

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHANG K. KIM and DEPARTMENT OF THE NAVY,
NAVAL SUPPLY SYSTEMS COMMAND, Bremerton, WA

*Docket No. 02-883; Submitted on the Record;
Issued August 27, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition in the performance of duty.

On August 1, 2000 appellant, then a 45-year-old general supply specialist, filed an occupational disease claim (Form CA-2), alleging that on April 19, 2000 he first realized that his emotional condition was due to employment factors. Specifically, appellant attributed his condition to management's allegations against him and that he "was traumatized without realizing it."

In an undated note, appellant alleged that he was mistreated by Mr. Brian Mueller, a second line supervisor and Ms. Joan Campbell, his supervisor and that they talked to him in either a rude or condescending manner. Appellant also alleged that he was overworked by being assigned several crucial assignments without the necessary people to help complete the assignments. He also alleged that he was denied his career ladder promotion. In January 2000, appellant alleged that he was assigned more work by Ms. Campbell and "was given a section with less desirable personnel to lead." He alleged that Ms. Campbell created a hostile work environment for him by constantly changing assignments and failing to inform all the parties of the changes. Regarding Mr. Mueller, appellant alleged that he was interviewed in a biased way due to an allegation. Appellant also alleged that he was scrutinized and monitored continuously during the period February 23 through April 19, 2000 by Wendy Sienkiewich, a supervisor. In addition appellant alleged that during this same period he "was harassed, slandered, defamed of character, hostilities and crucible (sic) environment, humility, isolation and condescending treatments by management."

The employing establishment responded to appellant's statements and denied his allegations. Ms. Campbell noted that appellant was not promoted in October 1999 due to low workload. She noted that appellant appealed the decision to management and was subsequently granted his promotion. In addition, the employing establishment submitted evidence of appellant's suspension for two instances of inappropriate conduct effective April 30, 2000. The

instances involved appellant verbally attacking Kelly Greene, a coworker and a vendor from Premier Copper “saying [appellant] really lit into him today with the attitude we were no longer going to do business with them.” The record contains affidavits from Mr. Greene and workers of the purchasing department including Anne Everist, Roxie Phinn, Claudette H. Coburn, Kris Halverson and Bradley J. Gihl, who all related appellant’s loud outburst at Mr. Greene on February 22, 2000 and the disruptive effect it had on them and their trying to work.

In a May 8, 2000 treatment noted, Dr. Stephen Duncan, an attending physician, diagnosed “major depression due to an on-the-job stress reaction.”

In a July 26, 2000 report, Diane Tai, a mental health therapist, diagnosed depression, which she attributed to “his situation at work when he was accused of assaulting Joan Campbell.” Ms. Tai noted a similar assessment in an August 7, 2000 report.

In a July 28, 2000 report, Dr. Duncan diagnosed severe depression “secondary to an incident at work that has to do with discrimination, the details of which I am not familiar.”

By letter dated April 4, 2001, the Office of Workers’ Compensation Programs informed appellant that the evidence of record was insufficient to establish his claim and advised him as to the type of medical and factual evidence necessary to support his claim.

By decision dated May 4, 2001, the Office denied appellant’s claim as he had failed to establish that his emotional condition arose out of the performance of duty. The Office found appellant had failed to establish any compensable factors of employment.

The Board finds that appellant has not established 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

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).

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 May 4, 2001, the Office 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.

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions, improperly assigned work duties and unreasonably monitored his activities at work, 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 handling of disciplinary actions, evaluations and leave requests, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties 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 Appellant has not submitted any corroborating evidence supporting his allegations that the employing establishment acted erroneously in disciplining him, the assignment of work or monitoring appellant's activities. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

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

⁶ *Id.*

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).

Likewise, appellant's assertions regarding his promotion are administrative or personnel functions of the employing establishment. The Board has previously held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform his regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.¹⁰ It appears that, after an initial denial of a promotion, appellant appealed the denial and subsequently received a promotion. However, the mere fact that personnel actions were later modified or rescinded, does not in and of itself, establish error or abuse.¹¹ Failure to be promoted is not compensable 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.¹² In addition, an employee's frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable.¹³ Furthermore, there is nothing in the record, which offers any support for appellant's allegation that the employing establishment acted abusively or unreasonably in its management responsibilities. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant has also alleged that harassment and discrimination on the part of his supervisors and coworkers contributed to his claimed stress-related condition. 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.¹⁴ 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.¹⁵ In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors or coworkers.¹⁶ Appellant alleged that supervisors and coworkers made statements and engaged in actions, which he believed constituted harassment and discrimination. However, he provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.¹⁷ Thus, appellant has not established a

¹⁰ *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

¹¹ *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

¹² *Andrew J. Sheppard*, 53 ECAB __ (Docket No. 00-1228, issued October 15, 2001).

¹³ *Judy L. Kahn*, 53 ECAB __ (Docket No. 00-457, issued February 1, 2002); *Barbara J. Latham*, 53 ECAB __ (Docket No. 99-517, issued January 31, 2002).

¹⁴ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁵ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁶ 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).

¹⁷ See *William P. George*, 43 ECAB 1159, 1167 (1992).

compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Appellant stated that he was overworked by being assigned crucial assignments without the necessary people to complete the tasks. If substantiated by the evidence in the record, these allegations would be compensable factors of employment. The Board has held that emotional reactions to situations in which an employee is trying to meet his position requirements are compensable.¹⁸ In *Antal*, a tax examiner filed a claim alleging that his emotional condition was caused by the pressures of trying to meet the production standards of his job and the Board, citing the principles of *Cutler*, found that the claimant was entitled to compensation. In *Kennedy*, the Board, also citing the principles of *Cutler*, listed employment factors, which would be covered under the Act, including an unusually heavy workload and imposition of unreasonable deadlines. In the instant case, appellant has submitted no evidence supporting his allegation that he was overworked or assigned crucial assignments or that management failed to provide him the necessary people to complete his assignments. As appellant provided no supporting evidence regarding his allegation of overwork, appellant has failed to establish a compensable factor in regards to this allegation.

Inasmuch as appellant failed to substantiate or implicate a compensable factor as a cause of his claimed emotional condition, the Office properly denied his claim for benefits due to an emotional condition.¹⁹

¹⁸ See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

¹⁹ 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).

The May 4, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.²⁰

Dated, Washington, DC
August 27, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

²⁰ Appellant submitted additional evidence on appeal, which had not been reviewed by the Office at the time of its May 4, 2001 decision. The Board does not have jurisdiction to review this evidence for the first time on appeal as its review of a case is limited to the evidence in the case record which was before the Office at the time of its final decision; *see* 20 C.F.R. § 501.2(c).