

FACTUAL HISTORY

On March 29, 2002 appellant, then a 58-year-old modified letter carrier, filed a claim alleging that his major depression was a result of his federal employment stating: “I was notified that I lost my lawsuit against [the] Post Office for reverse discrimination.” He submitted medical evidence diagnosing major depression, post-traumatic stress disorder and relational problem not otherwise specified. Appellant related to his psychiatrist his belief that he was passed over for a supervisory position in the interest of meeting affirmative action goals. The medical evidence indicated that appellant had severe emotional problems arising from both his federal employment and his divorce. Appellant indicated that service in the Vietnam War was also a source of stress.

In a decision dated September 3, 2002, the Office denied appellant’s claim for compensation on the grounds that there was no evidence to support racial discrimination and that being passed over for a supervisor’s position was not a compensable factor of employment.

At a hearing before an Office hearing representative, appellant testified that he was attributing his emotional condition to three things: Vietnam, his divorce and a federal judge disapproving his claim for reverse discrimination.

In a decision dated September 11, 2003, the hearing representative affirmed the denial of appellant’s claim for compensation.

LEGAL PRECEDENT

The Federal Employees’ Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.² The phrase “sustained while in the performance of duty” is regarded as the equivalent of the coverage formula commonly found in workers’ compensation laws, namely, “arising out of and in the course of employment.”³

When an employee experiences emotional stress in carrying out his employment duties or has fear and anxiety regarding his ability to carry out his 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 resulted from his emotional reaction to a special assignment or to a requirement imposed by the employing establishment or by the nature of his work. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers’ compensation law because they are not found to have arisen out of employment, such as when disability results from an employee’s fear of a reduction-in-force

² 5 U.S.C. § 8102(a).

³ This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers’ compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

or frustration from not being permitted to work in a particular environment or to hold a particular position.⁴

Workers' compensation law does not cover an emotional reaction to an administrative or personnel action unless the evidence shows error or abuse on the part of the employing establishment.⁵ The Board has held that actions of an employer which the employee characterizes as harassment or discrimination may constitute a factor of employment giving rise to coverage under the Act, but there must be some evidence that harassment or discrimination did in fact occur. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.⁶ Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.⁷ The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.⁸

ANALYSIS

Appellant did not contend that he experienced emotional stress in carrying out his employment duties as a letter carrier. He attributed his major depression instead to reverse discrimination by his employer and to the dismissal of his discrimination case by a federal judge, receipt of which prompted the filing of this claim for workers' compensation benefits.⁹ The dismissal of his discrimination lawsuit by a federal judge did not occur in the course of appellant's federal employment and is not a compensable factor. Any emotional reaction he might have had due to this dismissal falls outside the scope of the Act.¹⁰

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566, 572-73 (1991).

⁶ See *Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

⁷ *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

⁸ *Paul Trotman-Hall*, 45 ECAB 229 (1993) (Groom, M.E., concurring).

⁹ Appellant also attributed his emotional condition to the Vietnam War and his divorce, but he filed no claim that such stresses outside the workplace entitled him to workers' compensation benefits.

¹⁰ See *Virgil M. Hilton*, 37 ECAB 806 (1988) (where the claimant alleged that he suffered anxiety, ulcers, frustration and problems with his heart, nerves and mind as a result of mismanagement of his claim by the Office, the Board held that actions of the Office were not those of the employing establishment and were not compensable factors of employment).

With respect to being passed over for a supervisory position, the Board has held that disabling conditions resulting from the desire for a different job or promotion or transfer are not compensable.¹¹ Appellant charged the employing establishment with error or abuse in this administrative matter, and the record shows that he pursued his case for reverse discrimination through the Equal Employment Opportunity Commission and in U.S. District Court. These actions, however, did not meet with success. In support of his claim for workers' compensation benefits, appellant has produced no finding or decision from these adjudicatory bodies that reverse discrimination did in fact occur. He has thus failed to establish a basis in fact for the contentions made. He has not met his burden of proof.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the September 11, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 10, 2004
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ *E.g., Donald W. Bottles*, 40 ECAB 349 (1988).