

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PHILLIP D. ELIAS and SOCIAL SECURITY ADMINISTRATION,
OFFICE OF HEARINGS & APPEALS, Tulsa, OK

*Docket No. 01-1901; Submitted on the Record;
Issued February 13, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On March 13, 2000 appellant, then a 51-year-old attorney-adviser, filed a claim alleging that he developed a major depressive condition and aggravated his preexisting post-traumatic stress disorder due to factors of his federal employment. Appellant related that he took a job with the employing establishment in New Orleans, Louisiana, on June 22, 1997 which caused him to move from his home in Tulsa, Oklahoma. Appellant related that he experienced stress following his move to New Orleans in trying to appease his wife and from trying to perform the duties of his position. On January 5, 1998 appellant relocated to the Tulsa, Oklahoma office, but experienced stress because he was only a temporary employee. He experienced depression and consulted a psychiatrist on November 5, 1999. On January 20, 2000 appellant stopped work and was hospitalized for treatment of his psychiatric condition. He underwent therapy and medical management. Following his release, appellant's physicians recommended medical retirement.

In a January 21, 2000 report, Dr. Michael D. Dubriwny, a psychiatrist, related the history of appellant's hospitalization. Dr. Dubriwny noted that appellant was seen for recurrent suicidal ideation and had made a previous suicide attempt four years prior. He reported appellant's belief that his wife had hired someone to follow him and became fearful of leaving the house. He reported findings on mental status evaluation, noting appellant appeared delusional in nature with paranoid fears and diagnosed recurrent severe depression with post-traumatic stress disorder and delusional fears.¹ Appellant was discharged on January 25, 2000 and followed with psychotherapy and medication.

¹ Appellant, a former navy navigator, has a service-connected disability for irritable bowel.

Dr. Patrice T. Arehart, a psychiatrist with the Veterans Administration Outpatient Clinic, advised that appellant was totally disabled for work.² On February 25, 2000 Dr. Arehart indicated that appellant was seen on a weekly basis and his condition was guarded. She noted that appellant could work no more than 16 hours a week, stating that his condition had decompensated with an increase in visual hallucinations. On March 2, 2000 she noted that appellant filed a workers' compensation claim and stated that he could no longer do his job.

On March 30, 2000 the Office of Workers' Compensation Programs requested that appellant and the employing establishment submit additional factual and medical information to support his claim. Appellant submitted a narrative statement addressing his employment duties as an attorney adviser.

On April 4, 2000 Dr. Arehart stated that appellant's condition was stable until he began working for the employing establishment. He experienced stress resulting from the complexity of the work, quotas and the need for detailed evaluations in his job. Dr. Arehart stated that appellant's employment stress aggravated his preexisting post-traumatic stress disorder, resulting in depression with psychotic features. Appellant became suicidal and he was hospitalized for treatment. Following discharge, she determined that appellant should take medical retirement. She advised that he was heavily medicated, which substantially interfered with his ability to concentrate or to sustain reasonable thought. Dr. Arehart concluded that his emotional condition was permanently disabling.

On April 5, 2000 JoAnn L. Draper, a supervisory attorney at the employing establishment, advised that the position of attorney-adviser required appellant to work with a tremendous inventory of cases. She related that appellant had conflicts with several employees and an administrative law judge to whom he was assigned to write draft decisions. Appellant was reassigned to work with another judge and was physically moved to another part of the office in order to reduce conflict. To accommodate his emotional condition, appellant was allowed to work part time and was transferred to the Tulsa office. Ms. Draper attached a copy of appellant's position description.

By decision dated October 17, 2000, the Office denied the claim, finding that he failed to identify any compensable factors of employment.

Appellant requested reconsideration and submitted additional evidence pertaining to harassment while at the employing establishment.³

On July 5, 2001 the Office denied modification on the October 17, 2000 compensation order, finding that there were not compensable factors of employment established in this case.

The Board finds that the case is not in posture for decision.

