

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BILLIE L. YOUNG and DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT, Milwaukee, WI

*Docket No. 00-29; Submitted on the Record;
Issued October 23, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant sustained an emotional condition while in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration.

Appellant, a 60-year-old oil and gas inspector, timely filed an occupational disease claim for an emotional condition which he alleged was caused by working conditions. He stopped work on June 27, 1996 and voluntarily resigned effective March 3, 1997.

By decision dated July 30, 1997, the Office denied appellant's claim on the basis that the weight of the medical evidence was represented by the opinion of Dr. Harold Harsch, a Board-certified psychiatrist and Office referral physician. The Office had delineated those factors found compensable, noncompensable and not established. The Office found the extensive travel required of appellant's position to be compensable. His allegations regarding lack of adequate training, lack of assistance and excessive work hours were found not to be established. Matters found noncompensable included an investigation of having a firearm at work; disciplinary actions for poor performance; not receiving within-grade increases or promotions; and "problems learning new work material due to depression or other illness."

By decision dated September 30, 1998, an Office hearing representative affirmed the July 30, 1997 decision, finding that the Office had properly identified appellant's extensive travel as the only compensable factor of employment in its statement of accepted facts and Dr. Harsh properly confined his opinion within the parameters of the statement of accepted facts in concluding that appellant's emotional disorder did not arise from compensable work factors.

By decision dated January 20, 1999, the Office denied modification of the prior decision.

By decision dated June 11, 1999, the Office denied appellant's request for reconsideration, finding the March 10, 1999 letter requesting reconsideration did not include

new and relevant evidence or new legal arguments and therefore was insufficient to warrant further merit review.

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

Under the Federal Employees' Compensation Act,¹ 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. To establish 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.²

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.³ There are distinctions regarding the type of work situation giving rise to an emotional condition, which will be covered under the Act. For example, disability resulting from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employing establishment is covered.⁴ However, an employee's emotional reaction to an administrative or personnel matter is generally not covered⁵ and disabling conditions caused by an employee's fear of termination or frustration from lack of promotion are not compensable. In such cases, the employee's feelings are self-generated in that they are not related to assigned duties.⁶

Nonetheless, if the evidence demonstrates that the employing establishment erred or acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.⁷ However, an employee must support his allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.⁸

The Board notes that the Office made findings in this case with respect to several factors of employment it found which occurred in the performance of duty and incidents it found were

¹ 5 U.S.C. §§ 8101-8193.

² *Vaile F. Walders*, 46 ECAB 822, 825 (1995).

³ *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁴ *Jose L. Gonzalez-Garced*, 46 ECAB 559, 563 (1995).

⁵ *Sharon J. McIntosh*, 47 ECAB 754, 756 (1996).

⁶ *Barbara E. Hamm*, 45 ECAB 843, 850 (1994).

⁷ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

⁸ *Ruthie M. Evans*, 41 ECAB 416, 425 (1990).

not established as occurring as alleged or which were outside the scope of coverage under the Act.⁹ One of the factors identified by appellant was extensive travel, which is as compensable as a requirement of his employment.¹⁰ The Office properly found that appellant engaged in extensive travel in his position as an oil and gas inspector and therefore it is a compensable factor within the performance of duty.

Appellant alleged that he suffered stress as a result of his employer not willing to work with him in a professional manner, withheld grade increases and provided no additional help to an increase in workload. Most of appellant's allegations relate to the lack of training and assistance. A grievance in the matter resulted in a finding that appellant had received ample formal training. The employing establishment specifically contested appellant's allegation that he was provided with inadequate assistance and of increasing workloads and appellant has not provided any corroborating evidence in support of his allegations.

Most of the factors to which appellant attributed his emotional condition constitute administrative or personnel matters: performance evaluations, job criticism, a performance improvement plan, and disability retirement. 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.¹¹ The Office properly found that there was no evidence to support appellant's allegations regarding job criticism and performance evaluations as the record does not establish error or abuse, and thus, these administrative/personnel functions may not be considered compensable. Moreover, the record reflects that the employing establishment accommodated appellant by allowing him to seek voluntary disability retirement in lieu of a final decision on a pending removal action.

