

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANDREW J. SHEPPARD and EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, DETROIT DISTRICT OFFICE, Detroit, MI

*Docket No. 00-1228; Submitted on the Record;
Issued October 15, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that he developed an emotional condition causally related to factors of his federal employment.

On May 13, 1999 appellant, then a 51-year-old deputy district director, filed an occupational disease claim, Form CA-2, alleging that he sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated August 30, 1999, the Office of Workers' Compensation Programs denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. Appellant requested a review of the written record and by a January 25, 2000 decision, finalized January 27, 2000, an Office hearing representative affirmed the Office's prior decision.

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.¹

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.² There are distinctions regarding the type of situation giving rise to an emotional condition, which will be covered under the Federal Employees' Compensation Act.³ For example, disability resulting from an employee's emotional reaction to

¹ *Peggy Ann Lightfoot*, 48 ECAB 490 (1997).

² *Lillian Cutler*, 28 ECAB 125, 129 (1976).

³ 5 U.S.C. §§ 8101-8193.

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 covered,⁵ and disabling conditions caused by an employee's fear of termination or frustration from lack of promotion are not compensable.⁶ In such cases, the employee's feelings are self-generated in that they are not related to assigned duties.

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, a claimant must support his allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.⁸

The initial question is whether appellant has established any compensable employment factors as contributing to his condition;⁹ if appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.¹⁰

In this case, the Board finds that appellant has not established any compensable work factors and that the employing establishment has neither erred nor acted abusively or unreasonably in the administration of personnel matters.

Appellant alleged that in 1996 and 1997 he was wrongly denied a promotion to the position of district director of a field office. He stated that he had received several outstanding performance appraisals during the periods preceding his applications for promotion and that his many years of experience as deputy district director made him a highly qualified candidate. Appellant stated that despite repeated requests for an explanation as to why he had been denied the promotion, it was not until several years later, during a deposition held on April 29, 1999, that Elizabeth Thornton, the recommending officer for each of the position openings, admitted that she had heard rumors about appellant's having had relationships with women in his office and having borrowed money from coworkers. She also stated that there were some ethical concerns over appellant's suitability for promotion. He alleged that the rumors against him were largely unfounded and, therefore, the employing establishment had improperly used these rumors as a reason for denying his promotion. Appellant stated that he felt that he was denied promotion both in retaliation for having filed an earlier Equal Employment Opportunity Commission

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

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

⁶ See *Lillian Cutler*, *supra* note 2 at 131.

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

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

⁹ *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

¹⁰ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992) (noting that if appellant fails to substantiate with probative and reliable evidence a compensable factor of employment, the medical evidence need not be discussed).

(EEOC) claim regarding a performance appraisal and in part due to discrimination for his having had a relationship with a woman in his office.

In support of his claim, appellant submitted excerpts from the April 29, 1999 deposition of Elizabeth Thornton, in which Ms. Thornton, then the Director of the Office of Field Programs, confirmed that there had been concerns about appellant's truthfulness regarding his relationship with a female subordinate in his office, as well as some questions as to whether he had improperly borrowed money from this subordinate, and that she had a vague notion that some scandal surrounding his relationship with this coworker had led to his transfer to another office in 1995. Ms. Thornton stated that she did not remember the exact nature of the allegations, or whether they had been proven. The record further contains, however, a more contemporaneous confidential investigative memorandum dated February 8, 1994, from Manuel Zurita, Operations and Policy Specialist for the employing establishment, which concluded that while there was insufficient evidence to establish that appellant had improperly borrowed money from a subordinate, there was sufficient evidence to establish that he had misrepresented the nature of his relationship with a subordinate employee and had adversely affected employing establishment operations.¹¹ The record also contains an affidavit dated September 7, 1999 from Lynn Bruner, Director of the St. Louis Office, who stated that appellant had been transferred to the Detroit Office as a result of his conduct, which had adversely affected the operations of the St. Louis District Office.¹² Finally, the record contains a statement from the employing establishment refuting each of appellant's allegations, and stating that appellant was not selected for promotion in part because of information known to the selection officials that reflected unfavorably on appellant's judgment, character, credibility and ultimately, his suitability for a permanent position as district director; namely that appellant had lied to employing establishment management officials about intimate relationships he had with subordinate employees, relationships that interfered with efficient operation of district offices where appellant worked as deputy director and which created the appearance of a conflict of interest.

The Board initially notes that failure to be promoted is not compensable under the Act because the lack of a promotion does not involve an employee's ability to perform his or her regular or specially assigned duties but rather constitutes the employee's desire to work in a different position.¹³ Here, the employing establishment gave appellant high ratings for his job performance generally, but found him unsuitable for the district director position because of other identified factors which the employing establishment explained.¹⁴

¹¹ In an affidavit signed by appellant on January 29, 1992, he denied a romantic relationship with the woman in question. However, in an affidavit signed by appellant on November 17, 1993, he admitted that he had a serious relationship with the woman in question during the relevant time period.

¹² Ms. Bruner explained that there were persistent reports from her staff that appellant was engaged in a personal relationship with a subordinate employee and a perception among the staff that this subordinate employee was being treated more favorably by appellant than other employees, due to the nature of their relationship.

¹³ *James D. Carter, Jr.*, 43 ECAB 113, 124 (1991); see *Donald W. Bottles*, 40 ECAB 349, 353 (1988) (finding that an employee's frustration and depression resulting from an involuntary transfer are not compensable).

¹⁴ See *George A. Ross*, 43 ECAB 346, 352 (1991) (finding that determinations by the employing establishment concerning promotions are administrative in nature and not a duty of the employee).

Appellant contended that he had been denied promotions on several occasions, and that the employing establishment abused and mistreated him by basing its decision on rumors and racial factors. However, nothing in the record offers any support for appellant's allegation that the employing establishment acted abusively or unreasonably in its management responsibilities.

Inasmuch as appellant has failed to meet his burden of proof in providing factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition, the Board finds that the Office properly denied his claim.¹⁵

The decisions of the Office of Workers' Compensation Programs dated January 25, 2000, finalized January 27, 2000 and August 30, 1999 are affirmed.

Dated, Washington, DC
October 15, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁵ See *Raul Campbell*, 45 ECAB 869, 877 (1994) (finding that appellant failed to substantiate compensable factors of employment or allegations of error or abuse on the part of the employing establishment).