

The Board issued a decision on March 17, 1998¹ which reviewed the alleged factors of employment including pain in his hands and wrists, working a dead-end job which lacked prospects for advancement, lack of promotions, the alleged failure of the employing establishment to compensate appellant for two years of college, his alleged improper termination, harassment, discrimination and rotating work shifts. The Board found that appellant had substantiated that he was required to work rotating work shifts, a compensable factor of employment, but that he had not submitted sufficient medical evidence to establish a causal relationship between the established employment factor and his diagnosed condition of anxiety and affirmed the January 12 and 31, 1995 decisions of the Office.

In a second decision dated May 2, 2000,² the Board found that appellant had not established a causal relationship between his diagnosed emotional condition and his accepted compensable factor of rotating work shifts. The Board noted that appellant had not submitted the necessary medical evidence to establish his claim and affirmed the September 16, 1998 decision of the Office.

The Board reviewed appellant's claim on August 11, 2003³ and again found that appellant had not submitted sufficient evidence to establish error or abuse as a result of his resignation from the employing establishment. The Board found that appellant had not substantiated that he was forced to resign nor that he was fired due to his emotional condition. The Board also found that the allegation that the Merit Systems Protection Board (MSPB) did not adequately address his claim regarding his resignation was beyond its purview. The Board concluded that the medical evidence submitted was not sufficient to establish a causal relationship between appellant's diagnosed condition of anxiety and his accepted employment factor of rotating work shifts and that therefore appellant had not submitted sufficient evidence to meet his burden of proof in establishing an emotional condition due to his federal employment. The Board affirmed the Office's decisions dated July 5 and December 9, 2002 and April 11, 2003.

Following the Board's August 11, 2003 decision, appellant filed a petition for reconsideration and submitted additional evidence. By decision dated November 24, 2003, the Board denied appellant's petition for reconsideration.

Appellant requested reconsideration from the Office on December 31, 2003 based on the evidence submitted to the Office and the Board following the April 11, 2003 decision of the Office. In a letter dated April 18, 2003, appellant stated that his claim arose in 1980. In letters dated April 24 and 25 and May 18, 2003, appellant again asserted that the employing establishment erroneously fired a sick person, that he was forced to resign, that the MSPB acted improperly and that he be awarded damages as a result of these actions.

¹ Docket No. 95-1495 (issued March 17, 1998).

² Docket No. 99-133 (issued May 2, 2000).

³ Docket No. 03-1315 (issued August 11, 2003).

Appellant resubmitted a notification of personnel action dated June 30, 1990 which indicated that he resigned as a clerk typist due to personal reasons. He also resubmitted a copy of the approval of his application for disability retirement dated June 9, 1994. Appellant submitted a notification of personnel action dated July 28, 1989 indicated that appellant was involuntarily terminated as a clerk typist.

Appellant submitted two medical notes from the Department of Veterans Affairs. On May 16, 1980 a physician, whose signature is illegible, noted that appellant utilized the clinic to obtain Valium for his anxiety and stated that appellant became “nervous” at work. In a note dated “February 15, 19__” the physician stated that appellant complained of anxiety and a nervous feeling. The physician recommended out patient psychiatric evaluation.

By decision dated January 23, 2004, the Office reviewed appellant’s claim on the merits and found that the medical evidence submitted was not sufficient to meet appellant’s burden of proof in establishing that he developed an emotional condition due to factors of his federal employment.⁴

LEGAL PRECEDENT

To establish appellant’s occupational disease claim that he has 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.⁵ 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.⁶

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

⁴ Following the Office’s January 23, 2004 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

⁵ *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

⁶ *Id.*

a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.⁷

As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation 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.⁸

In cases involving emotional conditions, 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 compensation 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 Perceptions and feelings alone are not compensable to establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence. Only when the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, should the Office consider the medical evidence of record to determine the causal relationship between the accepted factors and the diagnosed condition.¹⁰

ANALYSIS

In his request for reconsideration appellant alleged that his emotional condition resulted from his erroneous termination by the employing establishment. In support of this allegation, appellant submitted a notification of personnel action dated July 28, 1989 indicating that appellant was involuntarily terminated as a clerk typist. While this document supports that at one point appellant was involuntarily separated by the employing establishment, as alleged, on its face without additional supportive evidence, this document is insufficient to establish error or abuse on the part of the employing establishment in this personnel action.¹¹

Appellant also attributed his emotional condition to his alleged forced resignation and to errors of the MSPB. The Board has previously addressed these allegations in its prior decisions. Appellant did not submit any new evidence substantiating these allegations. A claimant must support his or her allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.¹² As appellant has

⁷ *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

⁸ *Martha L. Watson*, 46 ECAB 407 (1995).

⁹ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

¹⁰ *Id.*; *Fred Faber*, 52 ECAB 107, 110 (2000).

¹¹ *Gregory N. Waite*, 46 ECAB 662, 673 (1995); *Deborah B. Jackson*, Docket No. 03-417 (issued April 15, 2003).

¹² *Roger Williams*, 52 ECAB 468, 473 (2001).

submitted no evidence further substantiating these previously addressed alleged employment factors, he has not established any additional compensable factors of employment.

The Board has previously found that appellant substantiated a compensable factor of employment in this case, rotating work shifts. In order to establish that his emotional condition resulted from this accepted employment factor, appellant must submit rationalized medical opinion evidence. In support of his request for reconsideration, appellant submitted two medical notes. The May 16, 1980 note indicated that appellant utilized the clinic for obtaining Valium for his anxiety and stated that appellant became “nervous” at work. This note does not mention the accepted employment factor of rotating work shifts and does not provide an opinion that this employment duty caused or contributed to appellant’s diagnosed condition of anxiety. This note is not sufficient to establish that appellant’s anxiety is causally related to his employment and does not meet his burden of proof in establishing an emotional condition arising from his compensable job duty.

The note dated February 15¹³ describes appellant’s complaints of anxiety and a nervous feeling. The physician recommended out-patient psychiatric evaluation. This note is also insufficient to meet appellant’s burden of proof as there is no mention of the accepted compensable factor of employment and no opinion supported with medical rationale establishing that his diagnosed condition of anxiety resulted from the accepted employment factor. The medical evidence submitted is not sufficient to establish that appellant sustained an emotional condition as a result of his federal employment.

CONCLUSION

The Board finds that appellant had previously established a compensable employment factor, rotating work shifts. The Board further finds that appellant has not substantiated any additional compensable work factors and that appellant has not submitted sufficient rationalized medical opinion evidence to establish that the accepted factor of employment caused or contributed to his diagnosed condition of anxiety.

¹³ The year is not visible on this report.

ORDER

IT IS HEREBY ORDERED THAT the January 23, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 2, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member