

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE E. KINCADE and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Norwalk, CT

*Docket No. 02-749; Submitted on the Record;
Issued August 9, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that he sustained an emotional condition in the performance of duty, causally related to compensable factors of his federal employment and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration.

On September 13, 1999 appellant, then a 46-year-old revenue officer filed an occupational disease claim alleging that on or about May 27, 1999 he was subjected to discrimination and harassment by management for approximately one year, which caused him stress, loss of sleep and digestive and cardiac symptoms. Appellant stopped work on May 27, 1999.

Appellant submitted medical evidence, documentation of Equal Employment Opportunity (EEO) claims filed against the employing establishment and allegations of discrimination and harassment believed to have caused the above conditions. He alleged that he did not receive a promotion due to racial discrimination and that discrimination played a factor in the denial of credit hours and the opportunity to maintain a flexiplace schedule, when other workers had both opportunities. Appellant further alleged that his denial of a promotion was based on his latest performance appraisal, which he believed was subjectively graded and inaccurately reflected his performance. He further alleged that he disagreed with his work assignments. Appellant stated that he was held to a different performance standard and a higher degree of scrutiny than his Caucasian coworkers and he was denied training. He also alleged that his supervisor treated him different from other coworkers during training sessions. Appellant further alleged that the employing establishment engaged in inappropriate interrogation and made threatening comments during his investigation and subsequent suspension for late payment of his federal and state taxes, inaccuracies on his travel voucher, misstatements on his SF-171 application and extended absences.

In letters dated October 15, 1999, the Office requested additional factual and medical information from appellant and the employing establishment in order to process the emotional condition claim.

In a letter dated October 29, 1999, the employing establishment responded to the Office's inquiry and controverted appellant's claim. A representative of the employing establishment indicated that appellant's allegations of harassment were not substantiated in any way and that appellant's performance and conduct issues were addressed in accordance to the employing establishment procedures.

In a letter dated October 28, 1999, appellant's supervisor, Christopher Quill refuted appellant's allegations of work-related stress and harassment. Mr. Quill attached a copy of appellant's job description to his letter and indicated that the requirements of his position were no different from any other revenue officer at his grade level. He further indicated that appellant had received unfavorable performance reviews, conducted April 1 through November 30, 1998. Mr. Quill stated that appellant was to be closely reviewed for 90 calendar days to determine if there was any improvement in his performance. He indicated that in January 1999, appellant requested a temporary reassignment from driving, therefore, the employing establishment relieved him from fieldwork. The employing establishment determined, however, that appellant's performance would still be reviewed in a certain timeframe as initially determined. Mr. Quill stated that, during the period of review, appellant's request for weeks of advanced sick leave were denied because he failed to provide sufficient medical documentation. He indicated that appellant had prior conduct issues for which he was suspended by the employing establishment including unpaid federal income taxes, bounced checks made to the Internal Revenue Service, fraudulent statements on his SF-171 application and travel vouchers. Mr. Quill further indicated that appellant began calling into work indicating that he would not be in. He stated that appellant was placed on annual leave until his leave was depleted and later placed on leave-without-pay status until he could substantiate his absences.

Appellant submitted additional medical evidence and resubmitted documentation regarding three EEO complaints filed against his supervisor, Mr. Quill and the employing establishment.

On April 5, 2000 the Office requested that the employing establishment provide information regarding specific allegations outlined in the letter. On April 19, 2000 Mr. Quill responded that appellant was held to the same standards of performance and conduct as his other coworkers. He specifically noted that appellant was denied a Grade 11 promotion because he was not the best qualified, based on his appraisal and that his race was not a factor. Mr. Quill further stated that between April 14 and October 19, 1997 appellant's GS-11 level cases were reassigned and he was restricted to GS-9 cases due to unsatisfactory performance. He further noted that appellant was denied the use of flexiplace because appellant needed training that was offered at the time in question. Mr. Quill indicated that appellant was required to use one hour of credit time on one occasion because he reported to work forty minutes late and that he was not aware of any other employees who were not similarly penalized when tardy. He further indicated that appellant's allegation that he was treated any different from other Caucasian coworkers during training sessions. Regarding his suspension in 1999, Mr. Quill noted that the employing establishment strictly complied with employing establishment's procedure and did

not interrogate appellant regarding his nonpayment of taxes. He further indicated that appellant was not threatened with termination for inaccuracies on mileage accounts as alleged. Regarding appellant's advanced sick and annual leave for his claimed medical condition, Mr. Quill indicated that appellant requested leave during a critical period of review and that he never presented sufficient medical documentation to substantiate his request for time off during this period.

Mr. Quill included a copy of appellant's job description, case reviews, his 1997 performance appraisal and notice of proposed adverse action previously issued to appellant outlining violations leading to his suspension from work.

