

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE BALLENTINE and DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE, Calexico, CA

*Docket No. 02-933; Submitted on the Record;
Issued April 1, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

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

On November 8, 2001 appellant, then a 49-year-old customs inspector, filed a notice of occupational disease alleging that, on or about October 15, 2001, his employing establishment notified him that he will be removed from his position as a customs inspector due to serious breaches of integrity and/or security. Appellant stated that a few days after receiving the letter his physical and mental condition began to deteriorate. He indicated that he suffered from severe migraine headaches, neck and stomach pain and weight loss and insomnia, all as a result of his removal from the position. Appellant maintained that the allegations made by the employing establishment were unsubstantiated and false and he was wrongfully removed from his position.

By decision dated January 8, 2002, the Office of Workers' Compensation Programs denied appellant's claim since he did not establish a compensable factor of employment.

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.¹

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

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 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.²

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

Appellant alleged that his removal from the position of customs inspector caused or contributed to his emotional condition. He maintained that he was unfairly removed from the position, as the agency's allegations of his impropriety were false and unsubstantiated. The Board finds that the allegations of unfair removal from the position relate to administrative or personnel matters, are unrelated to appellant's regular work duties and do not fall within the coverage of the Act.⁵ Although such matters are generally related to appellant's employment, they are administrative functions of the employer and not duties of the employee.⁶ However, the Board has 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.⁷ In this case, however, there is no evidence indicating that appellant's employing establishment acted wrongfully or abusively by removing him from the position. The employing establishment clearly indicated in their January 8, 1999 letter, that there was evidence of serious breaches of integrity and/or security on the part of appellant. Appellant did not submit any evidence showing that the employing establishment's allegations of his impropriety were false and that he was wrongfully removed. Appellant also did not allege any other employment factors, which caused or contributed to his emotional condition.

As appellant has failed to meet his burden of proof in providing factual evidence identifying employment factors alleged to have caused or contributed to his condition, the Board

² *Mary Boylan*, 45 ECAB 338 (1994).

³ *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

⁴ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

⁵ *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

⁶ *Id.*

⁷ *Id.*

finds that the Office properly denied his claim. Since no compensable factor of employment has been established, the Board will not address the medical evidence.⁸

The January 8, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 1, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁸ *Margaret S. Krzycki, supra* note 4.