

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN THOMAS and DEPARTMENT OF THE AIR FORCE,
AIR FORCE RESERVES, MARCH AIR FORCE BASE, CA

*Docket No. 02-433; Submitted on the Record;
Issued September 3, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

On September 20, 2000 appellant, then a 46-year-old construction representative, filed an occupational disease claim alleging that he sustained an emotional condition causally related to his federal employment. He alleged harassment and racial discrimination over a nine-year period by his supervisor and union and that he suffered from depression, a bipolar condition, anxiety, stress and a phobic disorder. Appellant filed a claim with the Equal Employment Opportunity (EEO) Commission regarding the alleged harassment and discrimination.

Appellant claimed that the following factors contributed to his emotional condition: (1) He was dismissed from his job as a pastor of his congregation because of his EEO case; (2) In November 1995, he received a reduction-in-force (RIF) notice effective March 1996; (3) He was acting as someone's representative in a District Court case and the workforce effectiveness section was trying to inhibit him from carrying out his duties; (4) The employer did not post notices of job openings to all employees as was directed by a U.S. Federal Labor Relations Authority (FLRA) settlement agreement; (5) In February 2000, appellant was issued a memorandum to use government vehicles to perform government business and not to walk to job sites; (6) The Office of Special Counsel (OSC) issued a letter to appellant regarding his violation of the Hatch Act because he was engaging in political activity while on duty; (7) Charges were made against appellant by a local union president and he was found guilty and his union membership was revoked for 10 years. Appellant appealed and the investigative committee found the charges filed by the union president to be clear and precise; (8) In April 2000, appellant received a memorandum that he would not receive a performance award that year and that he received a "meets" in his performance appraisal for May 2000; (9) Appellant was scheduled to be in a training class from July 24 to August 4, 2000 and received a memorandum requesting him to account for one hour of leave taken on July 24, 2000 or be charged absent without leave; (10) He requested annual leave for August 8 and August 9, 2000 in order to pay a traffic ticket but his leave was denied because he was in a one-week management training course

and this would have interfered with his course; (11) Appellant's manager disapproved a sick leave slip, stating that he needed evidence from a physician if he was absent from work for more than three days; and (12) On a civilian progress review worksheet dated August 28, 2000, appellant was notified that he needed to improve in several areas and his performance level was below standard.

By letter dated January 5, 2001, the Office of Workers' Compensation Programs requested that appellant submit additional factual and medical information to substantiate his claim for an emotional condition.

Appellant submitted medical reports from Dr. Donald Gates, a Board-certified family practitioner and Dr. Mac Eaton, a psychologist. In a January 19, 2001 report, Dr. Gates stated:

"[Appellant] has been seen in our clinic for work-related job stress. He has primarily been easily angered and often in a bad mood. [Appellant] has no suicidal plan or ideation of homicidal thoughts. [Appellant] has been seen by a psychiatrist and has refused to be on any medication regarding this condition.

"At present, [appellant] has been diagnosed with depression related to work stress. On August 16, 2000 he was given a week off work, more specifically nine days. [Appellant] was then asked to be seen in Mental Health/Psychiatry for his work-related stress and depression. Presently he has been offered and has declined medication about his depression. He is being seen on an ongoing basis by me, his primary care physician and also by psychiatry."

In a report dated January 25, 2001, Dr. Eaton stated:

"I have worked with [appellant] for three sessions of psychotherapy over the past two months. He presented as experiencing emotional stress as a result of his employment. [Appellant] reported having difficulty sleeping, irritability, anxiety and depression. He also reports a host of psychophysiological symptoms, which I understand will be reported to you by his physician, Dr. Gates.

"[Appellant] reported that his emotional stress is the result of 10 years of harassment on his job with the [employing establishment]. He has had to repeatedly resort to legal remedies to protect him and these struggles over the years, has taken its toll emotionally.

"Based upon my limited experience with [appellant] of three sessions, it appears to me that he is, indeed, suffering [from] emotional stress and that this condition could very well be the result of his working conditions."

Appellant also submitted an EEO decision dated September 12, 1996, concerning his claim of racial discrimination and reprisal at work. The EEO Commission determined that the evidence of record established that appellant's whereabouts had indeed been scrutinized at work, while the whereabouts of similarly situated nonmembers of his protected groups were not and that appellant had established racial discrimination. The EEO Commission also determined that

appellant suffered reprisals after his contact with an EEO counselor and while he served as an EEO representative.

By decision dated September 21, 2001, the Office denied appellant's claim for an emotional condition on the grounds that he failed to establish that his emotional condition was caused by federal employment factors. The Office determined, however, that appellant's allegation that he had been overly scrutinized by agency officials and that this was "oppressive and excessive" was factual and that reprisal and discrimination arose in the performance of duty. The Office also found that, even though appellant established that certain incidents occurred while in the performance of duty, namely that he was scrutinized, harassed and discriminated against by supervisors from 1991 to 1993, he did not provide the necessary medical evidence to establish that he suffered an emotional condition due to federal work factors.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

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. 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.¹

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 workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it, but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position or to secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.²

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors 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

¹ *Wanda G. Bailey*, 45 ECAB 835 (1994); *Kathleen D. Walker*, 42 ECAB 603, 608-09 (1991).

