

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH M. ALLEN and U.S. POSTAL SERVICE,
POST OFFICE, Toledo, OH

*Docket No. 03-89; Submitted on the Record;
Issued August 25, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an emotional condition causally related to factors of his federal employment.

On August 24, 2000 appellant, then a 49-year maintenance support clerk, filed an occupational disease claim alleging that on March 3, 1998 he first became aware of his anxiety and depression and that his conditions were caused by his employment.

By decision dated November 13, 2000, the Office of Workers' Compensation Programs found the evidence of record insufficient to establish that appellant sustained an emotional condition in the performance of duty. The Office stated that he failed to submit any evidence establishing that he was harassed and mistreated by the employing establishment from 1994 until the present. In a December 1, 2000 letter, appellant, through his attorney, requested an oral hearing before an Office hearing representative.

By decision dated September 21, 2001, the hearing representative found that the numerous grievances filed by appellant and personnel actions taken against him by the employing establishment did not constitute compensable factors of employment. The hearing representative also found that appellant did not submit any evidence to substantiate his allegation that he was subjected to racial slurs. The hearing representative, however, found that a May 1994 incident where the employing establishment failed to notify appellant about a vacancy for a day shift position that was announced while he was on active military duty constituted a compensable factor of employment. The hearing representative determined that the medical evidence of record required further development on the issue, whether a causal relationship existed between appellant's emotional condition and the identified compensable employment factor. Accordingly, the hearing representative set aside the Office's decision and remanded the case.

On remand the Office referred appellant along with medical records, a statement of accepted facts and a list of specific questions to Dr. Charles S. Burke, a Board-certified

psychiatrist, for a second opinion medical examination. He submitted a December 7, 2001 report, finding that appellant's emotional condition was not caused by the May 1994 employment incident.

In a decision dated December 21, 2001, the Office found that appellant's emotional condition was not caused by the accepted compensable employment factor based on Dr. Burke's report. By letter dated January 8, 2002, appellant, through his attorney, requested an oral hearing before an Office hearing representative.

By decision dated September 12, 2002, the hearing representative affirmed the Office's decision.

The Board finds that appellant has failed to establish that he sustained an emotional condition causally related to factors of his federal employment.

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 the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.¹

Perceptions and feelings alone are not compensable. 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.² To establish his claim 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.³

In this case, the Office properly found that the May 1994 incident where the employing establishment failed to notify appellant about a vacancy for a day shift position that was announced while he was on active military duty constituted a compensable factor of his employment. Appellant's allegation relates to administrative or personnel matters. As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

under the Act.⁴ However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the handling of administrative matters, coverage may be afforded.⁵

Appellant submitted a May 4, 1998 decision from the United States Court of Appeals reversing an April 4, 1997 decision of the Merit Systems Protection Board (MSPB). The April 4, 1997 MSPB decision denied appellant's appeal of its November 25, 1996 decision, which upheld the employing establishment's decision not to afford appellant an opportunity to apply for a day shift position while he was on active military duty during the period February through June 1994. The evidence of record confirms that the employing establishment erred in failing to offer appellant an opportunity to apply for a day shift position while he was on active military duty. As the employing establishment committed an error in the handling of an administrative or personnel matter, appellant has established a compensable factor of employment under the Act.

Appellant's burden of proof, however, is not discharged by the fact that he has established an employment factor, which may give rise to a compensable disability under the Act. To establish his occupational disease claim for an emotional condition, he must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.⁶ 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 factor. 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 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.⁷

Dr. Burke, an Office referral physician, submitted a December 7, 2001 report, in which he noted a review of appellant's case record, his allegations of harassment by the employing establishment and a history of his personal background. He provided his findings on mental examination and diagnosed adjustment disorder with disorder of mood, anxiety and conduct and severe occupational problems on Axis I. Dr. Burke deferred a diagnosis on Axis II because there were marked paranoid traits evident from the history gathered. He diagnosed hypertension that was stable with treatment and back pain that was also stable on Axis III. In response to the Office's questions, Dr. Burke stated that appellant's personality problems likely accounted for the majority of his occupational problems and that further psychological testing could better delineate his personality structure. He further stated that appellant's adjustment disorder with mixed features was present throughout the period March 1998 through the present, based on clinical findings in the medical record and his psychiatric interview. Regarding the 1994

⁴ *E.g.*, Norman A. Harris, 42 ECAB 923 (1991).

⁵ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁶ *See William P. George*, 43 ECAB 1159, 1168 (1992).

⁷ *Id.*

employment incident, Dr. Burke stated that it was of little concern to appellant during his examination. He noted that appellant's concerns about present allegations of harassment and mistreatment vastly overshadowed any single work factor from 1994. Dr. Burke opined that any incident in 1994 was considered completely unrelated to the present adjustment disorder, with mixed features and was only a minor factor in chronic, long-term occupational problems. He stated that the medical evidence provided by his evaluation did not establish that appellant had an emotional condition that prevented him from performing his normal work duties during the period December 3, 1999 through April 8, 2001. Dr. Burke concluded by recommending further medical treatment for appellant's emotional condition.

Dr. Burke has concluded that there is no causal relationship between appellant's diagnosed emotional condition and the compensable factor identified by the Office and the Board in this decision. Although appellant established that he was depressed and experienced anxiety in not being able to apply for the day shift position in May 1994, Dr. Burke found that this incident did not cause his emotional condition. In the absence of reasoned medical evidence to dispute the findings of Dr. Burke or to otherwise aid appellant in carrying his burden of proof to establish causal relationship, the Board concludes that the Office properly denied compensation.

The September 12, 2002 and December 21, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
August 25, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member