 2001

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

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

[6] *Virgil M. Hilton*, 37 ECAB 806 (1986).

[7] *Donna J. DiBernardo*, 47 ECAB 700 (1996).