

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

DANNY R. CRITES, Appellant)
and) Docket No. 04-347
DEPARTMENT OF THE TREASURY,) Issued: March 23, 2004
INTERNAL REVENUE SERVICE,)
Kansas City, MO, Employer)

)

Appearances:
Danny R. Crites, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On November 24, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated October 22, 2003 denying his claim for an occupational disease. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that employment-related stress caused or aggravated his temporomandibular joint disorder.

FACTUAL HISTORY

On July 20, 2003 appellant, then a 33-year-old data transcriber, filed a notice of occupational disease alleging that he developed a temporomandibular joint disorder and migraine headaches due to factors of his federal employment. He stated that he was first aware of his condition on January 7, 1998 and first related this condition to his employment on July 3, 2003.

The Office requested additional factual and medical information by letter dated August 26, 2003. By decision dated October 22, 2003, the Office denied appellant's claim finding that he failed to substantiate a compensable factor of employment as causing or contributing to his diagnosed condition.

LEGAL PRECEDENT

To establish appellant's occupational disease claim that he has sustained an emotional condition in the performance of duty which caused or contributed to a physical condition 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 and that this emotional condition caused or contributed to his physician diagnoses.¹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.²

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 concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable; however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment to hold a particular position.³

ANALYSIS

Appellant alleged that he experienced stress in the performance of his federal duties and that stress caused or aggravated his temporomandibular joint disease which, in turn, caused disabling headaches. He must first establish that his stress was causally related to compensable factors of his federal employment before any physical condition as a result of this stress can be addressed.⁴

¹ *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

² *Id.*

³ *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

⁴ *Roger W. Griffith*, 51 ECAB 491, 494 (2000).

Appellant submitted a narrative statement on August 1, 2003 listing the employment incidents which he felt contributed to his emotional condition. His supervisor, Cis Holzhauer, addressed these allegations in a statement received by the Office on September 16, 2003. Appellant alleged that he was under undue pressure to learn a new program and that he was told that if he did not learn the program and meet standards he would be terminated. Ms. Holzhauer stated that appellant worked in a production area and that termination for not meeting production was possible. However, she noted that appellant's performance appraisal was fully successful and that there was no counseling in his file to indicate that appellant was in any danger of being terminated.

The Board has held that emotional reactions to situations in which an employee is trying to meet his position requirements are compensable. Employment factors which are covered under the Federal Employees' Compensation Act include an unusually heavy workload and imposition of unreasonable deadlines.⁵ However, appellant's allegation relates primarily to a self-generated fear of termination. His supervisor, Ms. Holzhauer, noted that appellant was not failing to meet any production standards and there is no other evidence in the record to support appellant's claim for inability to or difficulty in meeting his performance standards. Regarding appellant's allegation that he developed stress due to insecurity about maintaining his position, the Board has previously held that a claimant's feeling of job insecurity, including a fear of a reduction-in-force, is not a compensable factor of employment under the Act.⁶

Appellant made the general allegation that he was questioned regarding issues relating to his integrity, as well as regarding the improper use of company time. Ms. Holzhauer denied that appellant's integrity was questioned. She stated that the employing establishment allowed employees to work four hours in the career development area and that appellant frequently requested more time for this activity. Ms. Holzhauer allowed appellant additional time commensurate with the demands of his position. Appellant did not submit any evidence to support his allegation that he was accused of improper use of company time or any other issue regarding his integrity.

Appellant alleged that he had payroll issues to contend with, that he did not receive assistance from management in resolving these issues and that he was instructed to use his own time to address problems with pay and leave. Ms. Holzhauer stated that she was unaware of any payroll issues, but that appellant was attempting to ensure adequate compensation for prior government service. She stated that appellant's manager allowed him a reasonable amount of time for this issue, but that he could not "spend all day on the [tele]phone." Appellant stated that he called in and sent emails to managers and received no responses alleged that his job was threatened despite the medical evidence he provided the employing establishment.

⁵ See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

⁶ See *Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

Ms. Holzhauer noted that the employing establishment required employees to request sick leave usage by telephone within two hours of the start of their respective shifts. She stated that no other method of requesting sick leave was acceptable. Ms. Holzhauer stated:

“There are several days on which [appellant] did not call in and request leave nor did he report for duty. He did send in statements and messages with coworkers and also sent an email message to me. This is not an acceptable form of requesting leave in our agency. I did not respond to his email because it is against our guidelines to send emails to personal accounts.”

As a general rule, an employee’s emotional reaction to an administrative or personnel matter is not covered under the Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁷ Nonwork usage of time, payroll disputes and leave denials relate to administrative and personnel matters, unrelated to the employee’s regular or specially assigned work duties and do not fall within the coverage of the Act without evidence that the employing establishment acted unreasonably.⁸ Appellant has submitted no evidence that the employing establishment acted unreasonably regarding his leave requests or in regard to allowing him time for other administrative or personnel matters such as correcting payroll errors or career development.

Appellant attributed his stress to partially resolved personality conflicts. He alleged that he worked in a hostile work environment. Appellant further stated that he had filed a sexual harassment claim against a female manager in 2002. He also alleged that he was subject to discriminatory actions. Appellant stated that he was harassed by coworkers due to his alleged involvement in a murder. He stated that he sought help from the inspector general at the employing establishment in quashing rumors.

A claimant’s burden includes the submission of a detailed description of the employment factors of conditions which he or she believes caused or adversely affected the condition or conditions for which compensation is claimed.⁹ For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹⁰

⁷ *Martha L. Watson*, 46 ECAB 407 (1995).

⁸ *Elizabeth Pinero*, 46 ECAB 123, 130 (1994).

⁹ *John Polito*, 50 ECAB 347 (1999).

¹⁰ *Alice M. Washington*, 46 ECAB 382 (1994).

Appellant has not provided a detailed description of the events which he felt constituted harassment or discrimination. He did not provide specific statements or actions which he felt were discriminatory or constituted harassment. Appellant did not submit any probative reliable evidence in support of his allegations of harassment or discrimination on the part of a former supervisor or coworkers. He did not submit corroborating evidence, such as witness statements, to establish that any statements were made or events actually occurred. Thus appellant has not established a compensable employment factor under the Act in this respect.

Appellant has not established that any of the events to which he attributed his stress constituted compensable employment factors. As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record.¹¹

CONCLUSION

Appellant failed to implicate a compensable factor of employment as causing or contributing to his diagnosed condition of stress and, therefore, further failed to establish that his physical conditions of temporomandibular joint disorder and migraine headaches which he felt were caused or aggravated by the alleged employment-related stress were causally related to his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the October 22, 2003 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 23, 2004
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).