

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID D. LOPPI and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Providence, RI

*Docket No. 00-1543; Submitted on the Record;
Issued June 7, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained an emotional condition in the performance of duty.

On July 8, 1999 appellant, then a 56-year-old housekeeping aid, filed a claim for work-related stress due to harassment from his supervisor and others. In a statement accompanying his claim form in a July 28, 1999 statement and in an undated statement submitted in response to a request for further information from the Office of Workers' Compensation Programs, appellant described the incidents and conditions of his employment to which he attributed his emotional condition. Appellant also submitted medical reports and statements from coworkers.

After developing the evidence by obtaining statements from the employing establishment, the Office, by decision dated January 31, 2000, found that appellant had not established that his claimed condition was caused by employment factors. The Office found that the incidents and conditions cited by appellant either did not occur or were not in the performance of duty. On March 24, 2000 appellant filed an appeal with the Board. By undated letter received by the Office on May 8, 2000, appellant requested reconsideration. By decision dated August 2, 2000, the Office found that appellant's condition did not arise from compensable factors of 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 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 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.²

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

All of the incidents to which appellant attributed his emotional condition involve administrative or personnel matters. Appellant contends that a June 30, 1999 letter of counseling for using obscene language and remarks that could be construed as threatening was erroneous, but appellant submitted no substantiation of error on the part of the employing establishment in issuing this letter of counseling.³ He has not shown error or abuse in his supervisor's instructions to report to the employing establishment's health unit the day after his May 12, 1999 back injury. Appellant alleges that this back injury resulted from a lack of training in lifting techniques, but the employing establishment submitted documents showing that appellant was provided with training. He stated that he was upset when he found out that the employing establishment had his daughter's obituary⁴ in his personnel file, but an employing establishment personnel management specialist explained that this obituary was not in appellant's official personnel folder but rather in a file maintained by facilities management service in order to send flowers or a card. Appellant has not shown error or abuse in this employing establishment action. He also has not shown how the isolated comment by a personnel assistant on June 10, 1999 that he could return to work answering telephones while lying down rose to the level of error or abuse,⁵ especially where appellant's second-level supervisor told him not to report for work that same day.

Appellant has established error in one employing establishment action. His supervisor admitted that he erred when he indicated on a May 12, 1999 accident report that no treatment was required. 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 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 employment factor.⁶ Appellant has not submitted such evidence. Dr. Aminadav Zakai, a Board-certified psychiatrist, stated in a November 9,

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

² *Michael Thomas Plante*, 44 ECAB 510 (1993).

³ Where appellant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence. *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁴ Appellant's daughter died on June 13, 1999.

⁵ See *Alfred Arts*, 45 ECAB 530 (1999) (The Board found that appellant's reaction to coworkers' comments such as "you might be able to do something useful" was not compensable).

⁶ See *William P. George*, 43 ECAB 1159 (1992).

1999 report that appellant could not return to work because the “stress involved in interacting with the housekeeping department is intolerable to him...” Dr. Zakai did not cite any compensable factors or provide any rationale. The August 24, 1999 report from Dr. Fred Ferri stating that appellant’s anxiety and depression were exacerbated by his injury at work does not provide any rationale explaining how or why this exacerbation occurred. A September 7, 1999 hospital admission report does not attribute appellant’s diagnosed major depression to any employment factors. Appellant has not met his burden of proof.

The decision of the Office of Workers’ Compensation Programs dated January 31, 2000 is affirmed. The Office’s decision dated August 2, 2000 is set aside as null and void, as it was issued while the case was on appeal before the Board.⁷

Dated, Washington, DC
June 7, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

⁷ See *Russell E. Lerman*, 43 ECAB 770 (1992).