U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GOUGH B. DAVIS and GENERAL SERVICES ADMINISTRATION, PUBLIC BUILDINGS SERVICE, Fort Snelling, MN

Docket No. 00-1402; Submitted on the Record;
Issued June 12, 2001

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a stress condition causally related to factors of his employment.

On February 22, 1999 appellant, then a 48-year-old maintenance mechanic, filed an occupational disease claim alleging that on October 18, 1995 he first realized his depression and stress were aggravated by or due to employment factors. Appellant stopped work on October 8, 1998.

In a letter dated May 13, 1999, the Office of Workers' Compensation Programs informed appellant that the evidence of record was insufficient to support his claim and advised him to provide a statement describing in detail the employment factors he believed contributed to his disability.

In a letter dated June 7, 1999, appellant provided a chronological list of various employment incidents that he believed contributed or caused his stress at the employing establishment. Specifically, appellant noted that when he accepted the assignment he was to work nights, but that when he reported to work he was informed that he would be working days.

Next, he stated that when he started his job he met Donna Carlson, the building manager of the federal courthouse, who had copies of his personnel file from the U.S. Army and that she questioned him about an issue in the file from the 1980s. Appellant answered her question without thinking that it was a private matter and none of Ms. Carlson's business.

Next, he alleged that during his two-week orientation he was given no opportunity to work on the building mechanical systems and equipment. Appellant stated that he was not allowed to start work at the same time as Stan Brown, the coworker he replaced, that he was told which seat to use during lunch and that he was questioned about his sexual activities. Ms. Carlson hung up the telephone on him when he called her to let her know that the contractor

would be contacting her regarding the lighting. Ms. Carlson denied his request for educational assistance for a computer program he took at a community college.

Appellant next alleged that a sexual harassment complaint was filed after he complimented a woman whose name he did not know. Due to this he was reassigned to the night shift. Appellant also alleged that he received a number of letters while working the night shift complaining about his behavior. Appellant stated that he had been told by a female coworker of a rumor that he was a sexual predator and that the night shift had been advised to watch him for this type of behavior.

Some of his coworkers would not speak to him as he started doing more work and they did less. Appellant also alleged that he never received any letters of appreciation for the work he performed, that he became stressed due to how dirty ventilation work is and that black dirt would get in his nose no matter how tightly he put on his respirator. Appellant also noted that he had been written up and referred for counseling after a relief valve on a the boiler went off. At the time, appellant had been told to run a boiler during Memorial Day weekend in 1992 or 1993 and electrical gear was locked out and the boiler valve blew out.

He received no training when a computer workstation was put in, the computer was turned off from midnight to 5:30 a.m. and his duty hours were 11:00 p.m. to 7:00 a.m. Appellant repeatedly asked management to correct this situation so that he could access email communications, but nothing was done. Job announcements began to be posted on the computer, to which he had no access and when he complained he was told to grieve it. Appellant was asked for his electronic access key after he reported missing items during the government shutdown.

Appellant feared Bob Penner's working as his night relief since Mr. Penner had flipped a switch during the day which caused severe problems at the postal payroll center. That his entire personnel file had disappeared and that it showed up 10 days later on top of the locked filing cabinet it was supposed to be in. Lee Maxfield screamed at appellant regarding his integrity.

Appellant alleged that a shift change from 8:00 a.m. to 7:00 a.m. increased his sense of isolation as Kevin Pellow and Mr. Maxfield would not discuss work matters with him when he requested. He complained to Lee Walker regarding Mr. Penner's bragging about his sexual exploits and using graphic detail talking about sex. That his vehicle had been vandalized.

Next, appellant detailed an incident with Pete Brusso. Appellant noted that he grabbed Mr. Brusso by the collar and put him in a chair to try to get him out of his face so they could talk and that Mr. Brusso returned with a security guard who escorted appellant from the building.

Next, appellant noted that Jay Hauser used reprimands in dealing with his crew and that he feared being harassed. Mr. Hauser raised his voice to appellant after appellant noted that he needed to talk to Mr. Hauser about a job announcement. Appellant was sent a notice for not wearing his badge at all times after being reported by a security guard. Appellant was yelled at by a security guard when he went to change a light bulb and that after this incident he was told to surrender his key guard and that he would be issued a letter of reprimand.

Next, appellant stated that coworker Stan Brown came into the control room to relieve him and asked Rick Conrad a sexually explicit question about appellant. Mr. Conrad's response was no. Mr. Penner brought a detonator to a Stinger missile to the break room two months before the Oklahoma City federal building bombing. Last, that supervisor John McCrum would not respond to his June 23, 1999 letter.

By decision dated December 2, 1999, the Office denied appellant's claim.

By letter dated December 22, 1999, appellant requested reconsideration and submitted an October 18, 1999 report by Dr. Deborah Coen, who diagnosed anxiety and depression and opined that appellant's stress precluded him from returning to work at the employing establishment.

