U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PETER F. LINDSEY and DEPARTMENT OF DEFENSE
DEFENSE LOGISTICS AGENCY, Columbus, OH

Docket No. 03-1125; Submitted on the Record;
Issued August 21, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition in the performance of his federal duties.

On April 25, 2000 appellant, then a 51-year-old refrigeration and air conditioning mechanic, filed an occupational disease claim alleging that his supervisors were trying to drive him out of his job and that he was discriminated against due to his race and for filing an Equal Employment Opportunity (EEO) complaint.[1] In support of his claim, appellant submitted a September 30, 1999 EEO form titled "Formal Complaint of Discrimination in the Federal Government" (complaint), in which he and another employee were denied cash awards. In a complaint dated November 3, 1999, appellant alleged that, although he was the oldest lead worker in the engineering department and had the most seniority, he and two other workers were denied the opportunity to retain lead worker positions while white employees were given the opportunity. He alleged that his computer was removed from his office while others retained theirs. In a January 14, 2000 complaint, appellant alleged that his white supervisor, Ron Dashner discriminated against him based on race, when he denied a request for training and tried to intimidate one of appellant's witnesses.

In a March 12, 2000 complaint, appellant alleged that he was being harassed and retaliated against because he walked out of a meeting with his supervisors without saying anything or being excused.

After a training class in Phoenix, AZ was rescheduled, appellant filed a complaint on May 8, 2000 alleging that he was subjected to reprisal and harassment. In a September 8, 2000 complaint, he alleged that he was denied a new radio without explanation. He asserted in a September 30, 2000 complaint, that he was given a three-day suspension in retaliation for an EEO complaint he filed.

[1] Appellant filed a previous complaint of harassment and discrimination on May 3, 1999 that was denied.

In an undated memorandum of suspension, David Dover, the utilities branch supervisor, wrote that on March 24, 2000 appellant came into his office to ask why his scheduled training was cancelled and appellant was told that under a reorganization plan the work he was to be trained for was being outsourced to subcontractors. Appellant responded that he was going to get Mr. Dover legally and that Mr. Dover should never talk to him again. Mr. Dover further wrote that between March 27 and 31, 2000 appellant failed to report to work or return telephone messages made to find out why he was not at work.

In a February 22, 2001 letter, Mr. Dashner noted that, while appellant was on paid leave, advanced leave, family medical leave and working half days, he would repeatedly appear at the job site and boast that he was being paid for stress. Mr. Dashner noted that the facilities engineering department was going through a reengineering process and some work was contracted out. He asserted that appellant never received an annual appraisal because he was off work during the appraisal period and that he was suspended for three days for a first offense of defiance of constituted authority. Mr. Dashner denied that appellant was discriminated against or treated unfairly based on race.

In a June 18, 2001 decision, the Office denied appellant's claim, finding that he had not established compensable factors in the performance of his federal duties.

In a March 2, 2002 letter, appellant requested reconsideration and submitted a decision by the Department of Veterans Affairs that found that he had a 70 percent disability from post-traumatic stress syndrome. Appellant submitted 15 copies of his Form CA-2 and several witness statements from coworkers. In a May 17, 2002 statement, Gerald Braunbeck, who served as a union steward, wrote that he and appellant were in a meeting, when appellant asked about a training session he was to attend. Mr. Braunbeck noted that Doug Smith responded that appellant was not going to be sent to Las Vegas and he needed to learn how to count, which resulted in others laughing and embarrassing appellant.

In a May 17, 2002 statement, Morris Richardson wrote that he concurred with appellant's answer to box 13.[2] Larry Harris and Preston Shelly, both coworkers, made similar comments in their May 20, 2002 statements. In a May 20, 2002 statement, Andrew Brandon wrote that he believed appellant felt that his supervisors were trying to strip him of his means of support for his family. In a May 20, 2002 statement, Stanley West wrote that, after appellant was removed from his work-leader position, he appeared to have intense disputes with management. Mr. West asserted that appellant's disposition changed, his computer was removed from his office and he was omitted from a recognition ceremony for his 30 years of service. Mr. West attributed some of these incidents to appellant's mental stability. In a May 19, 2002 statement, Gregory Parks indicated that appellant's problems started when installation services were reengineered and some positions, including appellant's, were ruled excess. He noted that appellant was the senior leader and held a higher grade than those who were retained.

In a June 4, 2002 decision, the Office denied appellant's claim, finding that he failed to establish that his condition arose from compensable employment factors.

[2] This is an apparent reference to Box 13 on appellant's CA-2 form that indicated that he was discriminated and retaliated against by his supervisors.

In an October 4, 2002 letter, appellant requested reconsideration and submitted additional witness statements. In a September 23, 1999 letter, Mr. Shelly wrote that appellant was reprimanded and "prejudiced" for a work injury that resulted under his supervision and that was not entirely his fault. According to Mr. Shelly, it was shortly after the injury that appellant lost his leader position and then began to miss a lot of work. He indicated that appellant acted very strange and was not able to mentally handle what happened. In a June 18, 2002 letter, Mr. Shelly wrote that he was in the meeting where Mr. Smith told appellant that they would not send him to Las Vegas to learn how to count and that they took appellant's leader job and computer firm because his supervisors did not like him.

