U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRENDA B. ONION and DEPARTMENT OF DEFENSE, DEFENSE DISTRIBUTION CENTER, New Cumberland, PA

Docket No. 00-779; Submitted on the Record;
Issued March 9, 2001

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT, A. PETER KANJORSKI

The issue is whether appellant has established that she developed dangerously high blood pressure in the performance of duty causally related to the factors of her federal 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 her 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 her 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 she 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 of Workers'

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[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).

Compensation Programs, 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 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]

On February 25, 1999 appellant, then a 49-year-old systems analyst, filed a notice of occupational disease, Form CA-2, alleging that she developed dangerously high blood pressure as a result of a number of employment incidents and conditions. In a decision dated September 17, 1999, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. On October 4, 1999 appellant filed a request for reconsideration and submitted additional evidence in support of her claim. In a decision dated October 26, 1999, the Office found the newly submitted evidence insufficient to warrant modification of the prior decision. The Board must, therefore, initially review whether the alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

The Board finds that appellant has failed to establish that she developed dangerously high blood pressure in the performance of duty.

Appellant's principle allegation is that she was harassed and mistreated by her supervisor, Robert Brickey. In narrative statements dated March 8 and April 16, 1999, appellant stated that within a few months of Mr. Brickey becoming her supervisor in early 1998, she began to feel that he did not want to associate with her and specifically told her to contact the work leader, not himself, if she needed assistance. Appellant stated that, because her relationship with the work leader was problematic, she continued to bring her problems to Mr. Brickey, but she felt that her concerns were falling on deaf ears and their relationship deteriorated. Appellant stated that, in May 1998, Mr. Brickey abruptly cancelled a training session she was scheduled to attend and that more recently, in February 1999, he engaged in a barrage of harassment and intimidation regarding a temporary duty (TDY) assignment. Appellant explained that, on February 16, 1999, she was informed that she was to go TDY for three days. She stated that when she told Mr. Brickey that she was unavailable for overnight travel but was willing to go for one day, Mr. Brickey became agitated and aggressive and told her she must go on the TDY mission. Appellant stated that after this encounter she felt dizzy and shaken and went to the dispensary where she was discovered to have very high blood pressure and left work. Appellant stated that when she returned to work on February 22, 1999, despite the fact that the union had told Mr. Brickey that appellant could not be forced to go TDY because it was not specified in her job description, Mr. Brickey again approached her and repeatedly asked her if she had finalized the travel arrangements for her TDY assignment. Appellant stated that she felt that Mr. Brickey's behavior was a deliberate attempt to intimidate and harass her, and that as a result, she continues

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

[6] *Id.*

to have dangerously high blood pressure. On February 22, 1999 appellant filed a grievance with the union, seeking relief from the TDY assignment in addition to other remedies. On March 29, 1999 Mr. Brickey issued appellant a letter of warning for unprofessional conduct. In the letter of warning, Mr. Brickey explained that, while there was, in fact, no prohibition on appellant being sent TDY based on her job description or otherwise, he realized the fact that she had been excused from TDY several times in the past may have led her to believe that she would again be excused if she showed reluctance towards the assignment. Mr. Brickey emphasized, however, that her agitated behavior and expression of scorn and contempt towards him when discussing the assignment warranted disciplinary action.

With respect to appellant's assertions that Mr. Brickey did not wish to associate with her, did not value her concerns, and arbitrarily cancelled her scheduled training, the Board has held that complaints concerning the manner in which a supervisor performed his duties as a supervisor or the manner in which the supervisor exercised his supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act absent evidence that the employing establishment acted unreasonably in the administration of a personnel matter.[7] In addition, 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.[8] In narrative statements dated March 8 and June 8, 1999, Mr. Brickey directly refuted appellant's accusations, stating that it was normal procedure for the employees to be asked to first approach their work leaders with assignment issues and then to elevate the issues to their supervisors, if necessary, thus utilizing a chain of command structure. He further explained that appellant's concerns were all individually examined and resolved by management, though not always in the way appellant requested, and that while the scheduled training was cancelled, as it conflicted with more important agency initiatives at the time, appellant was later rescheduled for and attended alternative training sessions. As appellant has not provided any support for her allegation that her supervisor acted unreasonably with respect to these administrative and personnel matters, appellant has not established a compensable employment factor under the Act.

With respect to the disputed TDY assignment, Mr. Brickey explained that, contrary to appellant's belief, the union had not informed him that appellant could not be sent to TDY, and, in fact, there was no prohibition on his directing her to fulfill the assignment. Mr. Brickey also submitted a March 9, 1999 letter from Charles E. Nye, Deputy Commander, who confirmed the fact that, because TDY was not mentioned in appellant's position description did not prohibit Mr. Brickey from making such an assignment, as a position description, this only contains the major, recurring duties of a position and does not constitute a limitation on the assignment of occasional additional duties. Mr. Nye further stated that investigation of the matter had revealed that it was appellant, rather that Mr. Brickey, who became agitated and did not behave in a professional manner.

Regarding appellant's contention that she developed high blood pressure as a result of the confrontation with Mr. Brickey over the TDY issue, the ensuing grievance procedure and the

[7] *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Abe E. Scott*, 45 ECAB 164 (1993).

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

letter of warning, the Board finds that these allegations are not compensable for several reasons. First, the Board has held that matters pertaining to union activities are not deemed employment factors.[9] Second, issues involving disciplinary action for unprofessional behavior, the underlying reason for the letter of warning, are related to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.[10] Where the evidence demonstrates that the employing establishment neither erred nor acted abusively in the administration of personnel matters, coverage will not be afforded.[11] The Board finds that appellant has submitted no evidence establishing error or abuse with respect to the handling of the TDY issue. Finally, the Board has held that an employee's emotional reaction to a disciplinary action is generally not covered under the Act. Thus, a letter of warning regarding her unprofessional behavior does not constitute a compensable factor of employment.[12] This also is an administrative matter and is not a duty of the employee. Although the parties, through compromise, resolved appellant's grievance on April 27, 1999, this resolution does not reveal that the employing establishment committed error or abuse in its administrative functions. The mere fact that personnel actions are later modified or rescinded does not, in and of itself, establish error or abuse on the part of the employing establishment.[13]

The Board has held that for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[14] In the present case, appellant alleged that her supervisor made statements and engaged in actions which she believed constituted harassment and discrimination, but she provided no corroborating evidence, such as witness statements, to support her contentions.[15] In addition, appellant's allegations were directly refuted by Mr. Brickey. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof to establish that she developed dangerously high blood pressure in the performance of duty causally related to factors of her federal employment. As no compensable factor of employment has been established, the Board will not address the medical evidence.[16]

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[9] *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997); *George A. Ross*, 43 ECAB 346, 353 (1991).

[10] *See Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

[11] *Carolyn S. Philpott*, 51 ECAB ___ (Docket No. 98-760, issued November 18, 1999).

[12] *Diane C. Bernard*, 45 ECAB 223 (1993).

[13] *See Michael Thomas Plante*, *supra* note 10; *Richard J. Dube*, 42 ECAB 916, 922 (1991).

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

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

[16] *Margaret S. Krzycki*, 43 ECAB 496 (1992).

The decisions of the Office of Workers' Compensation Programs dated October 26 and September 17, 1999 are hereby affirmed.

Dated, Washington, DC
March 9, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member