Appellant has alleged that he suffered abuse or harassment in regard to the investigation of an allegation that he brought a firearm to his office. The investigation into such threats is an administrative matter¹² and, absent a showing of error or abuse, appellant's reaction to the employing establishment's response is not compensable. The Office properly found that regardless of whether the charges were substantiated, the investigation into such an allegation of misconduct was proper. As there is no showing of error or abuse, the allegation is not compensable.

Many of the errors appellant alleged on the part of the employing establishment have not been substantiated. Appellant has not shown any error in the employing establishment's

⁹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statements of Accepted Facts*, Chapter 2.809.13(b) (June 1995), which provides that the claims examiner must distinguish between those workplace activities and circumstances that are factors of employment and those which are outside the scope of employment for purposes of compensation.

¹⁰ See *Jose H. Pico*, 46 ECAB 750 (1995).

¹¹ *Michael Thomas Plante*, 44 ECAB 510 (1993).

¹² *Anne L. Livermore*, 46 ECAB 425 (1995).

decision to withhold grade increases. The employing establishment stated that in-grade increases and promotions were withheld only when justified by unsatisfactory performance and accompanied by a notice of performance improvement and withholding action. There is no substantiation of appellant's allegation that the employing establishment required excessive work hours and that appellant's workload increased. The employing establishment stated that excessive work hours were not necessary. The number of inspections appellant was required to do decreased from 1984 to 1994. Although the number of inspection items and number of wells increased from 1984 to 1994, the employing establishment stated that the increased program workload did not result in a corresponding increase in appellant's workload. They asserted that appellant had the latitude to set his own schedule for the majority of the time. They further related that appellant had the option to stop at a motel when road conditions were unsafe and the latitude to schedule inspections to accommodate known traffic problems. Although appellant was responsible to maintenance, the vehicles were always maintained in good operating condition. Appellant also has not substantiated that any error occurred by his supervisor in what he alleged were inconsequential matters, such as abiding by the employing establishment's uniform policy.

Since appellant has substantiated one compensable factor of employment, extensive travel, the Board will analyze the medical evidence to determine whether it establishes that the compensable factor of employment contributed to appellant's emotional condition.¹³

In a form CA-20 attending physician's report, Dr. Kenneth E. Johnson, a Board-certified psychiatrist, diagnosed major depression, recurrent, moderate. He opined that appellant's work-related stress contributed to appellant's difficulty with depression. The Board finds that Dr. Johnson's opinion is not fully rationalized or of convincing quality regarding what work factors contributed to appellant's difficulty of depression.¹⁴ Moreover, it is important to note that to establish causal relationship in this case, the only accepted work factor is that of extensive travel.

In a June 21, 1996 medical report, Dr. Kenneth Johnson stated the results of his outpatient psychiatric evaluation of appellant. Major depression, recurrent, moderate was diagnosed along with stress at work and at home. However, the report was devoid of a discussion delineating what stress at work appellant was experiencing other than noting that appellant was involved with a decision with his employer concerning whether he would be terminated or leave work on disability.

In a December 2, 1996 report, Dr. Johnson reiterated his diagnosis that appellant suffers from major depression and opined that appellant has suffered from this disorder since August 1990. Dr. Johnson stated that appellant's symptoms diminished his ability to concentrate and

¹³ See *Norma L. Blank*, 43 ECAB 384 (1992).

¹⁴ The Board notes that the weight of medical evidence is determined by its reliability, its probative value and its convincing quality. Factors which enter into such evaluation include not only the thoroughness of examination but also the accuracy and completeness of the physician's historical knowledge, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion. See *Anna C. Leanza*, 48 ECAB 115 (1996); *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996); *Clara T. Norga*, 46 ECAB 473 (1995).

learn new material in his position as an oil and gas inspector and to remain current in his field. Dr. Johnson stated that appellant is a high achiever and his inability to comprehend parts of his job completely caused him additional stress which exacerbated the depression. Dr. Johnson stated that he has reviewed appellant's position description and the expectations his job entails and opined that the work is overly stressful for appellant, given his history of depression, the effect which the continued stress has on the depression and the inability to accommodate appellant. Dr. Johnson opined that appellant should not return to work as an oil and gas inspector. Inasmuch as Dr. Johnson attributed appellant's depression as affecting appellant's performance in his job, this medical evidence does not attribute appellant's emotional condition to compensable employment factors.

