

**United States Department of Labor
Employees' Compensation Appeals Board**

ROBERT L. TOWLES, Appellant

and

**DEPARTMENT OF THE AIR FORCE, Vienna,
OH, Employer**

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**Docket No. 03-2150
Issued: January 2, 2004**

Appearances:
John P. Lutseck, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On September 5, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs merit decision dated August 7, 2003, denying his claim of an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

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

FACTUAL HISTORY

On February 1, 2002 appellant, then a 56-year-old contract specialist, filed an occupational disease claim alleging that his preexisting emotional condition was aggravated as a result of anxiety and stress due to a change in positions and harassment by coworkers and management. He stopped working on September 29, 2001 and retired from federal employment on August 3, 2002. Appellant explained that on October 1, 2000 he was contracted from his former job as a carpenter to a new position as a contract specialist. He accepted the new position to avoid being terminated. Appellant alleged that the new position required him to be in constant contact and develop relationships with people, to work within time frames and provide an

accurate quality of work, which produced stress. Appellant alleged that he had to work in a hostile environment and was harassed by coworkers and management. His work was monitored by supervisors and coworkers and that he was often told what to do by others. Appellant alleged that he was directed to take classes throughout the country which took him away from his family, causing him to be depressed.

In an attending physicians report dated February 21, 2002, Dr. David Yeropoli, an internist, noted treating appellant for increased work stress resulting in exacerbation of symptoms and diagnosed post-traumatic stress disorder (PTSD) and exacerbation of symptoms. He noted with a check mark "yes" that appellant's condition was caused or aggravated by his employment duties and advised that appellant could return to work on October 1, 2001.

By letter dated July 31, 2002, the Office advised appellant to submit additional information, including a detailed description of the employment factors or incidents which he believed had contributed to his claimed illness, and a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed emotional condition.

In reports dated November 14, 2001 and January 18, 2002, Dr. Yerpoli related treating appellant since June 27, 2001 for an exacerbation of his PTSD symptoms and placed him on a three-month medical leave with a return to work in February 2002. In reports dated from February 14 to July 17, 2002 Dr. Yerpoli advised that appellant's symptoms intensified and impeded his ability to perform his job duties. He extended medical leave to August 2, 2002. In a January 16, 2002 report, Dr. Thomas Mako, a psychologist, noted that he treated appellant for PTSD and work problems and advised that his symptoms included depression, crying spells, intrusive thoughts, nightmares of Vietnam, isolation and fear of job loss. Also submitted were multiple nursing and social work notes related to Dr. Yerpoli's treatment of appellant.

Appellant submitted a statement which advised that he was a Vietnam combat veteran who had been diagnosed and treated for PTSD in 1966 and 1967. He stated that he was not personally equipped to perform the tasks of the new position in an office environment, as he was used to working alone and his PTSD symptoms became worse when in contact with people. Appellant was required to work overtime for one month at the end of the year, during three weeks training at Wright Patterson Air Force Base, and a month at Randolph Air Force Base. He noted no sources of stress outside of his work environment and that his stress increased when he was removed from his maintenance work position.

Appellant's supervisor, Jacqueline Rogers, submitted an August 7, 2002 statement which advised that she was unaware that appellant sustained an emotional condition on June 27, 2001. In October 2000 appellant and 60 other personnel were reassigned through a reduction-in-force (RIF) decision. Appellant was offered the option of accepting a position as a contract specialist, retirement with an incentive, or RIF out the gate. Appellant accepted the contract specialist position and held the position from October 2000 until September 2001. He was promoted to full performance level due to his satisfactory performance in October 2001. Ms. Rogers noted that appellant did attend a one-week course and a four-week course in the field of contracting. Appellant's position required that he meet deadlines every September 30th and

that some assignments were more intense and urgent. Ms. Rogers noted that there was no conflict between appellant and his coworkers and she did not believe that there was any conflict between appellant and his supervisors. She noted that appellant did work overtime for four hours in September 2001. Ms. Rogers indicated that, although there were no adjustments in deadlines, she would have reassigned duties had appellant's work load been determined to be too heavy for him to handle. She reported that appellant performed his work satisfactorily, that his conduct was acceptable, and that he was very quiet and did not talk in open conversations.

