

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

D.W., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Philadelphia, PA, Employer**

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**Docket No. 08-118
Issued: April 15, 2008**

Appearances:

Appellant, 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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On October 15, 2007 appellant filed a timely appeal from the March 29, 2007 merit decision of the Office of Workers' Compensation Programs, which denied his claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the claim. The Board also has jurisdiction to review the August 15, 2007 merit decision of the Office hearing representative, which affirmed the denial.

ISSUE

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

FACTUAL HISTORY

On September 27, 2006 appellant, then a 57-year-old physician, filed a claim alleging that his progressive electrocardiogram (EKG) changes, markedly elevated blood pressure, insomnia and depression were a result of his federal employment: "I was issued a letter of proposed removal from my employment by Dr. Michael Grippi ... with no explanation on 8/30/06. I was upset and did not sleep for 3 nights so I went to the ER at Kennedy Hospital in Cherry Hill on 9/2/06. I was hospitalized for 4 days."

The August 30, 2006 proposed removal cited the following reason: "Violation of the Privacy Act and/or Health Insurance Portability and Accountability Act (HIPAA) (This is in violation of VA Handbook 5021, Part II -- Table of Penalties)." Dr. Grippi described in some detail two specifications to support the charge.

In a decision dated March 29, 2007, the Office denied appellant's claim for benefits. The Office found that the evidence submitted was insufficient to establish that the event occurred as alleged. The Office further found no medical evidence providing a diagnosis that was connected to the claimed event.

Appellant requested a review of the written record by an Office hearing representative. He corrected the home mailing address that appeared on his original claim form and added the onset of Type II diabetes as a condition caused by his federal employment. Appellant submitted the medical discharge summary from his hospitalization in September 2006. He stated: "The evolving EKG changes, the BP in the stroke range, and the new onset of Diabetes type II were all precipitated from the psychological stress induced by the meeting with Dr. Grippi on August 30, 2006, as noted in the Final Diagnoses." Appellant also submitted, among other things, minutes of the meeting he had with Dr. Grippi on August 30, 2006.

In a decision dated August 15, 2007, the Office hearing representative affirmed the denial of compensation. With no evidence of error or abuse by management, the hearing representative found that appellant failed to establish a compensable factor of employment.

LEGAL PRECEDENT

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of his duty.¹ But workers' compensation does not cover each and every illness that is somehow related to one's employment.² An emotional reaction to an administrative or personnel action is not compensable unless the evidence shows error or abuse on the part of the employing establishment.³ Allegations alone by a claimant are insufficient.⁴ 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.⁵

¹ 5 U.S.C. § 8102(a).

² *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

³ *Thomas D. McEuen*, 42 ECAB 566, 572-73 (1991).

⁴ See *Kathleen D. Walker*, 42 ECAB 603 (1991); *Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each of these cases the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

⁵ *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).

ANALYSIS

Appellant attributes various emotional or emotional-physical conditions to the severe psychological stress he experienced as a result of an August 30, 2006 meeting with Dr. Grippi, his second-level supervisor. At that meeting, Dr. Grippi delivered a letter of proposed removal, but any emotional reaction appellant had to this meeting, or to the receipt of the letter of proposed removal, is not compensable as a general rule. Workers' compensation does not usually cover such administrative or personnel matters. The Board recognizes an exception where the evidence establishes error or abuse by management, but appellant has not shown that his case falls within the exception. It is not enough for appellant simply to allege wrongdoing. He must submit probative, reliable evidence establishing that Dr. Grippi committed an administrative error or was abusive in his August 30, 2006 meeting.

The Board has reviewed the record, including the minutes of the August 30, 2006 meeting, and finds that the evidence is insufficient to establish error or abuse by Dr. Grippi. With no probative, reliable evidence substantiating that error or abuse actually occurred, appellant has failed to establish that his claim falls within the scope of the Federal Employees' Compensation Act. The Board will therefore affirm the denial of compensation.⁶

CONCLUSION

The Board finds that the evidence is insufficient to establish that appellant sustained an emotional injury in the performance of duty.

⁶ Appellant's concern that the Office sent correspondence to the incorrect address he provided on his original claim form is a moot point. He corrected the address, the Office hearing representative considered all the evidence he submitted and issued a final decision on that evidence. On appeal, appellant has implicated other people and other incidents at work, but this is new evidence over which the Board has no jurisdiction. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). As with the meeting and proposed removal on August 30, 2006, appellant must do more than allege error or abuse or harassment or discrimination or reprisal. He must substantiate his allegations with probative and reliable evidence, such as a final decision from the Equal Employment Opportunity Commission that management committed the error or abuse alleged.

ORDER

IT IS HEREBY ORDERED THAT the August 15 and March 29, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 15, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board