

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALLEN C. GATTIS and DEPARTMENT OF THE AIR FORCE,
ROBINS AIR FORCE BASE, GA

*Docket No. 00-571; Submitted on the Record;
Issued January 19, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

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

On March 1, 1996 appellant, then a 32-year-old sheet metal worker, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that in April 1994 he first realized that his severe depression and anxiety disorder were due to his federal employment.

In a February 16, 1996 report, Dr. Ronnie Blount, appellant's attending physician, diagnosed severe major depression and anxiety disorder caused by appellant's work and mistreatment by his supervisor. In the history, appellant stated that work was his main stressor, particularly working in the environmental clean up section at the employing establishment. Appellant indicated that he "was caught up in office politics and is being forced to leave his position," that he had been treated unfairly and that no support or encouragement was given to address his concerns by either his supervisors or in the employee assistance program office. Dr. Blount recommended that appellant "never return to work at the [employing establishment] for that exposure will worsen his condition."

In a memorandum for record dated March 8, 1996, Scott Snider, sheet metal foreman, noted that appellant was loaned to another section and April 1995 and was requested on July 15, 1995 to discuss various issues including his. He indicated that appellant was unhappy with his current assignment and he "mentioned problems at home and legal problems related to a previously assigned organization at [employing establishment]." By October 24, 1995 appellant had used all of his sick and annual leave. He requested additional leave due to stress and did not report to work from November 1 through December 5, 1995 or explain his absence.

By letter dated March 15, 1996, appellant was advised that his employment would be terminated due to his excessive absences unless he reported to work by April 1, 1996. On

May 24, 1996 the employing establishment terminated appellant's employment effective May 31, 1996 due to excessive absences.

By letter dated May 14, 1996, the Office informed appellant that the evidence of record was insufficient to support his claim and advised him to submit additional factual and medical evidence.

By decision dated August 27, 1996, the Office denied appellant's claim on the basis that the evidence of record failed to support fact of injury.

In a February 3, 1997 letter, appellant's counsel requested reconsideration and submitted evidence including an August 8, 1996 deposition from appellant and an undated report by Dr. Blount, who diagnosed severe major depression and anxiety disorder due to workplace stressors. Appellant, in his Merit Protection Systems Board (MSPB) deposition, alleged that he was retaliated against because he reported improper disposal of hazardous waste. He also stated that a coworker, Tom Keene, made disparaging comments about his race and used racial slurs. Appellant related that the employing establishment tried to pressure him into making a statement about Mr. Keene to support the employing establishment's efforts to remove him. He throughout his deposition made various allegations regarding his treatment by the employing establishment, but did not provide precise dates or times in support of his allegations.

By merit decision dated February 21, 1997, the Office denied appellant's request for reconsideration on the basis that the evidence submitted was insufficient to warrant modification.

By letter dated May 22, 1997, appellant requested reconsideration and submitted a statement detailing the employment factors and incidents he believed caused his emotional condition. Appellant related that in 1992 he was detailed to environmental management where he worked with various people including Mr. Keene. Appellant stated that management had tried to force him to provide information regarding Mr. Keene and his work habits so that the employing establishment could remove Mr. Keene from his job. Appellant added that he felt very depressed after the deaths of his aunt and grandmother.

In an August 5, 1997 merit decision, the Office again denied appellant's request for reconsideration on the basis that the evidence was insufficient to warrant modification.

In an April 15, 1998 letter, appellant's counsel requested reconsideration and submitted an April 1, 1998 report detailing four Equal Employment Opportunity complaints appellant filed. Appellant elected not to pursue three of the complaints and informally withdrew the fourth after he was given a higher score on his appraisal.

In an April 28, 1998 merit decision, the Office again denied appellant's request for reconsideration on the basis that the evidence was insufficient to warrant modification.

On January 14, 1999 appellant's counsel requested reconsideration and submitted evidence used in appellant's criminal conviction proceeding for possession and sale of cocaine, an affidavit from Dr. Blount and a competency report from Selma DeJesus-Zayas, Ph.D., forensic examination coordinator, who indicated that appellant had severe depression prior to

committing the criminal act but was sane. Dr. Blount opined that appellant had been “so adversely affect by his hostile work environment, that he probably was not sane during parts of 1996 to the present.”

In a merit decision dated August 23, 1999, the Office denied appellant’s request for reconsideration of the prior Office decision on the basis that the evidence submitted was insufficient to warrant modification.

The Board finds that appellant has not established an emotional condition in the performance of duty.

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.¹ 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.²

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.³ 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.⁴

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 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.⁵ 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

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

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.⁶

In this case, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must initially review whether the incidents and conditions alleged by appellant are covered employment factors under the terms of the Act.

Appellant alleged that harassment and discrimination on the part of his supervisors and coworkers contributed to his stress-related condition. Appellant alleged that he was subjected to retaliation because he expressed concerns that toxic material was being disposed of improperly, and that he was pressured by his supervisor into providing adverse testimony against a coworker, who discriminated against him.

To the extent that disputes and 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.⁷ 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.⁸

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.⁹ Appellant alleged that supervisors and coworkers made statements and engaged in actions which he believed constituted harassment and discrimination, but he provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.¹⁰ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.¹¹

⁶ *Id.*

⁷ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁸ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

⁹ *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁰ *See William P. George*, 43 ECAB 1159, 1167 (1992).

¹¹ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

The decision of the Office of Workers' Compensation Programs dated August 23, 1999 is hereby affirmed.

Dated, Washington, DC
January 19, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member