

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DWAYNE DAY and DEPARTMENT OF VETERANS AFFAIRS,
Los Angeles, CA

*Docket No. 01-1104; Submitted on the Record;
Issued June 20, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant sustained an emotional condition causally related to compensable factors of his employment.

On June 18, 2001 appellant, then a 46-year-old service representative, filed an occupational disease claim alleging that he sustained a stress condition and pain in his neck and head on January 18, 2001 when his supervisor, William Thompson, blamed him for laughing and hanging up the telephone on a client.

In a statement dated February 1, 2001, Mr. Thompson stated that on January 18, 2001 he counseled appellant regarding his mishandling of files. He also stated that on that day another employee reported that someone hung up on him when he telephoned the office where appellant worked. Appellant acknowledged to Mr. Thompson that he was the only employee assigned to answer telephones at that time. Mr. Thompson stated that he discussed with appellant his performance problems and appellant accused Mr. Thompson of singling him out. Mr. Thompson denied that he was discriminating against appellant.

Appellant submitted disability certificates dated January 3 and 19, 2001 in which a physician's assistant indicated that he was disabled from January 3 to 4, 2001 and January 19 to March 22, 2001 due to anxiety and headaches.

By decision dated February 27, 2001, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to establish that his emotional condition was causally related to a compensable factor of his employment.

The Board finds that appellant failed to establish that he sustained an emotional condition causally related to a compensable factor of his employment.

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 this case, appellant attributed his emotional condition to a number of employment incidents and conditions. The Board must, thus, initially determine whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387, 391 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ See *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

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

⁵ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389 (1992).

⁶ *Id.*

Appellant alleged that his supervisor, Mr. Thompson, caused his emotional condition because he blamed appellant for hanging up on a customer who had telephoned on January 18, 2001. The monitoring of an employee's job performance by a supervisor is an administrative or personnel matter and is unrelated to the employee's regular or specially assigned work duties. Thus, the actions of a supervisor in performing his supervisory duties do not fall within the coverage of the Act.⁷ Although supervisory actions 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 this case, the employing establishment denied that it erred or acted abusively in its handling of administrative or personnel matters and appellant has provided insufficient evidence of error or abuse. Mr. Thompson stated that on January 18, 2001 he counseled appellant regarding his mishandling of files. He stated that on that day another employee reported that someone hung up on him when he telephoned. Appellant acknowledged that he was the only employee assigned to answer telephones at that time. Mr. Thompson stated that he discussed with appellant his job performance problems and appellant accused Mr. Thompson of singling him out. Mr. Thompson denied that he was discriminating against appellant. Appellant has not submitted sufficient evidence in support of his allegation that Mr. Thompson erred or acted abusively when he discussed appellant's job performance with him on January 18, 2001. Thus, appellant has not established a compensable employment factor under the Act in this respect.

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 while in the performance of duty.⁹

⁷ See *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

⁸ *Id.*

⁹ Because appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

The decision of the Office of Workers' Compensation Programs dated February 27, 2001 is affirmed.

Dated, Washington, DC
June 20, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member