

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAIME ROSADO and DEPARTMENT OF THE AIR FORCE,  
SAN ANTONIA AIR LOGISTICS CENTER, KELLY AIR FORCE BASE, TX

*Docket No. 03-1315; Submitted on the Record;  
Issued August 11, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, 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.

This case has previously been before the Board on appeal. In a decision dated March 17, 1998, the Board found that appellant had established a compensable factor of employment, changing work shifts. However, the Board found that appellant failed to submit sufficient rationalized medical opinion evidence to establish a causal relationship between his diagnosed emotional condition and his accepted employment factor.<sup>1</sup> In a decision dated May 2, 2000, the Board found that appellant had not submitted the necessary medical evidence to establish his claim for an emotional condition.<sup>2</sup> The facts and the circumstances of the case as set forth in the Board's prior decisions are adopted herein by reference.

Following the Board's May 2, 2000 decision, appellant requested reconsideration on October 20, 2000 and submitted additional medical evidence. By decision dated January 23, 2001, the Office of Workers' Compensation Programs denied appellant's request finding that it was not timely filed and did not establish clear evidence of error on the part of the Office. Appellant requested that the Board review this decision, and the Office of the Solicitor recommended remand. By order granting remand dated September 19, 2001, the Board returned appellant's claim for additional consideration by the Office.<sup>3</sup> By decision dated December 3, 2001, the Office reviewed appellant's claim on the merits and found that he had not submitted sufficient medical evidence to warrant modification of the prior decisions.

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<sup>1</sup> Docket No. 95-1495 (issued March 17, 1998).

<sup>2</sup> Docket No. 99-133 (issued May 2, 2000).

<sup>3</sup> Docket No. 01-937 (issued September 19, 2001).

Appellant requested reconsideration on June 1, 2002 and submitted additional evidence. By decision dated July 5, 2002, the Office denied modification of its prior decisions. Appellant requested a review of the written record on July 11, 2002. By decision dated December 9, 2002, an Office hearing representative found that appellant had not established that he developed an emotional condition as a result of his employment as he failed to submit sufficient rationalized medical opinion evidence.

Appellant requested reconsideration on March 7, 2003 and submitted medical evidence from 1981 through 1988. By decision dated April 11, 2003, the Office denied modification of the December 9, 2002 decision.<sup>4</sup>

The Board finds that appellant has failed to meet his burden of proof in establishing that he developed an emotional condition as a result of his 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 concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or to 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 or to hold a particular position.<sup>5</sup>

Appellant has alleged that his emotional condition worsened due to his resignation from the employing establishment. He asserted that the employing establishment forced him to resign and that he was fired due to his emotional condition. As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>6</sup> Appellant has not submitted any evidence that the employing establishment acted improperly in terminating his employment nor that he was forced to resign. Therefore he has failed to establish error or abuse in the acceptance of his resignation.

Appellant also alleged that the Merit Systems Protection Board did not adequately address his claim regarding his resignation. The Board's jurisdiction extends only to those matters which pertain to the Federal Employees' Compensation Act,<sup>7</sup> therefore, the actions of

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<sup>4</sup> On appeal to the Board, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

<sup>5</sup> *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

<sup>6</sup> *Martha L. Watson*, 46 ECAB 407 (1995).

<sup>7</sup> *Helen P. Allen*, 47 ECAB 141, 147-48 (1995).

the Merit Systems Protection Board with which appellant does not agree are not within the Board's jurisdiction. Appellant has not established any additional compensable factors of employment.

Appellant submitted a series of medical reports in support of his requests for reconsideration. Notes beginning in 1988 from the Outpatient Mental Health Clinic of the Wilford Hall Medical Center indicate that appellant underwent testing. In a note dated 1986, Dr. Andries De Boer, a physician Board-certified in occupational medicine, noted that appellant worked as a keypunch operator and that appellant felt unable to work the graveyard shift as he was unable to sleep during the day. Dr. De Boer diagnosed anxiety. In June 1988 appellant complained of stress on the job. These notes do not specifically address the causal relationship between appellant's diagnosed condition and the accepted employment factor. Although Dr. De Boer noted appellant's belief that he could not work well on the graveyard shift, the physician did not explain how the changing work shifts caused or contributed to appellant's diagnosed condition of anxiety.

A physician, whose signature is illegible, noted that appellant had a tendency to rely on tranquilizers in coping with night shift work and also increased alcohol usage when not on the day shift. The physician stated shift work did elevate appellant's anxiety state and could serve to make more difficult the management of his generalized anxiety disorder. While this report notes the accepted employment factor and suggested that shift work elevated appellant's anxiety, the physician did not provide any medical reasoning explaining why and how he felt that shift work caused or contributed to appellant's diagnosed emotional condition. For this reason this report is not sufficient to meet appellant's burden of proof.

Appellant submitted several notes from the Veterans Administration addressing his emotional condition from 1996 through 2000. These notes did not provide an accurate history of injury including appellant's accepted employment factor and therefore could not provide any medical reasoning establishing that appellant's diagnosed condition was due to his accepted employment factor.

Appellant has not submitted the necessary rationalized medical opinion evidence to establish a causal relationship between his accepted employment fact of changing duty shifts and his diagnosed condition of anxiety. Therefore, appellant has failed to establish that his emotional condition is due to his federal employment.

The April 11, 2003 and December 9 and July 5, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
August 11, 2003

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member