

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ELBERT V. BROOKS and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Seattle, WA

*Docket No. 00-772; Submitted on the Record;  
Issued January 2, 2002*

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DECISION and ORDER

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

The issue is whether appellant has met his burden of proof in establishing that employment-related stress aggravated his preexisting diabetes and related conditions.

Appellant, a 52-year-old contact representative, filed a notice of occupational disease claim alleging that harassment and the stress of interviewing and interacting with the public resulted in a worsening of his diabetes as well as kidney disease, hypertension, proliferate retinopathy and aneurysms. The Office of Workers' Compensation Programs denied appellant's claim by decision dated August 11, 1999. He requested reconsideration on August 25, 1999 and the Office denied modification of its August 11, 1999 decision on November 23, 1999.

The Board finds that appellant has failed to meet his burden of proof in establishing that employment-related stress aggravated his preexisting diabetes and related conditions.

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 illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment to hold a particular position.<sup>1</sup>

In this case, appellant attributed his emotional condition to monitoring by his supervisor, disagreement with his performance ratings, requirement of sick leave documentation and disciplinary actions. These are considered to be administrative actions by the employing establishment. As a general rule, an employee's emotional reaction to an administrative or

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<sup>1</sup> *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

personnel matter is not covered under the Federal Employees' Compensation Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>2</sup> Appellant has submitted no evidence that the employing establishment acted unreasonably in carrying out these administrative functions.

Appellant also alleged that supervisor Vickie Klein harassed him through the above mentioned actions. He stated that he was subjected to retaliation and disparate treatment. 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. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>3</sup> Appellant has not submitted any evidence in support of his allegations.

Appellant alleged that Ms. Klein tried to hit him on April 22, 1991. She denied appellant's allegations and stated that he fell when he miscalculated the position of his chair. Appellant did not submit any further evidence in support of this allegation and has not substantiated a factor of employment.

Appellant alleged that on November 26, 1996 coworkers yelled at him for no reason. He stated that he asked Ms. Liu, a coworker, about a note and that she reacted hysterically stating that she was afraid of appellant. Frank Allard stated that on November 26, 1996, Ms. Liu came to his office crying. He returned with Ms. Liu to her work station and told another coworker that appellant had upset Ms. Liu. Appellant overheard the conversation, came over and became engaged in a verbal confrontation with Mr. Allard in which the two men exchanged profanities.

An altercation between coworkers which arose out of a claimant's regularly or specially assigned duties would be considered an employment factor, but an altercation which arose out of nonemployment factors, *i.e.*, a purely personal dispute, would not be considered an employment factor.<sup>4</sup> However, not every statement uttered in the workplace will give rise to coverage under the Act.<sup>5</sup> In this case, appellant and a coworker engaged in a personal exchange of profane insults which was outside the scope of a verbal dispute over appellant's assigned work duties. The mutual insults between coworkers therefore cannot be considered to have occurred within the performance of duty.

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<sup>2</sup> *Martha L. Watson*, 46 ECAB 407 (1995).

<sup>3</sup> *Alice M. Washington*, 46 ECAB 382 (1994).

<sup>4</sup> *See Irene Bouldin*, 41 ECAB 506, 514 (1990); *Lester O. Rich*, 32 ECAB 1178, 1180 (1981).

<sup>5</sup> *Mary A. Sisneros*, 46 ECAB 155 (1994).

Appellant also alleged that the nature of his work was stressful due to interactions with the public, that he received death threats and that he was verbally abused. He stated that Dan Keeling threatened his life on November 14, 1996. The employing establishment responded to these allegations and noted that appellant's position was considered stressful and that appellant had conflict with the public. Appellant also submitted witness statements supporting that he was threatened by a client as well as yelled at frequently by the public.

Appellant has substantiated that he had compensable factors of employment in the stressful nature of his dealings with the public and the death threat by a client. However, he must then establish that these factors caused his emotional condition.

To establish appellant's occupational disease claim that he has sustained an emotional condition in the performance of duty appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.<sup>6</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>7</sup>

In a report dated June 25, 1991, Dr. Paul N. Fredlund, a Board-certified internist, noted that appellant had poor control of his diabetes. He noted that appellant experienced stress at work and stated that stress could cause a decrease in diabetes control. In a report dated July 25, 1998, Dr. Fredlund diagnosed insulin requiring diabetes since 1983, with complications of hypertension, proliferated retinopathy with laser therapy and multiple complications of neuropathy as well as early diabetic kidney disease. On October 21, 1998 he stated that appellant experienced stress at work as his job required considerable interaction with the public. In a sworn statement, Dr. Fredlund stated that stress was detrimental to diabetic management and would make the disease more difficult to control. These reports are not sufficient to meet appellant's burden of proof as Dr. Fredlund did not clearly enunciate the accepted factors of employment and did not offer any medical rationale in support of his opinion that appellant's diabetes and related conditions were aggravated due to the accepted factors.

Dr. Norm Rosenthal, a Board-certified internist, completed a report on September 16, 1998 and stated that diabetes and related conditions were worsened by stress. He stated: "His current employment involves public interviewing and this is a source of great stress for the patient." Dr. Rosenthal failed to provide any medical reasoning explaining how and why appellant's stress due to the accepted condition of interaction with the public worsened his diabetes and related conditions.

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<sup>6</sup> *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

<sup>7</sup> *Id.*

In a report dated June 8, 1999, Dr. Lawrence C. Rainey, a clinical psychologist, diagnosed adjustment disorder with depressed and anxious mood. He noted that appellant alleged that the employing establishment discriminated against him and that his supervisor singled him out for attention. Dr. Rainey also noted that appellant was experiencing difficulties with his ex-wife. This report is not sufficient to meet appellant's burden of proof as Dr. Rainey attributed appellant's diagnosed condition to unsubstantiated employment factors and nonwork-related stress.

Appellant has failed to submit the necessary rationalized medical opinion evidence explaining how and why his diabetes and related conditions were aggravated by the accepted factors of employment. He, therefore, failed to meet his burden of proof.

The November 23 and August 11, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
January 2, 2002

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member