

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of KEN A. STOUT, JR. and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Riverside, CA

*Docket No. 03-361; Submitted on the Record;  
Issued April 21, 2003*

---

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
A. PETER KANJORSKI

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

Appellant filed an occupational disease claim on June 12, 2002, alleging that his years-long efforts to obtain reasonable accommodations to do his job well and the lack of support from his supervisor caused insomnia and stress that disabled him for work.<sup>1</sup> Appellant stated that he first became aware of his mental condition in September 1997 but had been working with the employing establishment to try to resolve the issue of reasonable accommodations.

On July 26, 2002 the Office of Workers' Compensation Programs asked appellant to submit specific factual information about his attempts to obtain a voice recognition computer system, his allegation that a lack of automatic doors to his office contributed to his stress, any limitations regarding his "long walk" from the parking lot at work and the alleged lack of managerial support concerning his cases. The Office also requested medical records of appellant's treatment for his emotional condition.

Appellant's supervisor submitted a statement dated July 20, 2002 detailing his interactions with appellant during May 2002 up to appellant's hospitalization on May 24, 2002.<sup>2</sup> The supervisor described appellant's agitated response to questioning about some discrepancies between his timesheet and his case input records. The supervisor related an incident involving appellant's use of two student interns and refusal to share this resource with a coworker and another situation in which appellant improperly took extended leave to be with a friend injured in

---

<sup>1</sup> Appellant was terminated from the employing establishment effective September 21, 2002 for misconduct.

<sup>2</sup> A May 24, 2002 memorandum from the Inspector General's office indicated that appellant had told his treating psychiatrist during an appointment that he was "mad enough to kill" four managers at the employing establishment because they were "ruining his life." The psychiatrist notified police and appellant was involuntarily hospitalized for 72 hours.

a train accident. Statements from other supervisors listed appellant's caseload and his interactions with them.

Appellant submitted several memoranda he had written and a timeline statement regarding his requests for computer systems to help him with his work.<sup>3</sup> Appellant stated that he had been trying to obtain updated and upgraded voice recognition software and computers since November 1996 and had become frustrated and depressed at the incompetence of government employees in providing service.

On September 19, 2002 the Office denied appellant's claim on the grounds that he had failed to establish that his emotional condition occurred in the performance of duty. The Office found that appellant's allegations regarding adaptive software and an updated computer and the installation of automatic doors were not established as arising from the performance of duty. Further, appellant's allegation of lack of managerial support was not factually established.

The Board finds that appellant has failed to establish that his emotional condition was sustained while in the performance of duty.<sup>4</sup>

In an emotional condition claim, appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the mental 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>5</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.<sup>6</sup> There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the coverage of the Federal Employees' Compensation Act.<sup>7</sup> These injuries occur in the course of the

---

<sup>3</sup> Appellant has cerebral palsy, which affects his ability to type.

<sup>4</sup> By letter dated November 16, 2002, appellant requested reconsideration and an appeal of the Office's decision from both the Board and the Office's Branch of Hearings and Review. Inasmuch as appellant's request for reconsideration was misdirected to the latter agency, which does not consider requests for reconsideration, and he also requested an appeal, the Board has taken jurisdiction of the case. *See Martha A. McConnell*, 50 ECAB 128, 130 n. 2 (1998) (Board's jurisdiction extends only to those final Office decisions issued within one year prior to the filing of the appeal).

<sup>5</sup> *Wanda G. Bailey*, 45 ECAB 835, 837 (1994); *Kathleen D. Walker*, 42 ECAB 603, 608-09 (1991).

<sup>6</sup> *Samuel Senkow*, 50 ECAB 370, 373 (1999).

