

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACK M. TERRELL and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Charleston, SC

*Docket No. 00-1276; Submitted on the Record;
Issued September 18, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained an emotional condition, or aggravation of hypertension, diabetes and coronary artery disease in the performance of duty.

On November 3, 1999 appellant, then a 53-year-old chief environmental engineer, filed a notice of occupational disease alleging that he sustained an emotional condition in the performance of duty, which he attributed to “trying to please supervisor” Johnetta McKinley and “management officials with the types of employees [he] had to supervise....” In a statement and a February 27, 1999 letter, appellant asserted that he had an adversarial relationship with union representatives because he disciplined or removed employees for poor work performance. He noted that union involvement brought additional intervention from management “as grievances went to the third step,” which took up time and added to his workload. Appellant asserted that when he hired a cleaning contractor to clean part of the employing establishment in an attempt to save money, the new union president started a “war,” with grievances, accusations of unfair labor practices and administrative investigations.¹ Appellant was intermittently absent from work from November 25, 1998 through July 22, 1999. He submitted medical evidence in support of his claim.

In an April 9, 1997 report, Dr. Jan N. Basile, an attending Board-certified internist at the employing establishment, noted that appellant experienced “a lot of anxiety,” insomnia and crying spells due to trying to get “along with his workers who he sees as abusing the sick leave schedule.” Dr. Basile diagnosed “anxiety neurosis” and depressive symptoms.

¹ Appellant noted a history of stress while serving in the U.S. Marine Corps, following the sudden death of his wife, the death of his father and the murder of his brother. He listed nonoccupational stresses of the death of his mother and stepfather, triple coronary artery bypass, pericardial effusion and two serious automobile accidents, which occurred in the same time frame as the alleged employment factors.

In a May 9, 1997 report, Dr. Basile related appellant's account of increased anxiety due to "five unfair labor practices and one EEO [Equal Employment Opportunity] complaint filed against him" by the labor union "as he is head of environmental management." She diagnosed "anxiety neurosis" and "depression."

In a May 13, 1997 report, Dr. Paul Deci, an attending Board-certified psychiatrist at the employing establishment, noted appellant's account of feeling "very stressed at work and feels that he is under attack by the union," with "a number of EEO and union complaints as well as two IG [inspector general] investigations." Dr. Deci diagnosed "major depressive disorder, moderate," and "post-traumatic stress disorder," and prescribed medication and counseling.² In a June 19, 1997 follow-up report, he noted that appellant had increased anxiety as he "had more EEO and congressional grievances filed against him."³

In a March 8, 1999 report, Dr. Basile noted appellant's "problems with his supervisor, Ms. McKinley, and this has been causing a lot of stress. He left his job March 5, 1999 one and one-half hours early because of the stress load" and was reprimanded." Dr. Basile diagnosed "increase stress on the job."⁴

In an August 16, 1999 report, Dr. Lawrence Labbate, an attending Board-certified psychiatrist at the employing establishment, provided a medical and psychiatric history, performed a psychiatric examination and diagnosed major depressive and probable Bipolar II disorders, generalized anxiety disorder, alcohol and nicotine dependence, coronary artery disease, diabetes, status-post coronary bypass and status-post myocardial infarction. Dr. Labbate noted that appellant was "currently depressed in the face of persisting job stress."

In an August 29, 1999 report, Dr. Basile noted appellant's stress over the death of his father, his mother's heart attack and "a high amount of job stress." He diagnosed "[j]ob-related stress," and recommended reassignment as "his job is causing increased difficulty maintaining his medical conditions" of cardiac problems, hypertension and diabetes.

In a September 3, 1999 report, Dr. Labbate opined that appellant's depression, anxiety and probable Bipolar II disorders were "influence[d] by his stressful job," making "resolution of the illness difficult. His current position, with its attendant large responsibility, interpersonal strife with union leaders and reluctant working housekeepers is likely to worsen his psychiatric condition [and] ... poses significant health risk." Dr. Labbate recommended that appellant "not be in his current position."

² In a May 29, 1997 report, Dr. Deci noted that, with medication, appellant was "able to manage his anger better - handled a meeting with union leaders. Is still upset about being disciplined by his supervisor...."

³ Dr. Basile and Dr. Deci submitted periodic treatment notes dated August 26, 1997 to March 3, 1998.