In a decision dated January 14, 2003, the Office denied appellant's claim on the grounds that the evidence of record failed to demonstrate that the claimed emotional condition arose in the performance of duty.

On January 23, 2003 appellant through his attorney requested an oral hearing before an Office hearing representative. The hearing was held on May 12, 2003.

In a decision dated August 7, 2003, the hearing representative affirmed the January 14, 2003 decision.

LEGAL PRECEDENT

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; 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.

In the case of *Lillian Cutler*,² the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.³ 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 under the Act.⁴ When an employee experiences emotional stress in carrying out his employment duties, and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.⁵ There are situations where an injury or

¹ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² 28 ECAB 125 (1976).

³ 5 U.S.C. §§ 8101-8193.

⁴ *See Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

⁵ *Lillian Cutler*, *supra* note 2.

an illness has some connection with the employment but nevertheless does not come within the concept or coverage under the Act. 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 Act.⁶ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a RIF or his frustration from not being permitted to work in a particular environment or to hold a particular position.⁷

To establish that an employee sustained an emotional condition in the performance of duty, the employee must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence sufficient to establish compensable employment factors or incidents alleged to have caused or contributed to the emotional condition; and (3) rationalized medical opinion evidence establishing that a compensable employment factor caused or contributed to the emotional condition.⁸

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.⁹ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that 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.¹⁰

ANALYSIS

Appellant alleged that his preexisting post-traumatic stress disorder was aggravated as a result of change in positions on October 1, 2000 from his former job as a carpenter to a contract specialist under a RIF. He indicated that his new position required him to be in constant contact and develop relationships with people, to work within time frames, and provide an accurate quality of work, all of which cause him stress. Appellant alleged that he worked in a hostile environment and was harassed by coworkers and management. He indicated that his work was monitored by supervisors and coworkers and that he was often told what to do by others.

⁶ 5 U.S.C. §§ 8101-8193.

⁷ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, *supra* note 2.

⁸ *Andy J. Paloukos*, 54 ECAB ____ (Docket No. 02-1500, issued July 15, 2003); *Kathleen A. Donati*, 54 ECAB ____ (Docket No. 03-1333, issued August 13, 2003); *Marlon Vera*, 54 ECAB ____ (Docket No. 03-907, issued September 29, 2003).

⁹ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁰ *Id.*

Appellant alleged that he was directed to take classes throughout the country which took him away from his family which caused him to be depressed.

The Board finds appellant's allegation that he worked in a hostile environment and was harassed by coworkers and management is not supported by the evidence in the record. To the extent that incidents alleged as constituting harassment by a supervisor or coworker are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹¹ 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.¹² General allegations of harassment are not sufficient.¹³ In this case appellant has not submitted sufficient evidence to establish that he was harassed by his supervisor or coworkers.¹⁴ Appellant provided no supporting evidence, such as witness statements, to establish that the harassment alleged actually occurred.¹⁵ Appellant's supervisor noted that there was no conflict between appellant and his coworkers and did not believe that there was any conflict between appellant and his supervisors. The Board notes that vague allegations of a supervisor berating and taunting appellant are insufficient to establish appellant's claim that he was harassed. A claimant's own feeling or perception that a form of criticism by or disagreement with a supervisor is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under the Act absent evidence that the interaction was, in fact, erroneous or abusive. This principle 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.¹⁶ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

Appellant alleged that his work was monitored by supervisors and coworkers and that he was often told what to do by others. Although the monitoring of activities at work is generally related to the employment, it is an administrative function of the employer, and not a duty of the employee. Appellant did not submit evidence supporting his claims that the employing

¹¹ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹² *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹³ *See Paul Trotman-Hall*, 45 ECAB 229 (1993).

¹⁴ *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).

