

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RECO RONCAGLIONE and DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, FEDERAL CORRECTIONAL INSTITUTION, Jesup, GA

*Docket No. 01-144; Submitted on the Record;
Issued July 24, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant sustained ulcers in the performance of duty.

On March 23, 1998 appellant, then a 47-year-old landscape foreman, filed a claim for "ulcers related to worry and stress." By decision dated April 2, 1998, the Office of Workers' Compensation Programs found that appellant had not established any compensable employment factors as the cause of his condition.

Appellant appealed this decision to the Board. By order dated September 30, 1999, the Board remanded the case to the Office for reconstruction and proper assemblage of the case record, and, to protect appellant's appeal rights, for issuance of an appropriate decision.¹

By letter dated January 5, 2000, the Office advised appellant and the employing establishment that it had lost the case record. The Office requested that all documents relating to appellant's claim be resubmitted. Appellant submitted a statement dated May 5, 2000 in which he described the incidents and conditions of his employment to which he attributed his condition.

By decision dated July 14, 2000, the Office found that appellant had not established any compensable factors of employment.

The Board finds that appellant has not established that he sustained ulcers 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 work duties or to a requirement imposed

¹ Docket No. 99-332 (issued September 30, 1999).

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.²

As noted above, appellant provided a May 5, 2000 statement describing incidents and conditions of his employment to which he attributed his condition. His feeling of job insecurity about maintaining his position as landscape foreman is not a compensable factor of employment under the Act.³ His disagreement with the associate warden about the use of mulch versus gravel is not compensable, whether viewed as a disagreement with supervisory instructions⁴ or as perceived poor management.⁵ The alleged mismanagement of appellant's compensation claim is also not covered under the Act.⁶

Many of appellant's allegations concern administrative or personnel actions by the employing establishment. Generally, actions of the employing establishment in administrative or personnel matters unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.⁷

Appellant has not established any error in the assignment to do a daily inspection sheet, even if he was the only foreman who had to do one.⁸ He also has not established error in his unsatisfactory performance rating,⁹ or in the January 8, 1998 letter of counseling he received about the performance of his subordinate employees.¹⁰ The program review that began on January 26, 1998 also constitutes an assessment and monitoring of performance, which is not covered under the Act.¹¹

Appellant has also alleged harassment by the associate warden and the facility manager. 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

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

³ *Artice Dotson*, 42 ECAB 754 (1990).

⁴ *Frank A. Catapano*, 46 ECAB 297 (1994).

⁵ *Michael Thomas Plante*, 44 ECAB 510 (1993).

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

⁷ *Michael Thomas Plante*, *supra* note 5.

⁸ *James W. Griffin*, 45 ECAB 774 (1994).

⁹ *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹⁰ *Janet I. Jones*, 47 ECAB 345 (1996).

¹¹ *Jimmy Gilbreath*, 44 ECAB 555 (1993).

under the Act. 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 alone of harassment or discrimination are not compensable under the Act.¹² Other than the incidents described above and found not to be compensable, appellant has not cited any specific examples of harassment. Appellant also stated that working in a correctional institution is stressful, but he also has not cited specific conditions or incidents of the alleged stressful working environment.¹³ The physical problems that appellant experienced due to motor vehicle accidents in 1996 are also not covered under the Act, in the absence of any evidence these accidents occurred while in the performance of duty.¹⁴

Appellant has not attributed his condition to compensable factors of his employment. For this reason, the Office properly found that his condition was not sustained in the performance of duty.

The decision of the Office of Workers' Compensation Programs dated July 14, 2000 is affirmed.

Dated, Washington, DC
July 24, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹² *Donna Faye Cardwell*, 41 ECAB 730 (1990).

¹³ Appellant's burden of proof includes the submission of a detailed description of employment factors or conditions which he believes caused or adversely affected the condition for which he is claiming compensation. *Effie O. Morris*, 44 ECAB 470 (1993).

¹⁴ Chronic pain and limitations can be covered under the Act when they are due to an employment injury. *Arnold A. Alley*, 44 ECAB 912 (1993).