² The record reveals that appellant was released to return to work on January 31, 2000 on a half-time basis for one week.

³ On May 25, 2000 the Office of Personnel Management approved appellant's disability retirement application.

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 her 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.⁴ 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.⁵

To the extent that disputes and incidents alleged as constituting harassment by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.⁶ However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.⁷ Where an employee alleges harassment and cites to specific incidents or working conditions and the employer denies that harassment occurred, the Office, as part of its adjudicatory function must make findings of fact regarding whether the alleged factors are factually established and constitute compensable factors of employment.⁸ In such cases the issue is not whether the claimant has established harassment or discrimination under Equal Employment Opportunity Commission standards. Rather, the issue is whether the claimant under the Act has submitted evidence sufficient to establish an injury arising in the performance of duty.⁹ To establish entitlement to benefits, the claimant must establish a factual basis for the claim by supporting allegations with probative and reliable evidence.¹⁰

Appellant alleged that he sustained stress in the performance of his duties as an attorney adviser pertaining to his assigned workload, quotas and the complexity of his work assignments. The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable.¹¹ As appellant has related that his emotional condition was aggravated by the requirements of his work as an attorney adviser, he has established a compensable factor of employment. His supervisor, Ms. Draper, noted that her general agreement with appellant's description of his employment duties. In turn, Dr. Arehart

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Clara T. Norga*, 46 ECAB 473, 480 (1995); see *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991).

⁶ *Clara T. Noga*, *supra* note 5 at 481; *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

⁷ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

⁸ *Elizabeth W. Esnil*, 46 ECAB 606 (1995).

⁹ See *Martha L. Cook*, 47 ECAB 226, 231 (1995).

¹⁰ *Barbara E. Hamm*, 45 ECAB 843, 851 (1994).

¹¹ See *Lillian Cutler*, *supra* note 4.

addressed some of appellant's job responsibilities in an April 4, 2000 report, stating that his employment stress aggravated his preexisting emotional condition and resulted in severe depression. The Board finds that appellant has established a *prima facie* claim for compensation. While the medical reports of record do not provide a full medical history of appellant's emotional condition and treatment, they do attribute an aggravation of his condition, in part, to the work requirements of his position. For this reason, the case will be remanded to the Office for further development of the claim.¹²

As to other allegations raised, the Board finds that appellant has submitted insufficient evidence to establish compensable factors of employment. Appellant attributed his condition to the fact that he accepted work in the New Orleans office. The Board notes that there was no requirement that appellant accept work in that office, therefore, his frustration in not being able to work in Tulsa and his encounter with resulting marital difficulties involves his frustration from not being permitted to hold a particular position.¹³ Similarly, appellant's dissatisfaction with being only a temporary employee upon his return to the Tulsa office is not compensable as it arises from his frustration with the position held.

Appellant alleged harassment on the part of coworkers; particularly that he was sexually harassed with the knowledge of management. However, the Board finds that the evidence submitted in this regard is not sufficient to establish a compensable factor of employment. Appellant submitted copies of letters and materials that he purported were given to him by female coworkers. His supervisor, while noting conflicts with coworkers, did not substantiate appellant's allegations of sexual harassment in the workplace. The allegations raised by appellant are too general and lack specific information establishing the parties involved, time, place and occurrence of harassment. For this reason, the Board finds that the evidence does not substantiate appellant's allegations.

On remand, the Office should prepare a statement of accepted facts and further develop the medical evidence as appropriate. After such development as deemed necessary, the Office shall issue a *de novo* decision.

¹² See *John J. Carlone*, 41 ECAB 354 (1989).

¹³ *Buck Green*, 37 ECAB 374 (1986). Compare *Brenda Getz*, 39 ECAB 245 (1987) (a three-week detail assignment required to Chicago).

The July 5, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed in part, and set aside and remanded in part, for further action in conformance with this decision.

Dated, Washington, DC
February 13, 2003

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member