

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of STANLEY BORIS and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Boston, MA

*Docket No. 01-1671; Submitted on the Record;  
Issued March 7, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

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

On December 17, 1998 appellant, then a 57-year-old supervisory tax technician, filed a notice of occupational disease claiming that the heart attack he sustained on July 29, 1998 was caused by job stress. Dr. Margaret Ferrell, a Board-certified internist, diagnosed acute myocardial infarction and coronary artery disease on November 24, 1998. Appellant submitted a statement detailing the factors of his employment that he believed caused him stress, including; (1) his job site would be moved to another location and he feared that he would not be able to drive the distance because he is visually impaired; (2) he was overworked when he had to provide training for employees and perform the duties of manager at the same time; and (3) he was under pressure to meet deadlines and quotas.

By letter dated February 17, 1999, appellant's representative stated that appellant was also under pressure to make certain that everything was "done accurately" in his group and was in charge of the largest number of employees of any group in the office and feared his job would be eliminated.

By decision dated May 4, 1999, the Office of Workers' Compensation Programs denied appellant's claim as the evidence of file failed to demonstrate that an injury occurred in the performance of duty.

Appellant requested an oral hearing which was held on April 27, 2000.

Appellant submitted two affidavits from employees in his group, from Howard Faverman dated December 6, 1999 and Joseph Riccio dated December 14, 1999. Mr. Faverman stated: "[I]t was obvious to me and everyone else in the group that appellant was under a great deal of pressure and stress from his work during the filing season, from early January through April 15, 1998." He indicated that the future of the "call site" rested on their groups

performance and that it was “obvious” by looking at appellant or listening to his voice that he was under a great deal of pressure. Mr. Faverman also noted that appellant was under a great deal of stress because he was training employees and performing his manager duties at the same time. He indicated that appellant looked “haggard” and always sounded extremely tired. Mr. Riccio, noted that appellant told him numerous times how pressured he felt due to the large size of his group and his many responsibilities. Mr. Faverman noted that appellant had more employees and responsibilities than any other manager. He also stated that, in his experience, it was the first time that a manager had to teach and manage at the same time without the help of an acting manager. Appellant also submitted a job description detailing his duties of manager.

By decision dated August 11, 2000, the hearing representative affirmed the Office’s May 4, 1999 decision.

Appellant requested reconsideration on August 25, 2000. His request for reconsideration was denied on November 24, 2000, as appellant did not submit any new or relevant evidence.

Appellant requested reconsideration on December 15, 2000 and submitted a report from Dr. Ferrell dated December 5, 2000.

In a merit decision dated March 19, 2001, the Office denied modification of the prior decisions.

The Board finds that appellant has not met his burden of proof to establish that he sustained an emotional condition while 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.<sup>1</sup>

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 coverage of workers’ compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee’s frustration over not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. On the other hand, where disability results from an employee’s emotional reaction to her regular or specially assigned work duties or to a

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<sup>1</sup> *Vaile F. Walders*, 46 ECAB 822 (1995).

requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>2</sup>

The initial question presented is whether appellant has substantiated compensable factors of employment as contributing to his emotional condition,<sup>3</sup> if appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.<sup>4</sup>

Appellant alleged that the following factors of his employment contributed to his stress and his heart attack: (1) appellant's fears that his job site would be moved and he would be transferred to another location and would not be able to drive the distance because he is visually impaired; (2) he was overworked when he had to provide training for employees, teach a class and perform the duties of manager at the same time; and (3) he was under pressure to meet deadlines and quotas; (4) he was under pressure to make certain that everything was "done accurately" in his group and had the largest group in the office; and (5) he feared that his job would be eliminated.

Appellant's feelings of fear that his job site might be moved and that his job might be eliminated are not covered under the Act. The Board has held that fear of losing one's job or job insecurity is not sufficient to constitute a personal injury in the performance of duty.<sup>5</sup> The record also indicates that appellant's employing establishment was committed to finding jobs for all people affected if the job site was moved. Appellant also alleged that he was under pressure to meet quotas and deadlines and to make sure that everything was "done accurately in his group." He did not provide any evidence showing that the employing establishment acted in an abusive or unreasonable manner in setting quotas and deadlines. Thus, these actions on the part of management do not constitute a factor of employment.

Regarding appellant's allegations of overwork, the Board has previously noted that overwork can be a compensable factor of employment if substantiated by the record.<sup>6</sup> Appellant alleged that he was overworked because he had to teach a class and provide training and perform the duties of manager at the same time. He also stated that during tax season his group swelled to 22 employees, 13 more than he was originally responsible for when he began his position in 1997. Appellant provided affidavits from two employees in his group stating that he was under a great deal of stress during this period due to his increased responsibilities and the large size of his group. The position description indicates that during the nonfiling period a group contains 12 or more employees and that during the filing period the group may expand "up to 100 percent." The position description does not indicate, however, that the manager would have to teach a group of employees and perform his manager duties at the same time. The Board finds that the evidence of record substantiates that he was overworked. His training of employees and

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<sup>2</sup> *Mary Boylan*, 45 ECAB 338 (1994); *Lillian Cutler*, *supra* note 2.

<sup>3</sup> *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

<sup>4</sup> *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

<sup>5</sup> *Purvis Nettles*, 44 ECAB 623 (1993).

<sup>6</sup> *William P. George*, 43 ECAB 1159 (1992).

other managerial responsibilities relate to the performance of his regular and specifically assigned duties. The medical evidence of record, however, is insufficient to establish causal relationship between appellant's work factors and his heart attack.

The medical evidence generally discusses the "stress" that appellant was under and how this may "possibly" be linked to his heart attack. The medical evidence does not address any specific employment factors that may have attributed to his condition. Dr. Ferrell stated in her December 9, 1998 report that "it [i]s possible that the intense stress at work was related to [appellant's] cardiac event." In her December 5, 2000 report, she stated: "As you know at the time of his infarction [appellant] was under significant inappropriate stress at work." Dr. Ferrell does not provide a rationalized medical opinion stating that the established compensable employment factor is causally related to appellant's heart condition. Rather, her opinion is speculative in nature and of diminished probative value.<sup>7</sup>

As the evidence of record fails to establish that appellant sustained an emotional condition in the performance of duty, he has not met his burden of proof and the Office, therefore, properly denied his claim for compensation benefits.

The March 19, 2001, November 24 and August 11, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
March 7, 2002

Alec J. Koromilas  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>7</sup> See *Linda I. Sprague*, 48 ECAB 386 (1997).