

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

GEORGE A. RODRIGUEZ, Appellant)
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and)
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DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, North Chicago, IL, Employer)
)

**Docket No. 06-461
Issued: May 17, 2006**

Appearances:
George A. Rodriguez, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 21, 2005 appellant filed a timely appeal from the February 9 and November 1, 2005 merit decisions of the Office of Workers' Compensation Programs, which denied his claim that he sustained an emotional injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of his claim.

ISSUE

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

FACTUAL HISTORY

On September 13, 2004 appellant, then a 46-year-old police officer, filed a claim alleging that he experienced emotional stress when he was suspended from his position at work and investigated. On August 13, 2004 he first realized his disease or illness was caused or aggravated by his federal employment. This was the date the medical center director notified

him that his arrest authority was being suspended pending findings of an Administrative Board of Investigation. Further, he was being temporarily assigned to assist the chief of staff/Patient Care Group providing clerical support. Psychiatric records gave a diagnosis of adjustment disorder with anxiety and depressed mood. This was later changed to adjustment disorder not otherwise specified.

In a decision dated February 9, 2005, the Office denied appellant's claim for compensation. The Office found that suspensions and investigations were generally not covered by workers' compensation absent error or abuse.

Appellant requested an oral hearing before an Office hearing representative. The Office received additional evidence: a November 4, 2004 report of investigation by the Administrative Investigation Board into allegations against appellant of sexual harassment, verbal patient abuse and related conduct issues; a March 31, 2005 proposal to remove appellant from his federal employment for engaging in sexual activity while on duty and for twice making inappropriate comments about sexual activity to another employee while on duty; and a July 19, 2005 decision to remove appellant from his federal employment effective July 29, 2005 for the reasons stated in the March 31, 2005 proposal.

At the hearing, which was held on August 22, 2005, appellant testified that his August 2004 suspension was unlawful and that he was put in the wrong place, with people he had arrested. He filed a complaint with the Equal Employment Opportunity (EEO) Commission, which was still being adjudicated. Appellant also testified that a sergeant assaulted him, but an investigation was said to find no evidence to substantiate the allegation. He stated that people were angry with him because he reported a violation at the shooting range to the inspector general. Appellant indicated that the employing establishment slandered him and released too much information to the unemployment office. He also stated that he had a whistleblower protection action pending.

In a decision dated November 1, 2005, the Office hearing representative affirmed the February 9, 2005 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.¹ 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 performance."² "In the course of employment" relates to the elements of time, place and work activity. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in his employer's business, at a place where he may reasonably be expected to be in connection with his

¹ 5 U.S.C. § 8102(a).

² 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).

employment and while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto. The employee must also establish an injury “arising out of the employment.” To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration.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 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 or frustration from not being permitted to work in a particular environment or to hold a particular position.⁴

Workers’ compensation 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 As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.⁶ 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

When appellant filed his claim for compensation, he indicated that it was on August 13, 2004 that he first realized that his disease or illness was caused or aggravated by his federal employment. This was the date he received a memorandum from the medical center director notifying him that his arrest authority was being suspended pending findings of an

³ See *Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

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

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

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) (concurring opinion of Michael E. Groom, Alternate Member).

Administrative Board of Investigation and that he was being temporarily assigned to assist the chief of staff/Patient Care Group providing clerical support. Although the suspension of arrest authority and investigation happened at work, and therefore had some relationship to work, workers' compensation generally does not cover an emotional reaction to such administrative actions. Appellant's removal for cause is another administrative or personnel matter that generally speaking lies outside the scope of coverage.

There is an exception to the rule where the evidence establishes error or abuse by the employing establishment. But in this case, no such evidence appears in the record. The July 19, 2005 removal decision notified appellant that he was entitled to appeal the action to the Merit System Protection Board (MSPB), but the record shows no finding or final decision by the MSPB that his removal was erroneous. Appellant testified that he filed an EEO complaint and had a whistleblower protection action pending, but he has not yet obtained a favorable decision in these forums. There is no evidence of record to establish that the actions taken by the employing establishment against appellant were erroneous or abusive. As such, appellant's case falls outside the coverage of the Act. The Board will therefore affirm the denial of his claim for benefits.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty. Absent proof of error or abuse by the employing establishment, his emotional reaction to administrative or personnel matters is not covered by workers' compensation.

ORDER

IT IS HEREBY ORDERED THAT the November 1 and February 9, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 17, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board