By merit decision dated January 21, 2000, the Office denied appellant's request for modification.

The Board finds that appellant has not established that his stress was causally related to factors of his employment.

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]

In cases involving emotional conditions, 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

[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).

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 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, appellant attributed his emotional condition to a number of employment incidents and conditions. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the Act.

Appellant's allegations that the employing establishment engaged in improper disciplinary actions, issued unfair performance evaluations, wrongly denied leave, improperly assigned work duties and unreasonably monitored his activities at work are unrelated to the employee's regular or specially assigned work duties and thus do not fall within the Act.[7] Although the handling of disciplinary actions, evaluations and leave requests, the assignment of work duties and the monitoring of activities at work are generally related to employment, they are administrative functions of the employer and not duties of the employee.[8]

However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[9] In this case, there is no evidence that the employing establishment erred or acted abusively in these administrative matters. Thus, appellant has not established a compensable employment factor under the Act.

Appellant has also alleged that harassment and discrimination on the part of his supervisors and coworkers contributed to his claimed stress-related condition. 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.[10] However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or

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

[6] *Id.*

[7] *See Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[8] *Id.*

[9] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

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

discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[11]

In this case, 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.[12] 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.[13] Thus, appellant has not established a compensable employment factor.

The Board has held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment as they do not involve the employee's ability to perform his or her regular or specially assigned work duties but rather constitute his or her desire to work in a different position.[14]

The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.[15]

The Board has held that an employing establishment's refusal to give an employee training as requested is an administrative matter, which is not covered under the Act unless the refusal constitutes error or abuse.[16]

Appellant alleged that the employing establishment improperly proposed to change his work shift from daytime to the nighttime. As noted above, disability is not covered where it results from such factors as frustration from not being permitted to work in a particular environment or to hold a particular position. On the other hand, the Board has held that a change in an employee's work shift may under certain circumstances be a factor of employment to be considered in determining if an injury has been sustained in the performance of duty.[17]

Appellant's assertion that the proposed change in work shift was made contrary to the relevant policy relates to an administrative function of the employing establishment. To show that an administrative action such as the proposed change in work shift implicated a compensable employment factor appellant would have to show that the employing establishment committed

[11] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[12] *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).

[13] *See William P. George*, 43 ECAB 1159, 1167 (1992).

[14] *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

[15] *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

[16] *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

[17] *See Gloria Swanson*, 43 ECAB 161, 165-68 (1991); *Charles J. Jenkins*, 40 ECAB 362, 366 (1988).

error or abuse.[18] Appellant has not provided sufficient evidence to establish such action on the part of the employing establishment. Thus, appellant has not established a compensable employment factor.

Appellant has only identified compensable factors of employment with respect to the incident with Mr. Brown asking Mr. Conrad a sexually explicit question, Mr. Penner's bringing a "detonator" to a Stinger missile into the break room, Mr. Penner's boasting of his sexual exploits and the lack of a response to his June 23, 1999 letter by Mr. McCrum, appellant's supervisor. However, appellant's burden of proof is not discharged by the fact that he has established an employment factor which may give rise to a compensable disability under the Act. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.[19]

In treatment notes dated November 3 and 4, 1995, Dr. A.M. Yellin diagnosed depression and indicated that appellant had "a verbally abusive boss and feels the pressure of that abuse from time to time" and "occupational difficulties including fear of unemployment and some harassment on the job." In a letter dated October 28, 1998, Dr. Yellin diagnosed acute work-related stress and stated that appellant would not be able to report to work until November 30 1998.

Dr. Yellin diagnosed depression and adjustment disorder in treatment notes from October 28, 1998 through February 25, 1999 and noted that appellant referred to the incident which resulted in his being denied security clearance and his anger and sense of isolation from his place of work.

In a June 3, 1999 letter, Dr. Yellin indicated that he had been treating appellant for work-related stress since October 28, 1998 and that appellant "continued to experience significant anxiety and depression, making it inadvisable for him to return to the workplace as yet."

While appellant established compensable employment factors, he did not meet his burden of proof to establish that his emotional condition was work related because he did not submit rationalized medical evidence explaining how these factors of employment caused or aggravated his emotional condition. The reports from appellant's psychologists and physician indicate that he was treated for depression and anxiety resulting from stress from his employment. However, both Drs. Coen and Yellin only stated generally that this stress was caused by "work difficulties" with his supervisor. Neither Dr. Coen nor Dr. Yellin specifically addressed the compensable factors in this case as a cause of appellant's stress.[20]

Inasmuch as the medical evidence of record is devoid of any rationalized medical evidence establishing that appellant developed an emotional condition due to accepted factors of his employment, he has failed to meet his burden of proof to establish his claim.

[18] *See Richard J. Dube*, *supra* note 9.

[19] *See William P. George*, *supra* note 13 at 1168.

[20] *Victor J. Woodhams*, 41 ECAB 345 (1989).

The January 21, 2000 and December 2, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
June 12, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member