⁴ In a March 9, 1999 note, Dr. Basile noted receiving a call from Ms. McKinley, and that he explained to her that appellant "was under a lot of stress at work and that, in order to get well, ... [appellant] had to have a favorable medical as well as psychological well being. Dr. Basile noted that he "wanted to inform [Ms. McKinley] of what I see going on with [appellant] and how it is impacting upon his having a favorable health outcome."

In a September 28, 1999 report, Dr. Basile noted that appellant felt “unable to perform his current position. He diagnosed a “personality disorder ... clearly precipitated by his lack of control in being able to get his employee ... to perform their jobs as necessary.... [Appellant’s] ... appropriate expectations cannot be met and this is aggravating his medical condition.”

In a September 29, 1999 letter, Dr. Basile stated that appellant’s major depressive and anxiety disorders were aggravated by his position as “chief of environmental services,” due to unreliable employees who filed union complaints against him, “aggravating his medical well being and causing more anxiety and conflict ... as he tried to deal with” the complaints. He diagnosed depression, anxiety and passive-aggressive personality with antisocial traits. Dr. Basile also noted that appellant’s coronary artery disease, diabetes, hypertension and hyperlipidemia, were significantly and negatively “impacted by his job stress and underlying personality disorder.” He opined that appellant was “unable to perform his current position as head of environmental services” and that he be moved to another position.”

In a November 5, 1999 letter, Donald M. Wilson, an employing establishment official, stated that appellant, as well as “all other supervisors and managers” at the employing establishment, had to “deal with the union, difficult employees and a demanding supervisor.”⁵ Mr. Wilson characterized appellant’s position as having “average” stress and that appellant “performed his duties conscientiously.” He noted, however, that appellant was “abrasive,” had “a unique way of alienating others” and swore at his employees. Mr. Wilson disagreed that appellant had inordinate difficulties with the union and in fact was cautioned against “having too much informational discourse with union representatives.”

By decision dated February 14, 2000, the Office of Workers’ Compensation Programs denied appellant’s claim on the grounds that he had not established performance of duty. The Office found that appellant’s reactions to dealing with difficult employees, union representatives and a difficult supervisor were “self-generated” and not considered within the performance of duty. The Office also found that management involvement in step three grievances and other disciplinary matters was an administrative matter not within the performance of duty, and that no error or abuse was shown. The Office also found that appellant had not established as factual that his decision to hire a cleaning contractor resulted in employee grievances, accusations of unfair labor practices or administrative accusations. Regarding appellant’s accusations of harassment by management, the Office found that appellant’s description of events was too vague to support his version of events, and that there was no corroborating evidence of record. The Office noted that Mr. Wilson’s November 5, 1999 letter tended to negate appellant’s version of events.

The Board finds that the case is not in posture for a decision.

⁵ Mr. Wilson noted that appellant was scheduled to work 40 hours a week, but was “known to work extra to get things done.” Appellant has not alleged overwork as causing or contributing to his emotional condition. Also, Mr. Wilson noted that appellant was reprimanded in 1997 “for spending too much money on a project and divulging sensitive information,” but there were no adverse personnel actions against him. Appellant has not alleged that this disciplinary action caused or contributed to his emotional condition.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. Where the disability results from an employee's emotional reaction to employment matters but such matters are not related to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Federal Employees' Compensation Act.⁶ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁷

The Board finds that the Office erred in its February 14, 2000 decision, finding that appellant failed to establish a compensable factor of employment. Appellant attributed his claimed emotional condition, in part, to the stress of dealing with union officials, grievances and disciplining employees. The Board finds that appellant's position as chief of environmental services required meetings and negotiations with union representatives, the handling of grievances and administering to problem employees. These duties are considered to be within the performance of duty.⁸ Thus, appellant has established compensable employment factors. Thus, it must now be ascertained whether appellant submitted sufficient medical evidence to establish that he sustained an emotional condition or aggravation of hypertension, diabetes and coronary artery disease, causally related to the accepted job factors.

The Board further finds that appellant alleged several causes of his emotional condition that are not compensable employment factors.

Appellant also attributed his condition to management involvement in grievance proceedings brought by employees under his supervision. These are administrative actions unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.⁹ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁰ Appellant has not submitted sufficient evidence in corroboration of his claim to establish that the employing establishment erred or acted abusively with regard to the grievances. Thus, appellant has not established a compensable employment factor under the Act in this respect.¹¹

⁶ *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁸ *Lillian Cutler*, *supra* note 6.

⁹ *See Mary L. Brooks*, 46 ECAB 266 (1994); *see Michael Thomas Plante*, 44 ECAB 510 (1993).

