

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICK A. ZIEGLER and DEPARTMENT OF THE ARMY,
DEPARTMENT OF PUBLIC WORKS HOUSING AUTHORITY, Fort Riley, KS

*Docket No. 01-1213; Oral Argument Held September 10, 2002;
Issued November 6, 2002*

Appearances: *Beth Regier Foerster, Esq.*, for appellant; *Miriam D. Ozur, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he developed an emotional condition due to factors of his federal employment.

Appellant, a 55-year-old housing counselor, filed a notice of occupational disease on July 20, 1999 alleging that he developed situational stress due to factors of his federal employment. The Office of Workers' Compensation Programs denied his claim by decision dated December 16, 1999. Appellant, through his attorney, requested reconsideration on December 8, 2000. By decision dated December 21, 2000, the Office denied modification of its December 16, 1999 decision.

The Board finds this case not in posture for decision.

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 her emotional condition.¹ 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

¹ *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

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.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 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.³

Appellant had been employed by the employing establishment as a maintenance mechanic and was found to be medically unfit for this position due to an accepted employment injury. He reported to work in the position of housing counselor on June 21, 1999. Appellant worked from June 28 through July 1, 1999. The employing establishment required that he be trained to fulfill the position of desk clerk as well as that of housing counselor. Appellant began desk clerk training on June 28, 1999. He felt uncomfortable in an office setting, working with women, wearing "church clothes" and feeling that he was in the way. Appellant also attributed his emotional condition to the fact that this was the only position the employing establishment had for him and by the fact that he was expected to perform the duties of this position in a satisfactory manner within three to four months in order to retain the position.

Regarding these allegations, the Board has previously held that denials by an employing establishment of a request for a different job is not a compensable factor of employment under the Federal Employees' Compensation Act, as it does not involve appellant's ability to perform his regular or specially assigned work duties, but rather constitutes appellant's desire to work in a different position.⁴ The Board has also found that allegations regarding stress due to insecurity about maintaining a position are not compensable.⁵ As noted above, the Board does not consider frustration with a particular work environment, such as an office with women and in business attire compensable factors.⁶

Appellant stated that he found his training for the positions of desk clerk and housing counselor stressful as he was required to input data into the computer with limited typing experience and no familiarity with the function keys. He stated that he did not understand the terminology used in this position nor the acronyms used to identify military ranks. The Board has held that emotional reactions to situations in which an employee is trying to meet his position requirements are compensable. In *Antal*, a tax examiner filed a claim alleging that his emotional

² *Id.*

³ *Lillian Cutler*, 28 ECAB 125, 129-131 (1976).

⁴ *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

⁵ *See Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

⁶ *Kathy A. Scarnato*, 43 ECAB 335, 339 (1991).

condition was caused by the pressures of trying to meet the production standards of his job and the Board, citing the principles of *Cutler*, found that the claimant had established a compensable factor of employment.⁷ Appellant attempted to perform the duties required of him in his training and has alleged that he developed an emotional condition as a result of his difficulties in computer entry and in learning new terminology.

As appellant has established a compensable factor of employment, the Board will proceed to address the medical evidence. In notes dated July 6 and July 29, 1999, Dr. Thomas A. Craig, a Board-certified internist, diagnosed situational stress from appellant's new job. In his July 6, 1999 report, Dr. Craig stated that working as a housing counselor caused appellant severe mental stress. He concluded, "It is my medical impression that [appellant] is suffering from situational stress and depression due to the recent change in jobs."⁸ This report is insufficient to meet appellant's burden of proof as Dr. Craig did not specifically identify the aspects of appellant's employment which he felt contributed to his emotional condition. As appellant has alleged both compensable and noncompensable factors of employment, the medical evidence must be based on a proper factual background of the accepted employment factors. Dr. Craig did not indicate that he believed that appellant's emotional condition was due to the factors accepted as compensable by the Board and, therefore, this report does not establish appellant's claim.

Dr. Douglas D. Sheafor completed a report on December 4, 2000 and noted appellant's history of injury. He reported appellant's job duties as a housing counselor as learning to work on a computer and to work with new families. Dr. Sheafor stated that appellant worked in a reasonably large office structured with a series of cubicles. He noted that appellant was unused to working indoors and with a large group of people. Dr. Sheafor also noted appellant's perceived difficulties working with a computer. He stated, "[e]ven the thought of the kind of requirement for interacting closely and in a gregarious manner with others in the new position increased his sense of anxiety and dread." Dr. Sheafor concluded that appellant initially developed an acute stress reaction diagnosed as adjustment disorder with mixed anxiety and depression and that as time progressed his condition became more fixed and became major depression, single episode. Dr. Sheafor noted, "[a] significant contribution factor to [appellant's] illness is his preexisting condition which I would diagnose as [s]ocial [p]hobia." He opined that appellant's emotional condition was a reaction to his assigned duties both regarding the necessity to learn to use the computer and also the need to interview people⁹ and work closely with them. Dr. Sheafor's report also lacks the appropriate factual background as he based his diagnoses on both compensable and noncompensable factors. The Board has accepted appellant's attempts to learn the computer as compensable. However, the Board has found that appellant's inability to work in an office environment is not a compensable factor. Therefore, this report is insufficient to meet appellant's burden of proof.

⁷ *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

⁸ Appellant also submitted a report dated September 16, 1999 from Joseph P. Miller, an outpatient therapist. As there is no evidence in the record that Mr. Miller is a clinical psychologist, he is not a physician for the purposes of the Act and his report does not constitute medical evidence. 5 U.S.C. §§ 8101-8193, 8101(2).

⁹ The record indicates that appellant did not conduct any interviews during his training.

These reports do contain a history of injury, diagnosis and an opinion that appellant's condition was caused by his employment. While these reports are insufficient to meet appellant's burden of proof, they do raise an uncontroverted inference of causal relation between appellant's accepted employment factor and his diagnosed condition and are sufficient to require the Office to undertake further development of appellant's claim.¹⁰

On remand, the Office should prepare a statement of accepted facts including the compensable factors of employment and further develop the medical evidence. After such development as the Office deems necessary, the Office should issue an appropriate decision.

The December 21, 2000 decision of the Office of Workers' Compensation Programs is hereby set aside and remanded for further development consistent with this opinion of the Board.

Dated, Washington, DC
November 6, 2002

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁰ *John J. Carlone*, 41 ECAB 354, 358-60 (1989).