

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM G. GRIFFITHS and DEPARTMENT OF THE ARMY,
Fort Belvoir, VA

*Docket No. 01-1795; Submitted on the Record;
Issued March 20, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
COLLEEN DUFFY KIKO

The issue is whether appellant has met his burden of proof to establish that he sustained an emotional condition causally related to compensable factors of his federal employment.

On October 15, 1998 appellant, a 47-year-old criminal investigator, filed a claim alleging that he sustained emotional stress causally related to his federal employment. On the claim form, he stated that the official report of a motor vehicle accident contained errors that caused him stress; he also stated that his supervisor had created a hostile work environment. In an accompanying narrative report, appellant alleged harassment by his supervisor, an erroneous official report regarding his July 1997 motor vehicle accident and he also noted that for eight months following the accident he was detailed to strictly administrative duties.

On January 19, 1998 the Office of Workers' Compensation Programs advised appellant of the need for additional information; however, no information was provided.

By decision dated July 19, 1999, the Office determined that appellant had not established an emotional condition in the performance of duty. On October 4, 2000 appellant sought a modification of the July 19, 1999 decision and submitted a copy of a deposition of Dr. James A. Hunt, a Board-certified psychiatrist. By decision dated April 6, 2001, the Office determined that the evidence submitted was not sufficient to warrant modification of the prior decision.

The Board finds that appellant has not met his burden of proof in this case.

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.¹ To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual

¹ Pamela R. Rice, 38 ECAB 838 (1987).

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.²

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 secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³

It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.⁴ The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.⁵

In this case appellant has alleged that a supervisor, James Duck, harassed him. With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁶ The Office makes its own determination, based on the evidence, as to whether a compensable factor is established.⁷ Appellant did not submit corroborating witness statements, a finding of error by the employing establishment or a finding of harassment by the Equal Employment Opportunity Commission, or any probative evidence to

² See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

⁵ See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁶ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁷ The memorandum accompanying the April 4, 2001 decision states: "This Office cannot make a finding of whether or not harassment occurred, but must rely on an agency whose job it is to determine the validity of any harassment claim." Although a finding of harassment by another agency is probative evidence, the Board has held a final decision by another agency is not required to establish a claim based on an allegation of harassment. See *Parley A. Clement*, 48 ECAB 302 (1997). The Office must make its own finding as to whether the alleged factor has been substantiated. In this case, the Office did determine that the evidence was insufficient to substantiate the alleged work factor.

support his allegation. Appellant submitted a June 11, 1999 statement indicating that he had disagreements with his supervisor; he noted, for example, receiving a letter of instruction in April 1998 regarding use of government computers. The Board has recognized that supervisors must be allowed to perform their duties and a disagreement or dislike of supervisory actions will not be actionable, absent error or abuse.⁸ Appellant indicated that he filed two grievances against the supervisor, but there are no findings with respect to any grievances filed.

The Board notes that the record also contains a memorandum dated September 10, 1997 to the employing establishment in which appellant alleges harassment by coworkers. Appellant did not submit any additional supporting evidence. The Board finds that he has not substantiated a claim based on harassment in this case.

Appellant has also alleged that there were errors with respect to the investigation and official report following a July 1997 motor vehicle accident. The July 19, 1999 Office decision correctly finds that appellant was in the performance of duty at the time of the July 28, 1997 accident; he was in travel duty status and the Office accepted physical injuries as causally related to the incident. The April 6, 2001 Office decision found that the motor vehicle accident was not in the performance of duty, without providing adequate explanation. The July 28, 1997 accident would be a compensable factor; however, in this case appellant did not allege that the accident itself contributed to an emotional condition. Appellant alleged that subsequent administrative action by the employing establishment, including an official report and later his removal from federal employment, were erroneous or abusive.

In this respect the record does not contain probative evidence of error or abuse. The evidence indicates that the employing establishment obtained statements regarding the incident and ultimately found appellant liable for approximately \$5,000.00 in damages to the vehicle. There is no probative evidence supporting a finding of error or abuse in any administrative matter in this case.

The Board further notes that appellant briefly indicated that his light-duty job contributed to his stress. In a June 11, 1999 statement, appellant indicated that he was given little work to do while on light duty. The lack of work and any dissatisfaction or boredom with his light-duty job does not come within the concept of coverage under the Act.⁹

The Board accordingly finds that appellant has not alleged and substantiated a compensable work factor in this case. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.¹⁰

⁸ *Frank B. Gwozdz*, 50 ECAB 434 (1999).

⁹ *See Martin Standel*, 48 ECAB 306 (1996).

¹⁰ *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

The decision of the Office of Workers' Compensation Programs dated April 6, 2001 is affirmed.

Dated, Washington, DC
March 20, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member