U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARK A. WALRAVEN and DEPARTMENT OF THE AIR FORCE, EDWARDS AIR FORCE BASE, CA

Docket No. 03-757; Submitted on the Record;
Issued April 26, 2004

DECISION and ORDER

Before COLLEEN DUFFY KIKO, 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 February 22, 2001 appellant, then a 46-year-old automotive mechanic, filed a claim alleging that he developed an emotional condition due to a stressful work environment which resulted in anxiety and depression.

Appellant submitted treatment notes from Dr. Mark F. Simonds, a Board-certified psychiatrist, dated January 4, 2000, who treated him for work-related stress dating back to September 1999. Dr. Simonds diagnosed major depression and occupational problems. Medical notes from Dr. Waldo Jones, a family practitioner, dated March 31 to September 6, 2000, indicated that he treated appellant for sinusitis and that appellant underwent gamma knife brain surgery to reduce the pain associated with his condition of Tie Douloureux. He noted that appellant had experienced an inordinate amount of stress over the previous 12 months which exacerbated his pain. Reports from Dr. Shanmugan, an internist, dated April 22 to July 22, 2000, noted that appellant was treated for severe pain in the head region. The reports from Dr. Ronald F. Young, Board-certified in preventative medicine, dated August 23 to November 27, 2000 noted that appellant was treated for trigeminal neuralgia and underwent gamma knife stereotactic radiosurgery on June 26, 2000. He indicated that appellant's major depression and associated anxiety had aggravated his condition. Dr. Young further noted, in a report dated November 27, 2000, that appellant was permanent and stationary following the radiosurgery for the right trigeminal neuralgia, but that the side effects of pain medication made it impossible for him to return to gainful employment. Dr. Mark Imhoff, a psychologist, submitted a November 6, 2000 report which noted that appellant developed trigeminal neuralgia which resulted in headaches. He indicated that appellant felt at odds with his employer which led to chronic worrying about losing his livelihood. Dr. Imhoff noted that his condition was aggravated as a result of accusations of stealing government tools, a demotion, being over-scrutinized while at work for body odor, smoking, alleged rudeness to a customer, being wrongfully investigated for an indebtedness to a former Korean landlord and for taking his

personnel folder from his supervisor's desk. Dr. Young diagnosed a major depressive disorder; history of neurological problems; occupational disability; financial concerns; and physical problems. The physician noted that appellant's current pathology derived completely from his industrial injury and indicated that he was temporarily totally disabled through June 2001.

In a letter dated April 26, 2001, the Office advised appellant that the evidence submitted in support of his claim was insufficient. The Office advised him of the type of evidence needed to establish his claim and requested that he submit such evidence.

Appellant submitted a statement which raised the following allegations: (1) that he was wrongfully investigated and ordered to show cause why he exceeded his authorized dollar limit at the commissary, which resulted in having his purchasing privileges suspended; (2) he was harassed by a supervisor after distributing a memorandum regarding the use of magnetic signs on official vehicles; (3) he was wrongfully investigated regarding a customer complaint; (4) on January 30, 1998 he was wrongfully investigated for stealing tools and relieved of duty during the investigation and provided with "gofer jobs;" (5) he was wrongfully investigated for working more than the hours allowed by the employing establishment; (6) he was harassed by his supervisor for submitting whistleblower information in February 1998; (7) his personnel file and medical confidentiality was violated when these documents were left unattended on the supervisor's desk; (8) he was wrongfully investigated regarding a rental dispute with a Korean landlord; (9) he was harassed for his physical appearance including body odor, smoking and rudeness to a customer; (10) he was wrongfully denied an extension of his tour of duty in Korea on August 14, 1996; (11) he was harassed in public by Major Amy M. Bouchard regarding repairs performed on her vehicle; (12) he was harassed and threatened with termination by management for submitting a memorandum regarding an environmental problem at a day care facility; and (13) he was wrongfully issued a negative mid-year evaluation, placed on a performance improvement plan in August 1999 and on August 20, 1999 was wrongfully denied a step increase.