² *Marie Boylan*, 45 ECAB 338 (1994); *Lillian Cutler*, 28 ECAB 125 (1976).

factors of employment and may not be considered.³ Therefore, the initial question presented in the instant case, is whether appellant has alleged compensable factors of employment that are substantiated by the record.⁴

The Board has reviewed the record and finds that the factors appellant alleged as contributing to his emotional condition were not in the performance of duty or were not established as factual. Appellant alleged that he was dismissed from his position as pastor of his congregation because of his EEO case, however, it is not established as factual that the dismissal of his pastoral duties was in any way connected to his employment or the employing establishment. It is a well-settled rule that administrative functions on the part of the employing establishment are not compensable factors unless there is affirmative evidence that the employer erred or acted abusively in the administration of the matter.⁵ The evidence currently before the Board does not disclose that the employing establishment erred or acted abusively in the exercise of its administrative functions, including issuing the reduction-in-force, issuing the job posting, directing appellant to drive a government vehicle, notifying appellant of a work violation, issuing appellant's performance appraisals and denying his requests for sick and annual leave. Therefore, appellant has not established a compensable employment factor under the Federal Employees' Compensation Act⁶ in this respect. Regarding his allegations that union matters contributed to his emotional condition, the Board has found that union activities in general are personal in nature and are not considered to be within the course of employment.⁷ While the Board has recognized an exception to the general rule in that employees performing representational functions, which entitle them to official time, are in the performance of duty and entitled to all benefits of the Federal Employees' Compensation Act, if injured in the performance of those functions,⁸ this exception does not apply in this case since appellant was a union member and not a representative.

The Office did accept that appellant was subject to excessive scrutiny, harassment and discrimination from his supervisors from 1991 to 1993 and that this occurred within the performance of duty. Since he established a compensable factor of employment pertaining to his regular assigned duties, the inquiry must, therefore, turn on an analysis of the medical evidence for this factor.⁹

The fact that appellant has alleged and substantiated a compensable factor of employment does not establish entitlement to compensation. He has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the condition for which he claims

³ *Margaret S. Kryzcki*, 43 ECAB 496, 502 (1992); *Lillian Cutler*, *supra* note 2.

⁴ *Donald E. Ewals*, 45 ECAB 111 (1993).

⁵ *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Jimmy E. Norred*, 36 ECAB 726 (1985).

⁸ *Larry D. Passalacqua*, 32 ECAB 1859, 1862 (1981).

⁹ *Margaret S. Krzycki*, *supra* note 3.

compensation was caused or adversely affected by factors of his federal employment.¹⁰ This burden includes the necessity of submitting medical evidence establishing an emotional or psychiatric disorder and containing a rationalized medical opinion establishing that the identified compensable employment factors are causally related to the emotional condition.¹¹

The Board finds that the medical evidence submitted by appellant does not contain a rationalized medical opinion establishing that the compensable employment factors caused or contributed to his emotional condition. The medical evidence submitted does not establish a causal relationship between the accepted factor of employment, that appellant experienced discrimination and reprisal from 1991 to 1993 and his disability.

Appellant's attending family practitioner, Dr. Gates, indicated that he treated appellant for "work-related job stress" and noted that he was easily angered and often in a bad mood. He stated that appellant had been diagnosed with "depression related to work stress" and noted that he was also seeing a psychiatrist and refused to be on any medication for his depression.

Dr. Eaton, a psychologist, stated that appellant was experiencing "emotional stress as a result of his employment" and reported that he had difficulty sleeping, irritability, anxiety and depression. He noted that appellant thought his emotional stress was the result of 10 years of harassment on his job with the employing establishment and that his legal struggles had taken their toll on him emotionally. Dr. Eaton stated: "Based upon my limited experience with [appellant] of three sessions it appears to me that he is indeed suffering [from] emotional stress and that this condition could very well be the result of his working conditions."

Although Drs. Gates and Eaton noted that appellant was being treated for emotional stress, the physicians did not provide a definitive diagnosis for appellant's condition. Dr. Gates stated that appellant had been diagnosed with "depression related to work stress," but did not provide his own independent diagnosis. Dr. Eaton discussed his physical symptoms and stated that it "appeared" to him that appellant was suffering from emotional stress. He also did not provide a clear diagnosis for appellant's condition. Drs. Eaton and Gates also did not provide a rationalized medical opinion on the cause of appellant's condition. Dr. Eaton stated that it appeared that appellant's emotional stress "could very well be the result of" his working conditions. This statement is speculative and is also not supported by medical rationale. The Board has held that a speculative opinion, without medical justification, is insufficient to establish causal relation¹² and also that a conclusory statement without supporting rationale is of little probative value¹³ and is insufficient to discharge appellant's burden of proof. Dr. Gates stated that appellant had depression "related to work stress" but also did not support his statement with medical rationale.

¹⁰ *Pamela R. Rice*, 38 ECAB 838 (1987).

¹¹ *James W. Griffin*, 45 ECAB 774 (1994).

¹² *Alberta S. Williamson*, 47 ECAB 569 (1996).

¹³ *Marilyn D. Polk*, 44 ECAB 673 (1993).

Neither Dr. Gates, nor Dr. Eaton related appellant's condition to the accepted employment factor, specifically the discrimination and reprisal that he experienced at work from 1991 to 1993. Both physicians mentioned stress at work, but never mentioned specific incidents regarding racial discrimination or reprisal towards appellant in filing an EEO claim. The reports are also incomplete in that they do not contain a complete factual and medical background discussing appellant's emotional condition.

Since appellant did not submit a physician's medical report containing a definitive diagnosis and a rationalized medical opinion relating his disability to the accepted employment factor, he did not meet his burden of proof in this case. The Board finds that the Office properly denied his claim.

The decision of the Office of Workers' Compensation Programs dated September 21, 2001 is hereby affirmed.

Dated, Washington, DC
September 3, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member