<sup>7</sup> 5 U.S.C. §§ 8101-8193.

employment but nevertheless are not covered because they are found not to have arisen out of the employment.<sup>8</sup>

Disability that results from an employee's frustration over not working in a particular environment, holding a particular position, or securing a promotion is not covered. On the other hand, disability due to an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by management or the work itself is covered by the Act.<sup>9</sup>

In emotional condition cases, the Office 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.<sup>10</sup> Therefore, the initial question is whether appellant has alleged compensable factors of employment that are substantiated by the record.<sup>11</sup>

In this case, the Office found that appellant failed to establish any compensable factors of employment. Appellant alleged that his lengthy struggle to obtain the kind of computer equipment he felt he needed to excel at his job as a revenue agent and obtain promotions caused his insomnia and stress. Appellant's lack of satisfaction with the employing establishment's efforts to accommodate him is not a compensable factor of employment because it concerns an administrative matter unrelated to his regular or specially assigned duties.<sup>12</sup>

The Board has held that reactions to actions taken in an administrative capacity are not compensable unless the employing establishment erred or acted abusively.<sup>13</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably in carrying out its managerial and administrative duties.<sup>14</sup> Unless the evidence discloses error or abuse on the part of the employing establishment, administrative or personnel matters will not constitute compensable employment factors.<sup>15</sup>

---

<sup>8</sup> *Frank B. Gwozdz*, 50 ECAB 434, 436 (1999).

<sup>9</sup> *Marie Boylan*, 45 ECAB 338, 342 (1994); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>10</sup> *Margaret S. Kryzcki*, 43 ECAB 496, 502 (1992).

<sup>11</sup> *Donald E. Ewals*, 45 ECAB 111 (1993).

<sup>12</sup> See *Brian H. Derrick*, 51 ECAB 417, 421 (2000) (finding that appellant's allegations regarding unfair evaluations, inadequate training and equipment, and unreasonable managerial monitoring did not fall within coverage of the Act).

<sup>13</sup> *Robert W. Jones*, 51 ECAB 137, 142 (1999).

<sup>14</sup> *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>15</sup> *Anna C. Leanza*, 48 ECAB 115, 121 (1996).

In this case, the record contains several memoranda and copies of electronic mail that demonstrate the employing establishment's considerable efforts to accommodate appellant's need for a voice recognition system to do his work efficiently. These documents establish that the employing establishment acted reasonably in responding to appellant's various questions and requests for better and faster computer equipment, even to the point of providing a private office for him. Therefore, the Board finds that the employing establishment did not err or act abusively in this matter.<sup>16</sup> Appellant's frustration over not obtaining the latest in voice recognition software or a top-line computer more expeditiously is self-generated and not compensable under the Act.<sup>17</sup>

Similarly, appellant's unhappiness with the employing establishment's failure to install automatic doors as a reasonable accommodation is not related to any work factors. Appellant complained that he had cut his leather jacket on the door on December 21, 1999 and demanded that "automatic doors be installed immediately" as a reasonable accommodation. He repeated this request on April 20, 2000 when he spilled coffee on his arm as he was going through the office doors. The employing establishment attempted to accommodate appellant but explained in an August 22, 2002 letter that it was unable to install automatic doors because of security concerns. The record contains no evidence of error or abuse by the employing establishment in this matter. Therefore, the lack of reasonable accommodation is not a compensable factor.<sup>18</sup>

Finally, appellant generally alleged a lack of managerial support in processing his case assignments and stated that his supervisor was more interested in obtaining a promotion than in helping him. However, appellant submitted no factual evidence detailing specific instances of mismanagement or harassment by supervisors. The voluminous memoranda and other documents in the record belie appellant's allegation that he was ignored by management. Inasmuch as appellant provided no detailed explanation of his allegation and failed to submit any corroborating evidence, the Board finds that he has failed to establish a compensable factor of employment.<sup>19</sup> As there has not been established any compensable factors of employment, the medical evidence need not be considered.

---

<sup>16</sup> See *William Karl Hansen*, 49 ECAB 140, 144 (1997) (finding that appellant's frustration with the policies and procedures of management do not constitute compensable work factors absent a showing of error or abuse).

<sup>17</sup> See *Ray E. Shotwell*, 51 ECAB 656, 658 (2000) (finding that appellant's basic disdain for his work environment and dissatisfaction with frequent changes in supervisors were not compensable work factors because these issues related to administrative matters).

<sup>18</sup> See *Earl D. Smith*, 48 ECAB 615, 623 (1997) (finding that appellant's stress reaction to the employing establishment's failure to accommodate immediately all his demands for a special work environment was not a compensable factor).

<sup>19</sup> See *Dinna M. Ramirez*, 48 ECAB 308, 314 (1997) (finding that appellant failed to meet her burden of proof to establish a compensable factor of employment).

The September 19, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
April 21, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member