In May 23, 1997 medical report, Dr. Harold H. Harsch, a Board-certified psychiatrist and an Office referral physician, reviewed the statement of accepted facts, appellant's file and interviewed appellant. Dr. Harsch stated that his diagnosis would be consistent with Dr. Johnson's, appellant's treating physician. He stated that appellant probably began suffering from a major depression in late 1990 when the symptoms were first noted by his family physician. Dr. Harsch also stated that he concurred with the psychological testing done in 1991 that appellant may suffer from personality traits and/or personality disorder, which make personal relations difficult, which may make his perception of other people's reaction to him inaccurate. His underlying insecurity and feelings of inadequacy made him prone toward a significant emotional reaction in response to performance evaluations at his place of employment.

In response to the question "what specific events does the claimant state caused his condition," Dr. Harsch stated that major depression was most often precipitated by significant stress. Appellant identified various stressors in his work and family life as early as 1989. He reported that as time progressed, he felt more inadequate at work and perceived himself as not being adequately prepared, educated or trained to fulfill the tasks that he was assigned. Dr. Harsh stated that appellant related this as the primary stress that occurred on an almost daily basis while at work. Based on the medical evidence and his interview with appellant, Dr. Harsh opined that appellant's major depression developed sometimes between 1989 and 1991 and was caused by both stress in the home and stress at work. He stated that more significant stress appeared to be generated from work in the early 1990s than in the home.

After reviewing the statement of accepted facts, Dr. Harsh stated that there was no event listed substantiated by the evidence of record which caused this condition. In commenting upon the question of appellant not receiving adequate training, he noted that although appellant participated in various job performance improvement plans and was given additional learning materials to improve his job functioning, this was done in the early to mid 1990s at which time appellant was suffering from and receiving treatment for major depression. Dr. Harsh stated that appellant may have had enough residual symptoms in which attention, concentration and learning impairment is part of the syndrome and this may have prevented him from adequately participating in these improvement programs on the job. His opinion is sufficiently rationalized to establish that the accepted factor of extensive travel in appellant's job did not cause or contribute to his emotional condition. Rather, appellant's emotional condition contributed to performance problems at work.

The Board finds that the Office acted within its discretion in denying appellant's request for reconsideration of its January 20, 1999 decision.

Pursuant to 20 C.F.R. § 10.138(b)(1) in effect on June 5, 1998 and 20 C.F.R. § 10.606 in effect on January 6, 1999, a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent new evidence not previously considered by the Office.¹⁵ Formerly at section 10.138(b)(2), section 10.608(a) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.¹⁶ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹⁷ Evidence that does not address the particular issue involved does not constitute a basis for reopening the case.¹⁸

In this case, appellant's claim for compensation was denied on the basis that the medical evidence failed to relate appellant's emotional condition to the one established compensable work factor of appellant's federal employment, which pertains to appellant's extensive travel and includes driving. In his March 10, 1999 reconsideration request, appellant neither submitted relevant evidence not previously considered nor presented legal contentions not previously considered. The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deduction from established facts.¹⁹ Accordingly, as appellant's March 10, 1999 reconsideration request was properly found lacking in new and relevant evidence or new legal arguments pertinent to the issue in this case, it therefore is insufficient to warrant modification.²⁰ The Board finds that the Office properly denied appellant's application for reconsideration of his claim.

The June 11 and January 20, 1999 and September 30, 1998 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
October 23, 2001

¹⁵ 20 C.F.R. § 10.606(b)(2) (1999). *See generally* 5 U.S.C. § 8128(a).

¹⁶ 20 C.F.R. § 10.608(a) (1999).

¹⁷ *Howard A. Williams*, 45 ECAB 853 (1994).

¹⁸ *Richard L. Ballard*, 44 ECAB 146, 150 (1992); *Edward Mathew Diekemper*, 31 ECAB 224, 225 (1979).

¹⁹ *See Daniel J. Perea*, 42 ECAB 214, 221 (1990).

²⁰ 20 C.F.R. § 8128(a)(3).

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
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