¹⁰ *See Richard Dube*, 42 ECAB 916 (1991).

¹¹ *See Frederick D. Richardson*, 45 ECAB 454 (1994).

Appellant also alleged a pattern of harassment from the employing establishment, in particular, Ms. McKinley, his supervisor. In order to establish compensability under the Act, however, there must be evidence that harassment did in fact occur. The Board notes that unfounded perceptions of harassment do not constitute an employment factor, and that mere perceptions are not compensable under the Act.¹² In the present case, appellant has not alleged any specific incident of harassment, or submitted sufficient evidence to support a pattern or environment of harassment.¹³ Accordingly, the Board finds that appellant has failed to substantiate his claims of harassment.

Regarding appellant's allegations that grievances, unfair labor practice allegations, and investigations were brought against him for hiring a cleaning contractor, appellant failed to submit corroborating evidence. The Board has considered the lack of corroboration, and concluded that appellant has submitted insufficient evidence to sustain his allegations of events.¹⁴

Appellant submitted numerous medical reports addressing the causal relationship between the claimed emotional condition, aggravation of cardiovascular disease and diabetes, and the accepted work factor of dealing with union representatives.

In an April 9 and May 9, 1997 reports, Dr. Basile, an attending Board-certified internist at the employing establishment, noted that appellant sustained anxiety neurosis and depression due to trying to get along with unreliable workers who then filed union grievances and EEO complaints against him. In a March 8, 1999 report, Dr. Basile noted that appellant also experienced stress due to his supervisor, Ms. McKinley, reprimanding him for leaving his job early on March 5, 1999 "because of the stress load." In reports from August 29 to September 29, 1999, she diagnosed major depression, anxiety and personality disorders aggravated by appellant's position as "chief of environmental services," due to dealing with union complaints against him made by unreliable employees. Dr. Basile recommended appellant's reassignment as "his job is causing increased difficulty" with his cardiac problems, hypertension and diabetes.

In an August 16, 1999 report, Dr. Labbate, an attending Board-certified psychiatrist at the employing establishment, found appellant was "depressed in the face of persisting job stress." In a September 3, 1999 report, Dr. Labbate opined that appellant's depression, anxiety and probable Bipolar II disorders were negatively "influence[d] by his stressful job," in particular "interpersonal strife with union leaders and reluctant working housekeepers is likely to worsen his psychiatric condition [and] ... poses significant health risk." Dr. Labbate also recommended appellant's transfer to another position.

¹² *Kathleen D. Walker*, 42 ECAB 603 (1991).

¹³ Although appellant mentioned to Dr. Basile on March 8, 1999 that Ms. McKinley reprimanded him regarding leaving work early on March 5, 1999, appellant did not make this allegation directly to the Office, or provide any corroborating evidence to support that the incident occurred as alleged.

¹⁴ See *Lorraine E. Schroeder*, 44 ECAB 323 (1992); *Mary N. Kolis*, 25 ECAB 53 (1973).

In a May 13 and June 19, 1997 reports, Dr. Deci, an attending Board-certified psychiatrist at the employing establishment, noted that appellant experienced depression and anxiety as he felt “under attack by the union” due to the number of complaints and investigations lodged against him.

The reports of Drs. Basile, Deci and Labbate relate appellant’s condition to stress at work, and mention appellant’s dealings with union officials and employee grievances as a cause of that stress. These reports are not contradicted by any other medical evidence of record. However, there is wide variation in the diagnoses of these physicians, ranging from probable Bipolar II disorder to post-traumatic stress disorder. These reports, while insufficient to establish causal relationship between appellant’s employment and a specific emotional condition, are sufficient to require further development.¹⁵ The reports also indicate that appellant’s hypertension, diabetes and coronary artery disease were aggravated by a work-related emotional condition. The case will, therefore, be remanded for referral of appellant, together with a statement of accepted facts and the case record, to an appropriate physician or physicians for an examination and rationalized opinion on whether appellant sustained an emotional condition, or aggravation of cardiovascular disease and diabetes, causally related to his employment. Following this and any other development that the Office deems necessary, the Office shall issue an appropriate decision in the case.

The decision of the Office of Workers’ Compensation Programs dated February 14, 2000 is hereby set aside and the case remanded for further development consistent with this decision and order.

Dated, Washington, DC
September 18, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹⁵ *John J. Carlone*, 41 ECAB 354 (1989).