Appellant submitted a grievance claim, filed against the employing establishment on January 9, 1996 after confronted in public by Major Bouchard, regarding automobile parts left in her car. He indicated that she degraded, humiliated and harassed him in a public place in front of his family and store staff. The settlement agreement stated that, based on appellant's response, the employing establishment would impose a 30-day suspension and he would maintain conduct acceptable to his supervisor for a three-year period, that his performance rating period would be extended 90 days and that he would competently satisfy his performance plan elements. An October 28, 1996 memorandum regarded a drainage issue at a child day care center involving a diesel fuel leak and/or saturation of the ground in the area of the child development center. After he circulated the drainage memorandum, he was approached by management and warned that, if he continued to raise the question of an environmental problem at the child day care center, his employment would be terminated. On November 6, 1997 appellant warned that magnetic signs on motor vehicles would be detrimental to the base because they were easily removable and identify vehicles for would-be terrorist. Also submitted were letters from a rent dispute mediator dated August 11 and 17, 1998, which indicated that there were unpaid bills accrued by appellant during his tour in Korea. In a Merit Systems Protection Board decision dated August 31, 1998, it was noted that appellant filed an appeal because he was reduced in grade and pay effective April 26, 1998. The record reflects that a settlement was reached whereby he withdrew the

appeal. Appellant submitted a performance evaluation dated October 28, 1998, in which his supervisor noted that he was prompt and efficient in assembling items, that he finished assignments in a timely manner; however, he used a loud tone of voice with customers. He responded to the evaluation and noted that he used a loud tone of voice in the shop because the auditory system was of a poor quality. Appellant's attorney, in a letter dated November 30, 1998, noted that appellant was not indebted to his previous landlord as alleged. On May 17, 2001 Dr. Young advised that appellant was not diagnosed with an anxiety condition or trigeminal neuralgia prior to April 2000. The customer letters noted positive remarks for appellant's job performance.

The employing establishment submitted a letter regarding the rent dispute dated October 15, 1998; a performance plan for appellant dated August 20, 1999; and an additional letter dated April 13, 2000. The October 15, 1998 rent dispute letter requested clarification with regard to the alleged indebtedness of appellant to his previous landlord in Korea. The performance plan indicated that he was placed on a 90-day extended performance rating plan. The April 13, 2000 letter from appellant's supervisor, Jesse Mattox, noted that his 90-day extension plan was to end on April 27, 2000 and that the extension was the result of his being absent from work.

Appellant submitted a response to an employing establishment show cause order dated July 17, 1996, regarding privileges at the commissary. He noted that he increased his shopping at the commissary due to his presence at his home because of a work injury and because he hosted a party for his secretary. On January 28, 1998 in response to a customer complaint, appellant noted that he went into work on January 4, 1998, a scheduled vacation day, after he learned that the shop was not timely opened. Appellant indicated that the customer should have addressed him directly instead of writing a letter of complaint. In January 30, 1998 memorandum, appellant was relieved of all of his duties due to an investigation at the employing establishment. He noted sending a February 21, 1998 memorandum regarding fraud and waste at the employing establishment to Senator Diane Feinstein.

The employing establishment submitted a reinstatement of appellant's commissary benefits dated August 31, 1996; a customer complaint dated January 28, 1999; a memorandum regarding relief of appellant's responsibilities dated January 30, 1998; and a memorandum addressing medical confidentiality dated March 24, 1998. The reinstatement of his commissary benefits indicated that his commissary privileges were revoked because he was charged with over purchasing and wrongful transfer of personal goods. The customer complaint noted that the automobile shop that appellant managed was not promptly opened and that the customer believed that he showed no regard for the customers who were waiting for service. The March 24, 1998 memorandum addressed appellant's allegations of a breach of medical confidentiality and indicated that an investigation was conducted which revealed that no breach of medical confidentiality or personal privacy occurred.

By decision dated September 25, 2001, the Office denied appellant's claim for compensation. The Office determined that he established one compensable factor of employment, that he was harassed in a public place by Major Bouchard. The claim was denied on the grounds that the medical evidence failed to establish that the claimed condition was causally related to this incident.

