

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GUILLERMO CHAVEZ and DEPARTMENT OF JUSTICE,
IMMIGRATION & NATURALIZATION SERVICE, Los Angeles, CA

*Docket No. 02-259; Submitted on the Record;
Issued August 1, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

On November 15, 2000 appellant, then a 47-year-old supervisory immigration inspector filed an occupational disease claim alleging that he developed the condition of Bell's Palsy secondary to stress induced by the employing establishment that included discriminatory conduct and harassment. In support of his claim, he enclosed an email listing the participants who attended a training session and information on Bell's Palsy.

In an accompanying November 15, 2000 statement, appellant indicated that he was ordered to attend Equal Employment Opportunity (EEO) training. He stated that, while he was in class, he noticed that some of his colleagues were attending the training to prevent EEO complaints and to solve EEO problems before they were initiated. Appellant became distressed when he realized that most of the supervisors and managers attending the training had never had an EEO complaint, while those that should have been present were not. He stated that he had filed several EEO complaints against the area port director for discrimination during his tenure. Appellant stated that he had requested that the director attend EEO training in order for him to understand the rules and regulations regarding the federal law. He indicated that, over the last two years, it was an extremely stressful and hostile work environment. Appellant added that it was so stressful that "many of us have determined that the [port] director purposely has discriminated and harassed many of the employees." He also indicated that he had Bell's Palsy.

By letter dated January 3, 2001, the Office of Workers' Compensation Programs advised appellant of the additional factual and medical evidence needed to establish his claim and requested that he submit such. Appellant was advised that submitting a rationalized statement from his physician addressing any causal relationship between his claimed injury and factors of his federal employment was crucial. He was allotted 30 days to submit the additional factual and medical evidence.

In a June 8, 2001 decision, the Office denied appellant's claim on the grounds that he did not establish that he sustained any condition in the performance of duty.

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

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 his 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 his 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 he 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, 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

In the present case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated June 8, 2001, the Office

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).

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

⁶ *Id.*

denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that his condition of Bell's Palsy was secondary to stress caused by the employing establishment that included discriminatory conduct. He explained that he was required to attend EEO training. Appellant alleged that some supervisors and managers who should have been there were not. The Board finds that these allegations relate 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.⁷ Although the assignment of work duties, such as being required to attend training seminars is generally related to the employment, this is an administrative function of the employer and not a duty of the employee.⁸ 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.⁹ There is no evidence of any error or abuse. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant also stated that he himself had filed EEO complaints against the port director. However, the filing of a complaint does not mean nor confirm that the employer abused its discretion or acted in a discriminatory manner. He has not provided any decisions or findings regarding his allegations.

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹⁰ However, for harassment or discrimination 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.¹¹ In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and that appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors or coworkers.¹² Appellant alleged that he

⁷ See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

⁸ *Id.*

⁹ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁰ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹¹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹² See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

had filed an EEO complaint against the port director, as he believed his actions constituted harassment and discrimination. However, he did not identify what actions his supervisor made or name any specific examples of such behavior. Appellant did not provide any corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.¹³ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.¹⁴

The June 8, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
August 1, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

A. Peter Kanjorski
Alternate Member

¹³ See *William P. George*, 43 ECAB 1159, 1167 (1992).

¹⁴ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).