

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STANLEY E. MANSFIELD and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Martinsburg, WV

*Docket No. 00-835; Submitted on the Record;
Issued June 12, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition causally related to compensable factors of his federal employment.

On May 4, 1999 appellant, then a 55-year-old program analyst, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that he suffered from job-related stress. He stopped work on April 23, 1999. The employing establishment controverted the claim.

By letter dated May 11, 1999, the Office of Workers' Compensation Programs requested further information from appellant on the claim.

Appellant responded by submitting an undated statement, which was received by the Office on June 8, 1999, wherein he indicated that he began experiencing difficulty with high blood pressure about two and one-half years earlier. As a result of an episode of stress, he stayed off work for four weeks and was prescribed Paxal.

Appellant noted that sometime in early March 1999, he was approached about setting up a tumor registry, but he asked that the project be deferred. He stated that his doctor allowed him to continue to work if he assumed no new duties for four to six weeks. On March 20, 1999 appellant began work on the tumor registry project and began studying information on medical terminology. He stated that the more he read the more he became upset and he developed anxiety regarding the work assignment. Appellant stated that his physician took him off work immediately.

In further support of his claim, appellant submitted memoranda he submitted to the agency requesting a delay in starting the new project as well as medical evidence from various physicians discussing his anxiety and depressive disorder, noting that it was related to work stress and concluding that appellant was disabled due to this stress.

The employing establishment provided an unsigned statement regarding appellant's work assignments from April 12 to 26, 1999, presumably completed by appellant's supervisor. This statement noted that appellant started work on the tumor registry on April 12, 1999 and expressed concern about a lack of medical background. The employing establishment indicated that appellant was provided with training material and would review the material with him prior to his actually performing the duties of the job. A representative of the employing establishment reported that she arranged for appellant to go to Washington to receive training for a week on the tumor registry. On April 22, 1999 appellant claimed that the reading requirements were too stressful and caused anxiety.

In a June 2, 1999 letter, the employing establishment controverted the claim, noting any stress which appellant experienced was brought about by nonjob-related issues. By letter dated July 10, 1999, appellant responded to the employing establishment's controversion.

By decision dated October 20, 1999, the Office denied appellant's claim as it found that appellant had not shown that the injury occurred in the performance of duty.

Appellant filed his appeal with the Board on November 22, 1999. Subsequently, on March 9, 2000, an Office hearing representative affirmed the decision of October 20, 1999. The Board notes that the Office's March 9, 2000 decision is null and void as the Board and the Office cannot have jurisdiction over the same issue in the same case.¹ The Board further notes that the additional evidence submitted by appellant after the Office's June 26, 1998 decision, the last decision issued by the Office prior to appellant's appeal to the Board, represents new evidence which may not be considered for the first time by the Board. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of the final decision before the Board. 20 C.F.R. § 501.2(c).

The Board finds that this case is not in posture for decision.

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.² 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.³

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

¹ 20 C.F.R. § 501.2(c); *Douglas E. Billings*, 41 ECAB 880 (1990).

² *Edward C. Heinz*, 51 ECAB ____ (Docket No. 99-992, issued September 12, 2000); *Martha L. Street*, 48 ECAB 641, 644 (1997).

³ *Ray E. Shotwell, Jr.*, 51 ECAB ____ (Docket No. 99-2032, issued September 12, 2000); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

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 under the coverage of the Federal Employees' Compensation Act.⁴

In the case, at hand, appellant alleges that his emotional condition was caused by his reassignment to a new project that he believed he did not have the experience or expertise to perform. Appellant alleged that he felt insecure about his ability to perform the work in his new position. Feelings of job insecurity *per se* do not establish an employee's entitlement to compensation under the Act.⁵ In the case at hand, appellant's supervisors indicated that he was making fine progress; there is no evidence that appellant was unable to perform his regular or specially assigned duties. Appellant has alleged that his reassignment to a new project caused an emotional condition. Appellant's work reassignment relates to his supervisor's exercise of supervisory discretion in assigning work activities. Error or abuse by the supervisor in an administrative or personnel matter, or evidence that the supervisor acted unreasonably in the administration of a personnel matter, may afford coverage.⁶ However, there is no evidence in this case that appellant's work reassignment was unreasonable or in error.

Appellant alleged that he suffered stress from his work assignment to the tumor registry and the requirement of studying information pertaining to the registry. The Board finds that this constitutes a compensable factor of employment, as the training was required for the performance of his duties under *Cutler*, this work assignment was a specially assigned work duty and a requirement of his employment and constitutes a compensable factor of his federal employment.

The case will be remanded to the Office for further development. On remand, the Office should prepare a statement of accepted facts and development the medical evidence. After such development as the Office deems necessary, it should issue a *de novo* decision on his claim.

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Id.*

⁶ *Rudy Madril*, 45 ECAB 602 (1994).

The decision of the Office of Workers' Compensation Programs dated October 20, 1999 is reversed and this case is remanded to the Office for further development consistent with this decision and order.

Dated, Washington, DC
June 12, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member