In a letter dated October 10, 2001, appellant requested an oral hearing, which was held on April 2, 2002. He submitted a report from Dr. Young dated June 26, 2002, who treated appellant and provided radiosurgical treatment for the right and left-sided trigeminal neuralgia. Appellant noted that he had a number of stressful occurrences beginning in January 1996 at the employing establishment, which resulted in depression. Dr. Young advised that it was impossible to state with a reasonable degree of medical probability whether the employment conditions were the cause of the trigeminal neuralgia, but he believed it aggravated his condition.

In a decision dated November 18, 2002, the hearing representative affirmed the September 25, 2001 decision.

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

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.[1] 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.[2]

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.[3] 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.[4]

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.[5] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that

[1] 5 U.S.C. §§ 8101-8193.

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

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

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

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

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.[6]

In the present case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors.

Appellant alleged harassment on the part of his supervisor. To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from performance of his regular duties, these could constitute employment factors.[7] 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.[8] In the present case, appellant alleged that his supervisor harassed him after he distributed a memorandum regarding the use of magnetic signs on official vehicles. He indicated that the supervisor wrote him a letter stating that his actions made the supervisors "blood boil." However, the Board notes that this letter was never produced by appellant and he provided no witness statements regarding this allegation. He alleged that he was harassed and embarrassed when his medical confidentiality was violated after finding his personnel file on his supervisor's desk. The employing establishment noted that an investigation into the alleged violation of medical confidentiality was conducted, witnesses were interviewed and evidence gathered. The employing establishment determined that no breach of confidentiality occurred. Appellant alleged that he was harassed by his supervisor for submitting whistleblower information in February 1998; that he was harassed for his physical appearance, including body odor, smoking and for rudeness to customers and was harassed and threatened with termination by management for submitting a memorandum regarding an environmental problem at a day care facility.[9] The Board finds that he has not submitted sufficient evidence to establish that he was harassed by his supervisor[10] because appellant provided no supporting evidence such as witness statements to establish that the harassment actually occurred.[11] Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

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[6] *Id.*

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

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

[9] *See Michael A. Deas*, 53 ECAB ___ (Docket No. 00-1090, issued November 14, 2001) (while the Board has recognized the compensability of threats in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to compensability). In this case, appellant did not submit evidence or witness statements in support of his allegation that his supervisor threatened him with termination.

[10] *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).

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

Appellant's other allegations of employment factors that caused or contributed to his condition fall into the category of administrative or personnel actions. In *Thomas D. McEuen*,[12] the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act, as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach, if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment's superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. Appellant alleged that he was wrongfully investigated and ordered to show cause why he exceeded his authorized dollar limit at the commissary; that he was wrongfully investigated regarding a customer complaint; on January 30, 1998 appellant was wrongfully investigated for stealing tools and relieved of his duty during the investigation and thereafter provided with "gofer jobs;" that he was wrongfully investigated for working more than the allowable hours by the employing establishment;[13] and he was wrongfully investigated regarding a rental dispute with a Korean landlord.[14]

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.[15] In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[16] Although appellant has made allegations that the employing establishment erred and acted abusively in conducting its investigation, he has not provided sufficient evidence to support such a claim. 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.[17] Additionally, the Board recognizes that a supervisor or manager must be allowed to perform his or her duties and that, in performing such duties, employees will at times dislike actions taken.[18] Thus, appellant has not established a compensable employment factor under the Act in this respect.[19] He did not submit evidence supporting his claims that the employing establishment committed error or abuse in investigating

[12] *See Thomas D. McEuen*, *supra* note 2.

[13] *Jimmy B. Copeland*, 43 ECAB 339 (1991) (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).

[14] *Id*.

[15] *See Jimmy B. Copeland*, *supra* note 13.

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

[17] *See Larry J. Thomas*, 44 ECAB 291, 300 (1992).

[18] *Michael A. Deas*, *supra* note 9.

[19] *See John Polito*, 50 ECAB 347 (1999).

appellant with regard to the above investigations such that he did not establish a compensable employment factor.