¹⁵ *See William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

¹⁶ *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 her allegation.

establishment committed error or abuse in monitoring work activities such that he did not establish a compensable employment factor.¹⁷

Appellant's allegation that his preexisting emotional condition was aggravated as a result of change in the positions on October 1, 2000 under the RIF is not a compensable factor. The Board has held that fear of a RIF or not being allowed to hold a particular position does not give rise to compensability under the Act.

However, once in the contract specialist position, appellant noted that it required him to be in constant contact and develop relationships with people, to work within time frames and provide an accurate quality of work under deadlines which caused him stress. The Board has held that emotional reactions to situations in which an employee is trying to meet his position requirements are compensable.¹⁸ In *Antal*, a tax examiner filed a claim alleging that his emotional condition was caused by the pressures of trying to meet the production standards of his job. The Board, citing the principles of *Cutler*, found that the claimant was entitled to compensation.¹⁹ In *Kennedy*, the Board, also citing the principles of *Cutler*, listed employment factors which would be covered under the Act, including an unusually heavy work load and imposition of unreasonable deadlines.²⁰

The record establishes that in October 2000 appellant was reassigned to the position of contract specialist. Appellant stated that he was not personally equipped to perform the tasks of the new position in an office environment as he was use to working alone and his PTSD symptoms were made worse when in contact with people and that his new duties required him to work closely with others. He was required to work overtime for one month at the end of the year, during three weeks training at Wright Patterson Air Force Base, and a month at Randolph Air Force Base. In a statement dated August 7, 2002, Ms. Rogers, appellant's supervisor, noted that appellant accepted the contract specialist position and held the position from October 2000 until September 2001. She advised that there were deadlines every September 30th and that some assignments were considered intense and urgent. Ms. Rogers confirmed that appellant did work overtime on September 29, 2001. She also indicated that appellant's position required traveling, which included attending a one-week and four-week course in the field of contracting. The Board finds that these matters relate to appellant's regularly and specially assigned work duties. Under *Cutler*, the evidence establishes a compensable factor of employment.

However, appellant's burden of proof is not discharged by the fact that he has identified 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

¹⁷ See *Dennis J. Balogh*, 52 ECAB 232 (2001); see also *John Polito*, 50 ECAB 347 (1999).

¹⁸ See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608 (1983).

¹⁹ *Id.*

²⁰ *Georgia F. Kennedy*, *supra* note 18.

rationalized medical evidence establishing that he had an emotional or psychiatric disorder and that such disorder is causally related to the identified compensable employment factor.²¹

Dr. Yerpoli generally supported that appellant's aggravation of his preexisting emotional condition was due to the pressures of performing his new job duties. In an attending physicians report dated February 21, 2002, Dr. Yerpoli noted treating appellant for increased work stress resulting in exacerbation of symptoms and diagnosed PTSD and exacerbation of symptoms. In reports dated November 14, 2001 and January 18, 2002, he related that since June 27, 2001 appellant had been receiving treatment for an exacerbation of his PTSD symptoms and advised that he be placed on three months medical leave and return to work in February 2002. The physician advised that his symptoms intensified and impeded his ability to perform his job duties and extended his medical leave to August 2, 2002. Additionally, Dr. Mako reported on January 16, 2002 that he treated appellant for PTSD and work problems and advised that his symptoms included depression, crying spells, intrusive thoughts, nightmares of Vietnam, isolation and fear of job loss. While the medical evidence submitted by appellant is not sufficiently rationalized to discharge his burden of proof, it constitutes sufficient evidence in support of his claim to require further development of the record by the Office.²² The Board notes that there is no medical evidence of record negating causal relationship.

On remand, the Office should refer this case to a Board-certified psychiatrist to review the reports of appellant's physicians and render a rationalized opinion regarding whether appellant has any emotional condition that has been caused or aggravated by the pressures to meet his job requirements. Following such further development of the case record as it deems necessary, the Office should issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has established a compensable factor of employment and this case is remanded to the Office for further development of the medical evidence to be followed by an appropriate decision.

²¹ *Kathleen D. Walker, supra* note 11.

²² *See Horace Langhorne, 29 ECAB 820 (1978).*

ORDER

IT IS HEREBY ORDERED THAT the August 7, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: January 2, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member