

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of REED KISER and DEPARTMENT OF LABOR, MINE SAFETY & HEALTH  
ADMINISTRATION, Pikesville, KY

*Docket No. 03-1784; Submitted on the Record;  
Issued October 28, 2003*

---

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant sustained a stress-related condition in the performance of duty.

On October 11, 2002 appellant, a 57-year-old mine safety supervisor, filed a Form CA-2 claim for benefits based on occupational disease, alleging that he had developed an emotional condition caused by factors of his employment. Appellant stated that he began experiencing chest pains during an April 30, 2002 meeting with his employees and that he first realized he was experiencing stress caused by factors of his employment as of May 3, 2002. Appellant stopped working on September 30, 2002, when he retired from federal employment. In support of his claim, appellant submitted a written statement dated September 28, 2002 in which he asserted that his emotional condition was caused by the following factors of his employment:

- (1) Traveling through wet, damp, dark, dusty, noisy mines for 4 to 6 hours while carrying 20 pounds or more of equipment, occasionally crawling up to 4 hours carrying various tools and mine equipment;
- (2) Receiving telephone calls at his home on weeknights and weekends, to which he was required to respond at all times;
- (3) Supervising, monitoring and evaluating employees;
- (4) Monitoring and supervising mine inspections;
- (5) The stress produced by the April 30, 2002 meeting with his employees.

In a report dated September 18, 2002, Dr. Maurice E. Nida, Board-certified in internal medicine, noted that appellant suffered from "quite a bit of" anxiety, that his job was sufficiently stressful to cause chest pains. Dr. Nida advised that appellant did not cope well in high stress

jobs, and that in his current job he was constantly being called out on duty, which he considered stressful.

By decision dated November 22, 2002, the Office of Workers' Compensation Programs found that fact of injury was not established, as the evidence of record did not establish that an emotional condition was sustained in the performance of duty.

By letter dated November 27, 2002, appellant requested a review of the written record. Appellant submitted an undated statement from a coworker, inspection supervisor Sandra Barber, who stated that, during an April 24, 2002 meeting with management, supervisors were informed of allegations of inspectors taking bribes. According to Ms. Barber, appellant was particularly upset by this allegation, which he felt would become the subject of investigation by the inspector general's office. Appellant was set to discuss these allegations during the April 30, 2002 meeting, when he seemed extremely stressed, became nervous and agitated, experienced chest pains and had to leave early. Ms. Barber subsequently learned that appellant was taken to the hospital. She also mentioned another occasion when appellant became anxious and agitated during a conference held to discuss mine incidence rates and experienced chest pains. In an October 29, 2002 statement, appellant asserted that a few days prior to the April 30, 2002 meeting, Ms. Barber had been asked by management to meet with a coal operator (appellant accompanied her to the meeting), which he did not consider to be proper procedure under the circumstances.

By decision dated April 4, 2003, an Office hearing representative affirmed the Office's November 22, 2002 decision.

The Board finds that appellant has not established that he sustained a stress-related condition in the performance of duty

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition, and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.<sup>1</sup> There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.<sup>2</sup>

Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act.<sup>3</sup> On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job

---

<sup>1</sup> See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

<sup>2</sup> See *Ruth C. Borden*, 43 ECAB 146 (1991).

<sup>3</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.<sup>4</sup>

The Board finds that the administrative and personnel actions taken by management in this case do not establish establishment error and are, therefore, not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.<sup>5</sup> In the instant case, appellant has presented no evidence that the employing establishment acted unreasonably or committed error with regard to the incidents of alleged unreasonable actions involving personnel matters on the part of the employing establishment. The Office properly found that the April 30, 2002 meeting was a routine, administrative function of appellant's job, which, absent agency error or abuse, was not compensable.<sup>6</sup> Disciplinary matters consisting of counseling sessions, discussions or letters of warning for conduct pertain to actions taken in an administrative capacity and are not compensable as factors of employment.<sup>7</sup> Appellant has provided insufficient evidence to establish that the employing establishment acted unreasonably or committed error in discharging its administrative duties with regard to this meeting. Further, appellant's fear that he was being investigated for bribe-taking is not compensable. The Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regularly or specially assigned employment duties are not considered to be employment factors.<sup>8</sup> 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.<sup>9</sup> A review of the evidence indicates that appellant has not shown that the employing establishment's actions in connection with its investigation of him were unreasonable. Regarding appellant's allegation that he developed stress due to the uncertainty of his job duties and his insecurity about maintaining his position, the Board has previously held that a claimant's job insecurity is not a compensable factor of employment under the Act.<sup>10</sup> Accordingly, a reaction to such factors did not constitute an injury arising within the performance of duty. The Office properly concluded that in the absence of agency error or abuse such personnel matters were not compensable factors of employment.

In his April 4, 2003 decision, the Office hearing representative modified the November 22, 2002 decision in part, finding that appellant established that four factors of

---

<sup>4</sup> *Id.*

<sup>5</sup> See *Alfred Arts*, 45 ECAB 530, 543-44 (1994).

<sup>6</sup> Appellant stated in his September 28, 2002 written statement that this was a "routine" staff meeting.

<sup>7</sup> *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

<sup>8</sup> *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

<sup>9</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>10</sup> See *Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

employment alleged by him constitute compensable factors of employment, as they pertained to assigned or required work duties imposed by the employing establishment. These included traveling through wet, damp, dark, dusty, noisy mines for 4 to 6 hours while carrying 20 pounds or more of equipment; occasionally crawling up to 4 hours carrying various tools and mine equipment; receiving telephone calls at his home on weeknights and weekends, to which he was required to respond at all times; and supervising, monitoring and evaluating employees. However, the Board finds that the medical evidence of record is not sufficient to establish that any of these accepted factors caused or contributed to appellant's stress-related condition.<sup>11</sup> The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.<sup>12</sup> Dr. Nida's report, the only medical evidence of record pertaining to appellant's alleged emotional condition, was not sufficiently specific in linking the cause of appellant's chest pains to these employment factors and did not provide a specific diagnosis of a stress-related or emotional condition.<sup>13</sup> Although Dr. Nida stated in his September 18, 2002 report that appellant had chest pains resulting from his high-stress job, this statement is not probative with regard to causal relationship because it is vague and lacking rationale. Dr. Nida's report thus did not contain a rationalized medical opinion, based on a proper factual and medical background, explaining his opinion on causal relationship or otherwise relating a diagnosis to the factor found compensable in this case. For these reasons, the Board finds the report of Dr. Nida insufficient to establish a causal relationship between factors of appellant's employment and an emotional condition. Therefore, as appellant failed to establish that he sustained an emotional condition causally related to factors of his federal employment, the hearing representative properly affirmed, as modified, the previous Office decision which denied compensation based on an alleged emotional condition.

---

<sup>11</sup> Appellant's burden of proof 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, appellant 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; see *William P. George*, 43 ECAB 1159, 1168 (1992).

<sup>12</sup> See *Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>13</sup> The hearing representative also noted that Dr. Nida was an internist, and that, pursuant to the Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d)(7) (March 1994), a diagnosis of an emotional condition must be supported by the opinion of a psychiatrist or a licensed clinical psychologist.

The decisions of the Office of Workers' Compensation Programs dated April 4, 2003 and November 22, 2002 are affirmed.

Dated, Washington, DC  
October 28, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member