Regarding appellant's allegations that the employing establishment engaged in issuing unfair performance evaluations, the Board finds that this allegation relates to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and does not fall within the coverage of the Act.[20] Although the handling of disciplinary actions, evaluations and leave requests and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[21]

Regarding appellant's allegation of a denial of an extension of his tour of duty in Korea on August 14, 1996 and his allegation of denial of promotion in the form of a grade and step increase, the Board has held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment as they do not involve the employee's ability to perform his or her regular or specially assigned work duties, but rather constitute his or her desire to work in a different position.[22] Thus, appellant has not established a compensable employment factor under the Act in this respect. The employing establishment has either denied these allegations or contended that it acted reasonably in these administrative matters. Appellant has presented insufficient evidence to support that the employing establishment erred or acted abusively with regard to these allegations. Thus, he has not established administrative error or abuse in the performance of these actions and; therefore, they are not compensable under the Act.

The Office found that appellant established a compensable factor of employment with respect being harassed in public on January 9, 1996 by Major Bouchard, regarding repairs that had been made on her vehicle. However, his 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.[23] Appellant submitted various medical records from Drs. Simonds, Jones, Shanmugan, Young and Imhoff. However, none of these reports mention the incident on January 9, 1996 as a factor contributing to his emotional condition. Dr. Simonds' report of January 4, 2000 merely noted that he treated appellant for work-related stress dating back to September 1999 and diagnosed major depression and occupational problems, but he did not reference the confrontation with Major Bouchard on January 9, 1996 as a cause for appellant's condition. Dr. Jones' reports dated March 31 to September 6, 2000 indicated that he treated appellant for sinusitis and that he performed gamma knife brain surgery to reduce the pain associated with his

[20] *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).

[21] *Id.*

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

[23] *See William P. George*, *supra* note 11.

condition of Tie Douloureux. He further noted that appellant had experienced an inordinate amount of stress over the previous 12 months, which exacerbated his pain; however, he did not mention that the incident with Major Bouchard on January 9, 1996 caused this exacerbation. A report from Dr. Shanmugan, an internist, dated April 22 to July 22, 2000 noted that appellant was treated for severe pain in the head region. The report from Dr. Imhoff dated November 6, 2000 noted that appellant developed trigeminal neuralgia as a result of conflicts with his employer, which led to chronic worrying about losing his livelihood. He noted that appellant's condition was aggravated by the accusations of stealing government tools, being demoted, being over-scrutinized while at work for body odor and smoking and for alleged rude behavior to a customer and being wrongfully investigated for indebtedness to a former Korean landlord. However, Dr. Imhoff did not mention the confrontation with Major Bouchard on January 9, 1996 as an aggravating employment factor for appellant's condition.

Dr. Young's report of May 17, 2001 mentioned the following incidences as contributing factors to appellant's condition: stealing government tools, being demoted, being over-scrutinized while at work for body odor and smoking and for alleged rude behavior to a customer, wrongly investigated for indebtedness to a former Korean landlord and for taking his personnel folder from his supervisor's desk. However, Dr. Young did not mention the incident with Major Bouhard on January 9, 1996 as a factor. His June 26, 2002 report noted a history of treatment of appellant indicating that he performed radiosurgical treatment for his trigeminal neuralgia condition. Dr. Young noted that appellant had a number of stressful occurrences beginning in January 1996 at the employing establishment, which resulted in depression, but did not specifically mention the January 9, 1996 incident. Moreover, the Board notes that his opinion is speculative with respect to causal relationship of appellant's condition to the employment factors,[24] as he noted that it was impossible to state with a reasonable degree of medical probability whether the conditions were the cause of the trigeminal neuralgia, but he believed they aggravated his condition.

The Board finds that appellant has not submitted sufficient rationalized medical evidence establishing that his emotional condition is causally related to the accepted compensable employment factor.[25]

[24] Speculative and equivocal medical opinions regarding causal relationship have no probative value; *see Alberta S. Williamson*, 47 ECAB 569 (1996); *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Paul E. Davis*, 30 ECAB 461 (1979).

[25] *See William P. George*, *supra* note 11.

The decisions of the Office of Workers' Compensation Programs dated November 18, 2002 and September 25, 2001 are affirmed.

Dated, Washington, DC
April 26, 2004

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member