

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GREGORIO E. CONDE and DEPARTMENT OF THE ARMY,
CORPS OF ENGINEEERS, El Monte, CA

*Docket No. 00-2362; Submitted on the Record;
Issued June 27, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

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

On February 23, 1998 appellant, then a 47-year-old engineering technician, filed a claim for stress, which he related to death threats and harassment resulting from his reports of contract fraud. Appellant stopped working on February 9, 1998.

In an April 20, 1998 statement, appellant indicated that he received telephone calls at home on January 20 and 30 and February 4, 1998, in which death threats were made. He related that on January 22, 1998 he was invited to join two other coworkers for lunch, but declined because he was suspicious. He had reported one of the coworkers for engaging in possible contract fraud in September 1995.

Appellant indicated that he had a discussion about the telephone calls and the January 22, 1998 incident with his supervisor on February 17, 1998 and described his belief that the telephone calls and the incident were related to his reporting of possible fraud almost three years previously. Appellant's supervisor responded that he did not believe appellant's description of fraud and commented that appellant's stress was not work related.

In an August 27, 1998 decision, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to establish that the alleged events occurred at the time, place and in the manner alleged.

In a September 17, 1998 letter, appellant requested a hearing, which was held on February 19, 1999. Appellant indicated that in September 1995, while working at a project near Las Vegas, Nevada, he observed his supervisor approving payments to a contractor for work the contractor had not done and for equipment which had not been provided. He reported the incident to his superiors but no action was taken. Appellant testified that, thereafter, he was given less desirable work assignments. He again described the telephone death threats and the

January 22, 1998 incident. Appellant also indicated that on February 9, 1998, he was left alone at a work site for an hour and a half near a busy highway. He feared that he had been set up for a drive-by shooting.

In a June 9, 1999 decision, the Office hearing representative found that appellant's claim was based solely on the speculation that fellow employees plotted to kill him. He added that the self-generated fear of such a possibility was not compensable because there was no factual basis for appellant's allegations. The hearing representative denied appellant's claim.

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

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act.¹ Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the 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.

Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.² When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.³ In these cases the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.⁴

Appellant claimed that the death threats he received were related to his reports of possible fraud to his superiors, but did not furnish any evidence beyond his own perceptions to establish this allegation. He cited two incidents at work which led him to believe that coworkers were planning his death. Appellant's accounts of the incidents, however, do not support a reasonable conclusion that his coworkers intended to kill him or have him killed. The evidence of record

¹ 5 U.S.C. §§ 8101-8193.

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

³ *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

⁴ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

shows only that appellant's emotional condition was self-generated, arising from his own fears and speculation, without any contribution from the performance of his assigned duties.

Appellant stated at his hearing that, as a consequence of his reporting of possible fraud, he was given less desirable work assignments. Appellant, however, did not specifically describe those assignments. Nor did he discuss whether those assigned duties caused stress or contributed to his emotional condition. He, therefore, did not cite any assigned work duties as the cause of his emotional condition.

On appeal appellant contends that the Office hearing representative erred in not issuing subpoenas to witnesses in an effort to substantiate his claim that the death threats were related to his employment.

Section 8126⁵ of the Act provides that the Secretary of Labor, on any matter within her jurisdiction, may issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles. This provision gives the Office discretion to grant or reject requests for subpoenas. Office regulations state that subpoenas for documents will be issued only where the documents are relevant and cannot be obtained by any other means. Subpoenas for witnesses will be issued only where oral testimony is the best way to ascertain the facts.

In requesting a subpoena, a claimant must explain why the testimony is relevant to the issues in the case and why a subpoena is the best method or opportunity to obtain such evidence because there is no other means by which the testimony could have been obtained.⁶ The Office hearing representative retains discretion on whether to issue a subpoena. The function of the Board on appeal is to determine whether there has been an abuse of discretion. Abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or action taken which are clearly contrary to logic and probable deductions from established facts.⁷

Appellant submitted a request for subpoenas on February 18, 1999, which was the day before the hearing. He cited several witnesses and documents, for which he requested the issuance of subpoenas. Appellant contended prior to the hearing that subpoenas were necessary because the witnesses had refused to make written statements. He argued that documents he requested would show that the incidents he described actually occurred.

Appellant's request for subpoenas on the day before the scheduled hearing was vague and did not present a clear recitation of the specific information he sought through the subpoenas. Appellant gave only general reasons why the documents and witnesses could be obtained only through subpoenas and by no other means. A general contention that the evidence obtained through subpoenas would establish his claim is not sufficient to require that subpoenas should be

⁵ 5 U.S.C. § 8126.

⁶ 20 C.F.R. § 10.619.

⁷ *Dorothy Bernard*, 37, ECAB 124 (1985).

issued.⁸ The Office hearing representative acted within his discretion in not issuing subpoenas as requested by appellant.

The June 9, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 27, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁸ See *Darlene Menke*, 43 ECAB 173, 180 (1991).