In an undated statement received by the Office on October 7, 2002, Jesse Jenkins wrote that appellant was the most senior and most qualified leader but he lost his team leader job. He asserted that after appellant filed his EEO complaint everything started happening to him. Mr. Jenkins indicated that Mr. Dashner, Mr. Smith and Mr. Dover "humiliated" appellant at a meeting and suggested that he was unfairly denied a new radio. He wrote that appellant started to do things "unbecoming" and became incoherent. In a June 28, 2002 statement, Mr. Lewis wrote that he was present when appellant met with Mr. Dover and he did not see or hear appellant threaten Mr. Dover. In a June 25, 2002 statement, Mr. Richardson wrote that shortly after appellant was reprimanded for the worker's injury he noticed a "rash of changes between appellant and management" that led him to believe management was out to dismantle appellant's image and character. He wrote that when appellant was to lose his position as leader he felt that it was a great injustice. Since that time several incidents occurred that belittled appellant, including having his computer removed from his office and not recognizing him at a 30-year recognition ceremony.

In a June 28, 2002 statement, Mr. West wrote that management discriminated against and harassed appellant when they removed his computer from his office without an explanation after reengineering, did not award him a cash bonus and failed to recognize him during the 30-year ceremony. In a June 28, 2002 statement, Mr. Brandon mentioned the same issues and concluded that Mr. Dashner was after appellant. In a July 12, 2002 statement from Samuel Guice, who wrote that he had observed considerable friction between appellant and Mr. Dover; he said that he did not know why, but it was obvious that Mr. Dover did not like appellant. Appellant also submitted an October 7, 2002 legal brief his representative submitted to a U.S. District Court that repeated his assertions.

In a December 27, 2002 decision, the Office denied modification, finding that appellant failed to establish that his condition arose out of a compensable employment factor.

The Board finds that appellant has not established that he sustained an emotional condition in the performance of his federal duties.

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation

Act.[3] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.[4]

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 employment factors.[5] This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[6]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, 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.[7] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[8]

Appellant alleged that he sustained an emotional condition as a result harassment and discrimination through a number of employment incidents including that he was unfairly removed from a leader position, humiliated in front of his coworkers, unfairly disciplined for an accident, his computer was wrongfully removed from his office, he was denied a new radio, he was denied training opportunities and did not receive a cash award that he felt entitled to receive, nor was he allowed to participate in a 30-year ceremony. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions, issued unfair performance evaluations and improperly assigned work duties, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of

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[3] 5 U.S.C. §§ 8101-8193.

[4] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[5] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[6] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[7] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[8] *Id.*

the Act.[9] Although the handling of disciplinary actions and evaluations, the assignment of work duties are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[10] However, the Board has also 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. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[11] However, appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters. Mr. Shelley's September 23, 1999 statement that appellant was reprimanded and prejudiced for an accident that was not entirely his fault is vague as it does not specify how appellant was prejudiced in any reprimand. Other statements, including Mr. Jenkins' October 7, 2002 statement that appellant improperly lost his leadership assignment are also nonspecific with regard to alleged harassment and discrimination. The claim was controverted by the employing establishment, which indicated some work was being contracted out and, therefore, some leader positions were lost. Mr. Richardson's June 25, 2002 statement that it was an injustice that appellant lost his leader position is also too vague and imprecise to establish error or abuse. The statement by Mr. Jenkins that appellant was unfairly denied a new radio or that he was denied participation in a 30-year ceremony and his statement that appellant wrongly lost his computer are also vague and conclusory and do not show how these acts and omissions were erroneous or discriminatory. Appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant has also alleged that harassment and discrimination on the part of his supervisors contributed to his claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[12] However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[13] In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and he has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors.[14] Appellant alleged that supervisors made statements and engaged in actions which he believed constituted harassment and

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[9] *See Janet I. Jones,* 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[10] *Id.*

[11] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[12] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[13] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[14] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

discrimination, but he provided insufficient evidence to establish that the statements actually were made or that the actions actually occurred.[15] The witness statements submitted do not establish that the conflicts rose to the level of harassment or discrimination. Mr. Shelley's and Mr. Braunbeck's statements that appellant was denied training opportunities in Las Vegas, while supporting appellant's statement that he was humiliated and embarrassed, do not establish discrimination in light of the fact that the employing establishment provided nondiscriminatory reasons for the actions, *i.e.*, that some work assignments were changing and, therefore, who would be trained would change and that some training was being rescheduled. Additionally, the record does not reflect that a final decision was reached regarding the EEO complaints or the brief filed with U.S. District Court and the documents presently in the record regarding these claims do not establish error or abuse. Appellant has not established a compensable employment factor under the Act, with respect to alleged harassment and discrimination.

Regarding appellant's allegation of denial of promotions, the Board has previously held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve his ability to perform his regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.[16] Appellant has not established a compensable employment factor under the Act in this respect. Regarding appellant's allegation that he developed stress due to insecurity about maintaining his position, the Board has previously held that a claimant's job insecurity, including fear of a reduction-in-force, is not a compensable factor of employment under the Act.[17]

The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable under the Act.[18] The Board has held that an employing establishment's refusal to give an employee training as requested is an administrative matter, which is not covered under the Act, unless the refusal constitutes error or abuse.[19]

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.[20]

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[15] *See William P. George*, 43 ECAB 1159, 1167 (1992).

[16] *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

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

[18] *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

[19] *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

[20] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

The decisions of the Office of Workers' Compensation Programs dated December 27 and June 4, 2002 and June 18, 2001 are affirmed.

Dated, Washington, DC
August 21, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member