

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOUIS OUBRE and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, New Orleans, LA

*Docket No. 01-884; Submitted on the Record;
Issued January 7, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

On April 23, 2000 appellant, then a 42-year-old criminal investigator, filed a notice of occupational disease, claiming "major depression, post-traumatic stress syndrome, hypertension, suicidal and homicidal thoughts and renal condition" caused by his employment. Appellant submitted an attending physician's report from Dr. Anwar Ismail, dated April 6, 2000, diagnosing appellant with major depressive disorder and post-traumatic stress disorder. Dr. Ismail indicated that appellant was taking psychiatric medication for hypertension and anger and that he should not carry a gun at work.

The Office of Workers' Compensation Programs also received a report from Dr. Ismail dated March 20, 2000. In his report Dr. Ismail noted that appellant voluntarily admitted himself to a hospital on January 18, 2000 due to depression and suicidal and homicidal thoughts. He indicated that appellant had been through "a lot of stressors" from 1992 to 1995 when he was working as an undercover drug officer. Dr. Ismail stated that appellant was angry and hostile towards his employment and that he had had thoughts of going to work and "blowing everything away."

Appellant also submitted an undated personal statement received on May 12, 2000, in which he discussed the history of his undercover operations and the alleged causes of his emotional condition.

The Office also received a statement from appellant's employing establishment dated May 10, 2000. The employing establishment stated that they had initiated an investigation on appellant due to his alleged sexual misconduct while on an undercover assignment in Philadelphia, which began in October or November 1993. During this assignment, appellant allegedly had sexual relations with a female attorney in Philadelphia and supplied a narcotic substance to another special agent while acting in an undercover capacity. Appellant's

[employing establishment] implied that appellant's emotional claim was based on the [employing establishment's] investigations into the allegations of appellant's improper behavior and his frustration of not being able to secure a promotion or transfer of his job.

By letter dated June 5, 2000, the Office requested that appellant submit additional information to support his claim.

In response, appellant submitted a handwritten personal statement dated July 18, 2000. Appellant's employing establishment also submitted an additional nonconurrence statement dated July 28, 2000.

By decision dated November 3, 2000, the Office denied appellant's claim since appellant had not identified any compensable factors of employment.

The Board finds that appellant has failed to establish that his emotional condition occurred in the performance of duty.

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 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.¹

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.² There are distinctions regarding the type of situation giving rise to an emotional condition, which will be covered under the Act.³

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.

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

¹ *Vaile F. Walders*, 46 ECAB 822 (1995).

² *Lillian Cutler*, 28 ECAB 125, 129 (1976).

³ 5 U.S.C. §§ 8101-8193.

⁴ *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995).

⁵ *Sharon J. McIntosh*, 47 ECAB 754 (1996).

emotional condition arising in reaction to such error or abuse may be covered.⁶ However, a claimant must support his allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.⁷

The initial question is whether appellant has established compensable employment factors as contributing to his condition;⁸ if appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.⁹

In this case, the Board finds that appellant has not established any compensable work factors and that the employing establishment has neither erred nor acted abusively or unreasonably in the administration of personnel matters.

Appellant is primarily alleging that his emotional condition arose from the repercussions of his undercover assignment in Philadelphia from 1993 to 1995. Appellant allegedly had sexual relations with a female attorney he was investigating in a money-laundering operation while acting as an undercover officer. The female attorney brought criminal and civil charges against appellant for sexual misconduct on the part of a government employee. As a result, the United States Attorney's office conducted an investigation into the allegations and temporarily suspended appellant for 14 days. In the following years, appellant applied for several different positions within the federal government but was not selected and was told it was because of "past events" in his career. Appellant is alleging that "wherever he goes" there are rumors as to what happened in Philadelphia which have inhibited the growth of his career and which cause him stress.

Appellant is also alleging that the government did a poor job in representing him during his criminal trial and that the handling of the case has negatively impacted his life and his career. He stated that he felt "abandoned" by the federal government and that he was now "pegged" as a "bad agent." Specifically, appellant indicated:

"The [employing establishment] for which I sacrificed my life for, has abandoned me physically, mentally and emotionally. The [employing establishment] led me to believe that I was getting a second chance, once I completed my suspension and the Philadelphia incident would no longer affect my career. I feel as if I am a fighter with no arms. I have taken all the punches."

Appellant states that his emotional condition began when the employing establishment launched an investigation into the matter of his alleged sexual misconduct while acting as an undercover officer. He alleges that the employing establishment committed error or abuse in connection with the investigation it conducted relating to the charges of his sexual misconduct.

⁶ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

⁷ *Ruthie M. Evans*, 41 ECAB 416, 425 (1990).

⁸ *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

⁹ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992) (noting that if appellant fails to substantiate with probative and reliable evidence a compensable factor of employment, the medical evidence need not be discussed).

The Board has held that investigations, which are an administrative function of the employing establishment are generally not considered to be employment factors.¹⁰ 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 in the investigation on the part of the employing establishment. The Board has carefully reviewed the evidence of record and notes that appellant has not provided sufficient evidence to support his claim regarding the employing establishment's investigation of the charges against him. Appellant only indicated in his personal statement that he did not agree with the government's representation of him in his criminal trial and that during the trial he was "on his own." He did not submit any evidence to support his allegations that the employing establishment's actions during his trial were in any way in error or erroneous such that they would constitute error or abuse. Also, his statements that the employing establishment for which he "sacrificed his life for" has "abandoned him physically, mentally and emotionally" are vague and without merit and do not demonstrate error or abuse on the part of his employing establishment.

Appellant also claims that "wherever he goes" there are rumors as to what happened during his undercover operation in Philadelphia, which have caused him stress. In *Mary A. Sisneros*, the Board found that appellant's fear of gossip and rumors was a personal frustration, which was not related to her job duties or requirements and, therefore, was not compensable.¹¹

Appellant is also alleging that due to these "rumors" he was not chosen for promotions or transfer requests. In *Peggy Ann Lightfoot*, the Board found that the failure to be promoted is not compensable under the Act 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 Similarly, in *Frank A. Catapano*, the Board found that a denial of a transfer is not a compensable factor of employment.¹³ Appellant has not submitted any evidence to establish administrative error or abuse on the part of his employing establishment in the denial of a promotion or transfer request.

Accordingly, the Board finds that appellant has identified no compensable work factors that are substantiated by the record and that the employing establishment has neither erred nor acted abusively or unreasonably in the administration of personnel matters. As no compensable work factors have been identified, it is unnecessary to address the medical evidence.¹⁴

¹⁰ *Anne L. Livermore*, 46 ECAB 425 (1995).

¹¹ *Mary A. Sisneros*, 46 ECAB 155 (1994).

¹² *Peggy Ann Lightfoot*, 48 ECAB 490 (1997).

¹³ *Frank A. Catapano*, 46 ECAB 297 (1994).

¹⁴ *See supra* note 9.

The November 3, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 7, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member