By decision dated May 9, 2000, the Office denied appellant's claim on the grounds that he did not submit sufficient evidence to support he sustained an emotional or physical condition as a result of factors of his federal employment.

On June 2, 2000 appellant requested an oral hearing, which was held February 22, 2001. He testified regarding his allegations of discrimination and harassment on the part of Mr. Quill, his supervisor and the employing establishment and further regarding his claimed emotional and physical conditions. The Office hearing representative held the record open for 30 days following the hearing for the submission of additional information. Appellant submitted a complaint against the employing establishment and transcripts from an administrative proceeding with the employing establishment regarding an adverse action taken against him concerning his extended medical leave and his leave-without-pay status. Appellant further submitted medical evidence in support of his claim.

Evidence submitted by appellant following the hearing was provided to the employing establishment for review and appellant's supervisor made additional comment regarding the claim. The Office provided appellant a copy of his supervisor's comments and gave him an opportunity to respond. He made additional comment regarding his allegations.

The Office hearing representative affirmed the May 9, 2000 decision in a decision finalized on May 7, 2001. The Office hearing representative found that appellant failed to submit sufficient evidence to support a compensable work factor for which he could attribute to his emotional or physical condition.

Appellant requested reconsideration in an undated letter postmarked July 3, 2001. By decision dated October 3, 2001, the Office denied appellant's request for reconsideration, finding that the July 3, 2001 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

¹ 5 U.S.C. §§ 8101-8193.

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

Appellant alleged that his supervisor and the employing establishment racially discriminated against him when he was denied a promotion based on a subjective performance appraisal and denied him the opportunity to utilize flexiplace. He disagreed with his work assignments, alleging that his supervisor inappropriately scrutinized him for his performance. Appellant further alleged that he was held to a different performance standard although his workload was reduced to a GS-9. He further alleged that he was treated unfairly during training sessions and regarding the use of credit time. Appellant further asserted that the employing establishment acted improperly during his investigation and suspension for late payment of his federal and state taxes, termination for inaccuracies on his travel voucher and misstatements on his SF-171, application for employment and extended use of advanced leave for medical reasons, which placed him in a leave-without-pay status. The employing establishment specifically contested appellant's allegations and asserted that he was held to the same standards of

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).

performance and conduct as his Caucasian coworkers and that the employing establishment complied with agency policy in instituting each action against appellant. He 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 and a denied promotion. 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.⁹ The Office properly found that there was no evidence to support appellant's allegations regarding his denied promotion, 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.

Regarding appellant's anxiety over being temporarily suspended from the employing establishment, the Board has previously stated that 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 is not a compensable employment factor under the Act. Appellant's allegations that he did not like the way management handled these issues, without evidence establishing error or abuse, is not sufficient to establish compensability under the Act.¹⁰ The Board also notes that an employee's emotional reactions to a disciplinary action are generally not covered by the Act.¹¹

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. In view of this decision, it is unnecessary to consider the medical evidence to determine whether appellant's emotional and physical conditions were causally related to compensable factors of his employment. Such factors must be identified and established before it can be determined, through medical evidence, whether a claimant's disability is causally related to such factors.

The Board further finds that the Office acted within its discretion in denying appellant's request for reconsideration in its May 7, 2001 decision.

Pursuant to 20 C.F.R. § 10.606, 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.¹² Section 10.608(a) provides that when an application for review of the merits of a claim does not meet at

⁹ *Michael Thomas Plante*, 44 ECAB 510 (1993).

¹⁰ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹¹ *Diane C. Bernard*, 45 ECAB 223, 228 (1993).

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

least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.¹³ 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.¹⁴ Evidence that does not address the particular issue involved does not constitute a basis for reopening the case.¹⁵

In this case, appellant's claim for compensation was denied because the Office found that appellant's condition did not arise out of compensable factors of employment. In his reconsideration request postmarked July 3, 2001, appellant neither submitted relevant evidence not previously considered nor presented legal contentions not previously considered. He submitted argument that the Office hearing representative based her decision on information given by the employing establishment and not the information he submitted in support of the claim. Appellant submitted additional medical evidence, however, it is not part of this claim and is considered to be irrelevant to the issue in this case.

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.¹⁶ Accordingly, as appellant's July 3, 2001 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.¹⁷ The Board finds that the Office properly denied appellant's application for reconsideration of his claim.

¹³ 20 C.F.R. § 10.608(a) (1999).

¹⁴ *Howard A. Williams*, 45 ECAB 853 (1994).

¹⁵ *Richard L. Ballard*, 44 ECAB 146, 150 (1992); *Edward Mathew Diekemper*, 31 ECAB 224, 225 (1979).

¹⁶ *See Daniel J. Perea*, 42 ECAB 214, 221 (1990).

¹⁷ 20 C.F.R. § 8128(a)(3).

The October 3 and May 7, 2001 and May 9, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
August 9, 2002

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member